

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

RIANA BUFFIN and CRYSTAL  
PATTERSON, on behalf of themselves and  
other similarly situated,

Plaintiffs,

v.

CITY AND COUNTY OF SAN  
FRANCISCO, *et al.*

Defendants.

Case No. 4:15-cv-04959-YGR

STIPULATED ~~PROPOSED~~  
PROTECTIVE ORDER

\*as modified by the Court\*

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public disclosure  
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures  
7 or responses to discovery and that the protection it affords from public disclosure and use extends  
8 only to the limited information or items that are entitled to confidential treatment under the  
9 applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that  
10 this Stipulated Protective Order does not entitle them to file confidential information under seal;  
11 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be  
12 applied when a party seeks permission from the court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
15 information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
18 Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their support  
20 staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
22 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
24 CODE”.

25 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium  
26 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
27 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
28 discovery in this matter.

1           2.6     Expert: a person with specialized knowledge or experience in a matter pertinent to the  
2 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a  
3 consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor,  
4 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s  
5 competitor.

6           2.7     “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:  
7 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or  
8 Non-Party would create a substantial risk of serious harm that could not be avoided by less  
9 restrictive means.

10          2.8     “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely  
11 sensitive “Confidential Information or Items” representing computer code and associated comments  
12 and revision histories, formulas, engineering specifications, or schematics that define or otherwise  
13 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to  
14 another Party or Non-Party would create a substantial risk of serious harm that could not be avoided  
15 by less restrictive means.

16          2.9     Non-Party: any natural person, partnership, corporation, association, or other legal  
17 entity not named as a Party to this action.

18          2.10    Outside Counsel of Record: attorneys who are not employees of a party to this action  
19 but are retained to represent or advise a party to this action and have appeared in this action on  
20 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party. For  
21 purposes of this Order, the San Francisco City Attorney’s Office lawyers and support staff, and the  
22 San Francisco Sheriff’s Department Chief Legal Counsel and Assistant Chief Legal Counsel, are  
23 treated as Outside Counsel.

24          2.11    Party: any party to this action, including all of its officers, directors, employees,  
25 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

26          2.12    Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
27 Material in this action.

28

1           2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
2 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
3 storing, or retrieving data in any form or medium) and their employees and subcontractors.

4           2.14 Protected Material: any Disclosure or Discovery Material that is designated as  
5 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as  
6 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

7           2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
8 Producing Party.

9 **3. SCOPE**

10           The protections conferred by this Stipulation and Order cover not only Protected Material (as  
11 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
12 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
13 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
14 However, the protections conferred by this Stipulation and Order do not cover the following  
15 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
16 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
17 publication not involving a violation of this Order, including becoming part of the public record  
18 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
19 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
20 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
21 Protected Material at trial shall be governed by a separate agreement or order.

22 **4. DURATION**

23           Even after final disposition of this litigation, the confidentiality obligations imposed by this  
24 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
25 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
26 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
27 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the  
28 time limits for filing any motions or applications for extension of time pursuant to applicable law.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
3 Non-Party that designates information or items for protection under this Order must take care to  
4 limit any such designation to specific material that qualifies under the appropriate standards. To the  
5 extent it is practical to do so, the Designating Party must designate for protection only those parts of  
6 material, documents, items, or oral or written communications that qualify – so that other portions of  
7 the material, documents, items, or communications for which protection is not warranted are not  
8 swept unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
10 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily  
11 encumber or retard the case development process or to impose unnecessary expenses and burdens on  
12 other parties) expose the Designating Party to sanctions.

13 If it comes to a Designating Party’s attention that information or items that it designated for  
14 protection do not qualify for protection at all or do not qualify for the level of protection initially  
15 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the  
16 mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
18 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
19 Discovery

20 Material that qualifies for protection under this Order must be clearly so designated before  
21 the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents, but excluding  
24 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the  
25 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
26 “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If  
27 only a portion or portions of the material on a page qualifies for protection, the Producing Party also  
28

1 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins)  
2 and must specify, for each portion, the level of protection being asserted.

