

1 under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3,
2 below, that this Stipulated Protective Order does not entitle them to file confidential information
3 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards
4 that will be applied when a party seeks permission from the court to file material under seal.

5 2. DEFINITIONS

6 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
7 information or items under this Order.

8 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
9 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
10 of Civil Procedure 26(c), and for which public disclosure is likely to result in particularized harm
11 and violate privacy interests recognized by law. This information may include:

- 12 a. personnel file records of any peace officer;
- 13 b. medical records;
- 14 c. social security numbers and similar sensitive identifying information

15 (unless redacted by order or by agreement of all parties).

16 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
17 well as their support staff).

18 2.4 Designating Party: a Party or Non-Party that designates information or items that it
19 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

20 2.5 Disclosure or Discovery Material: all items or information, regardless of the
21 medium or