3 A Party or Non-Party that makes original documents or materials available for inspection  
4 need not designate them for protection until after the inspecting Party has indicated which material it  
5 would like copied and produced. During the inspection and before the designation, all of the material  
6 made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’  
7 EYES ONLY.” After the inspecting Party has identified the documents it wants copied and  
8 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
9 protection under this Order. Then, before producing the specified documents, the Producing Party  
10 must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
11 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE) to each page  
12 that contains Protected Material. If only a portion or portions of the material on a page qualifies for  
13 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
14 appropriate markings in the margins) and must specify, for each portion, the level of protection  
15 being asserted.

16 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
17 Designating Party identify on the record, before the close of the deposition, hearing, or other  
18 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
19 impractical to identify separately each portion of testimony that is entitled to protection and it  
20 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
21 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right  
22 to have up to 21 days to identify the specific portions of the testimony as to which protection is  
23 sought and to specify the level of protection being asserted. Only those portions of the testimony that  
24 are appropriately designated for protection within the 21 days shall be covered by the provisions of  
25 this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or  
26 up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated  
27 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

1 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or  
2 other proceeding to include Protected Material so that the other parties can ensure that only  
3 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
4 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
5 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
6 ATTORNEYS’ EYES ONLY.”

7 Transcripts containing Protected Material shall have an obvious legend on the title page that  
8 the transcript contains Protected Material, and the title page shall be followed by a list of all pages  
9 (including line numbers as appropriate) that have been designated as Protected Material and the level  
10 of protection being asserted by the Designating Party. The Designating Party shall inform the court  
11 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day  
12 period for designation shall be treated during that period as if it had been designated “HIGHLY  
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the  
14 expiration of that period, the transcript shall be treated only as actually designated.

15 (c) for information produced in some form other than documentary and for any other tangible  
16 items, that the Producing Party affix in a prominent place on the exterior of the container or  
17 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
19 CODE”. If only a portion or portions of the information or item warrant protection, the Producing  
20 Party, to the extent practicable, shall identify the protected portion(s) and specify the level of  
21 protection being asserted.

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
23 designate qualified information or items does not, standing alone, waive the Designating Party’s  
24 right to secure protection under this Order for such material. Upon timely correction of a  
25 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in  
26 accordance with the provisions of this Order.

27  
28

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
3 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
5 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
6 confidentiality designation by electing not to mount a challenge promptly after the original  
7 designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
9 by providing written notice of each designation it is challenging and describing the basis for each  
10 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
11 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
12 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
13 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
14 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
15 Party must explain the basis for its belief that the confidentiality designation was not proper and  
16 must give the Designating Party an opportunity to review the designated material, to reconsider the  
17 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
18 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
19 has engaged in this meet and confer process first or establishes that the Designating Party is  
20 unwilling to participate in the meet and confer process in a timely manner.

21 6.3 Judicial Intervention. **If the Parties cannot resolve a challenge without court**  
22 **intervention, the parties shall follow the Court's Standing Order in Civil Cases regarding**  
23 **Discovery and Discovery Motions. The parties may file a joint letter brief regarding retaining**  
24 **confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties**  
25 **agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.**  
26 **Failure by a Designating Party to file such discovery dispute letter within the applicable 21 or**  
27 **14 day period (set forth above) with the Court shall automatically waive the confidentiality**  
28 **designation for each challenged designation. If, after submitting a joint letter brief, the Court**

1 allows that a motion may be filed, any such motion must be accompanied by a competent  
2 declaration affirming that the movant has complied with the meet and confer requirements  
3 imposed in the preceding paragraph. The Court, in its discretion, may elect to transfer the  
4 discovery matter to a Magistrate Judge.

5 In addition, the parties may file a joint letter brief regarding a challenge to a  
6 confidentiality designation at any time if there is good cause for doing so, including a challenge  
7 to the designation of a deposition transcript or any portions thereof. If, after submitting a  
8 joint letter brief, the Court allows that a motion may be filed, any motion brought pursuant to  
9 this provision must be accompanied by a competent declaration affirming that the movant has  
10 complied with the meet and confer requirements imposed by the preceding paragraph. The  
11 Court, in its discretion, may elect to refer the discovery matter to a Magistrate Judge.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating  
13 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
14 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
15 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
16 file a letter brief to retain confidentiality as described above, all parties shall continue to afford  
17 the material in question the level of protection to which it is entitled under the Producing  
18 Party's designation until the court rules on the challenge.

19 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
21 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
22 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
23 the categories of persons and under the conditions described in this Order. When the litigation has  
24 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
25 DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a location and in a  
27 secure manner that ensures that access is limited to the persons authorized under this Order.  
28

1           7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by  
2 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
3 information or item designated “CONFIDENTIAL” only to:

4           (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of  
5 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for  
6 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is  
7 attached hereto as Exhibit A;

8           (b) the officers, directors, and employees of the Receiving Party to whom disclosure is  
9 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement  
10 to Be Bound” (Exhibit A);

11           (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
12 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement  
13 to Be Bound” (Exhibit A);

14           (d) the court and its personnel;

15           (e) court reporters and their staff, professional jury or trial consultants, and Professional  
16 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18           (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
19 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
20 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
21 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
22 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
23 Stipulated Protective Order.

24           (g) the author or recipient of a document containing the information or a custodian or other person  
25 who otherwise possessed or knew the information.

26           7.3     Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
27 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered  
28 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any

1 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
2 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of  
4 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for  
5 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is  
6 attached hereto as Exhibit A;

7 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this  
8 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and  
9 (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

10 (c) the court and its personnel;

11 (d) court reporters and their staff, professional jury or trial consultants, and Professional  
12 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

14 (e) the author or recipient of a document containing the information or a custodian or other  
15 person who otherwise possessed or knew the information.

16 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –  
17 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or  
18 Items to Experts.

19 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,  
20 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has  
21 been designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
22 ONLY” may be disclosed to an Expert without disclosure of the identity of the Expert as long as the  
23 Expert is not a current officer, director, or employee of a competitor of a Party or anticipated to  
24 become one.

25 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,  
26 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has  
27 been designated “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first  
28 must make a written request to the Designating Party that (1) identifies the general categories of

1 “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks  
2 permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state  
3 of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the  
4 Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received  
5 compensation or funding for work in his or her areas of expertise or to whom the expert has provided  
6 professional services, including in connection with a litigation, at any time during the preceding five  
7 years, and (6) identifies (by name and number of the case, filing date, and location of court) any  
8 litigation in connection with which the Expert has offered expert testimony, including through a  
9 declaration, report, or testimony at a deposition or trial, during the preceding five years.

10 (b) A Party that makes a request and provides the information specified in the preceding  
11 respective paragraphs may disclose the subject Protected Material to the Expert unless, within 14  
12 days of delivering the request, the Party receives a written objection from the Designating Party.  
13 Any such objection must set forth in detail the grounds on which it is based.

14 (c) A Party that receives a timely written objection must meet and confer with the  
15 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
16 within seven days of the written objection. If no agreement is reached, the Party seeking to make the  
17 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with  
18 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion  
19 must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to  
20 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and  
21 suggest any additional means that could be used to reduce that risk. In addition, any such motion  
22 must be accompanied by a competent declaration describing the parties’ efforts to resolve the matter  
23 by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth  
24 the reasons advanced by the Designating Party for its refusal to approve the disclosure.

25 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of  
26 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
27 outweighs the Receiving Party’s need to disclose the Protected Material to its Expert.  
28

1 **8. PROSECUTION BAR**

2 Absent written consent from the Producing Party, any individual who receives access to  
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
4 SOURCE CODE” information shall not be involved in the prosecution of patents or patent  
5 applications relating to any highly confidential source code produced by parties or non-parties,  
6 including but not limited to source code relating to any public safety assessment tool(s), including  
7 without limitation the patents asserted in this action and any patent or application claiming priority  
8 to or otherwise related to the patents asserted in this action, before any foreign or domestic agency,  
9 including the United States Patent and Trademark Office (“the Patent Office”). For purposes of this  
10 paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise  
11 affecting the scope or maintenance of patent claims. To avoid any doubt, “prosecution” as used in  
12 this paragraph does not include representing a party challenging a patent before a domestic or  
13 foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*  
14 reexamination). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY” “HIGHLY CONFIDENTIAL – SOURCE CODE” information is  
16 first received by the affected individual and shall end two (2) years after final termination of this  
17 action.

18 **9. SOURCE CODE**

19 (a) To the extent production of source code becomes necessary in this case, a Producing  
20 Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” if it comprises  
21 or includes confidential, proprietary or trade secret source code.

22 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”  
23 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’  
24 EYES ONLY” information including the Prosecution Bar set forth in Paragraph 8, and may be  
25 disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
26 ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4.

27 (c) Any source code produced in discovery shall be made available for inspection in a  
28 format through which it could be reasonably reviewed and searched during normal business hours or

1 other mutually agreeable times at a location that is reasonably convenient for the Receiving Party  
2 and any experts to whom the source code may be disclosed. The source code shall be made available  
3 for inspection on a secured computer in a secured room without Internet access or network access to  
4 other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion  
5 of the source code onto any recordable media or recordable device. The Producing Party may  
6 visually monitor the activities of the Receiving Party's representatives during any source code  
7 review, but only to ensure that there is no unauthorized recording, copying, or transmission of the  
8 source code.

9 (d) The Receiving Party may request paper copies of limited portions of source code that  
10 are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other  
11 papers, or for deposition or trial, but shall not request paper copies for the purposes of reviewing the  
12 source code other than electronically as set forth in paragraph (c) in the first instance. The Producing  
13 Party shall provide all such source code in paper form including bates numbers and the label  
14 "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing Party may challenge the amount  
15 of source code requested in hard copy form pursuant to the dispute resolution procedure and  
16 timeframes set forth in Paragraph 6 whereby the Producing Party is the "Challenging Party" and the  
17 Receiving Party is the "Designating Party" for purposes of dispute resolution.

18 (e) The Receiving Party shall maintain a record of any individual who has inspected any  
19 portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper  
20 copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall  
21 not create any electronic or other images of the paper copies and shall not convert any of the  
22 information contained in the paper copies into any electronic format. The Receiving Party shall only  
23 make additional paper copies if such additional copies are (1) necessary to prepare court filings,  
24 pleadings, or other papers (including a testifying expert's expert report), (2) necessary for deposition,  
25 or (3) otherwise necessary for the preparation of its case. Any paper copies used during a deposition  
26 shall be retrieved by the Producing Party at the end of each day and must not be given to or left with  
27 a court reporter or any other unauthorized individual.

28

1 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
2 **LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation that compels  
4 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY  
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
6 CODE” that Party must:

7 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of  
8 the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
10 other litigation that some or all of the material covered by the subpoena or order is subject to this  
11 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
13 Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with the subpoena  
15 or court order shall not produce any information designated in this action as “CONFIDENTIAL” or  
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
17 SOURCE CODE” before a determination by the court from which the subpoena or order issued,  
18 unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear  
19 the burden and expense of seeking protection in that court of its confidential material – and nothing  
20 in these provisions should be construed as authorizing or encouraging a Receiving Party in this  
21 action to disobey a lawful directive from another court.

22 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
23 **THIS LITIGATION**

24 (a) The terms of this Order are applicable to information produced by a Non-Party in this  
25 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
26 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. Such information produced by  
27 Non-Parties in connection with this litigation is protected by the remedies and relief provided by this  
28

1 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
2 additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
4 Party's confidential information in its possession, and the Party is subject to an agreement with the  
5 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

6 1. promptly notify in writing the Requesting Party and the Non-Party that some  
7 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

8 2. promptly provide the Non-Party with a copy of the Stipulated Protective  
9 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the  
10 information requested; and

11 3. make the information requested available for inspection by the Non-Party.

12 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
13 days of receiving the notice and accompanying information, the Receiving Party may produce the  
14 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
15 seeks a protective order, the Receiving Party shall not produce any information in its possession or  
16 control that is subject to the confidentiality agreement with the Non-Party before a determination by  
17 the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of  
18 seeking protection in this court of its Protected Material.

19 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
21 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,  
22 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
23 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)  
24 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
25 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to  
26 Be Bound" that is attached hereto as Exhibit A.

1 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
2 **MATERIAL**

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
4 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties  
5 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
6 modify whatever procedure may be established in an e-discovery order that provides for production  
7 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
8 parties reach an agreement on the effect of disclosure of a communication or information covered by  
9 the attorney-client privilege or work product protection, the parties may incorporate their agreement  
10 in the stipulated protective order submitted to the court.

11 **14. MISCELLANEOUS**

12 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
13 its modification by the court in the future.

14 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
15 no Party waives any right it otherwise would have to object to disclosing or producing any  
16 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
17 Party waives any right to object on any ground to use in evidence of any of the material covered by  
18 this Protective Order.

19 14.3 Filing Protected Material. Without written permission from the Designating Party or a  
20 court order secured after appropriate notice to all interested persons, a Party may not file in the  
21 public record in this action any Protected Material. A Party that seeks to file under seal any Protected  
22 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal  
23 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant  
24 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the  
25 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
26 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant  
27 to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the Protected  
28

1 Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by  
2 the court.

3 **15. FINAL DISPOSITION**

4 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
5 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
6 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
7 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
8 the Protected Material is returned or destroyed, the Receiving Party must submit a written  
9 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
10 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material  
11 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,  
12 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected  
13 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
14 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
15 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant  
16 and expert work product, even if such materials contain Protected Material. Any such archival copies  
17 that contain or constitute Protected Material remain subject to this Protective Order as set forth in  
18 Section 4 (DURATION).

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 Dated: April 12, 2018

LATHAM & WATKINS LLP

21 By: /s/ Robert E. Sims

22 Robert E. Sims (SBN: 116680)

23 Steven M. Bauer (SBN: 135067)

24 Tyler P. Young (SBN: 291041)

EQUAL JUSTICE UNDER LAW

25 By: /s/ Phil Telfeyan

26 Phil Telfeyan (SBN: 258270)

27 Attorneys for Plaintiffs Riana Buffin and Crystal  
28 Patterson

1 Dated: April 12, 2018

DHILLON LAW GROUP INC.

2  
3 By: /s/ Brandon Baum

Harmeet K. Dhillon (SBN: 207872)

4 Krista L. Baughman (SBN: 264600)

5 Brandon D. Baum (SBN: 121318)

6 Gregory R. Michael (SBN: 306814)

7 Attorneys for Defendant Intervenor

8 California Bail Agents Association

9 Dated: April 12, 2018

CITY ATTORNEY

10  
11 By: /s/ Jeremy Goldman

Dennis J. Herrera (SBN: 139669)

12 Wayne K. Snodgrass (SBN: 148137)

13 Jeremy M. Goldman (SBN: 218888)

14 Attorneys for Defendant Sheriff Vicki Hennessy

15  
16 **ATTESTATION PER L.R. 5-1**

17 I, Brandon Baum, hereby attest, pursuant to Local Rule 5-1, that the concurrence to the filing  
18 of this document has been obtained from each signatory hereto:

19 Dated: April 12, 2018

DHILLON LAW GROUP INC.

20 By: /s/ Brandon Baum

Harmeet K. Dhillon (SBN: 207872)

21 Krista L. Baughman (SBN: 264600)

22 Brandon D. Baum (SBN: 121318)

23 Gregory R. Michael (SBN: 306814)

24 Attorneys for Defendant Intervenor

25 California Bail Agents Association

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

DATED: April 16, 2018

  
Hon. Yvonne Gonzalez Rogers

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have  
5 read in its entirety and understand the Stipulated Protective Order that was issued by the United States District  
6 Court for the Northern District of California on \_\_\_\_\_ in the case of *Buffin, et al. v.*  
7 *City and County of San Francisco, et al.*, Case No. 4:15-CV-04959-YGR. I agree to comply with and  
8 to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure  
9 to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that  
10 I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to  
11 any person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Northern  
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such  
14 enforcement proceedings occur after termination of this action.

15 I hereby appoint \_\_\_\_\_ [print or type full name] of  
16 \_\_\_\_\_ [print or type full address and telephone number] as my  
17 California agent for service of process in connection with this action or any proceedings related to  
18 enforcement of this Stipulated Protective Order.

19  
20 Date: \_\_\_\_\_

21 City and State where sworn and signed: \_\_\_\_\_

22 Printed name: \_\_\_\_\_

23 [printed name]

24 Signature: \_\_\_\_\_

25 [signature]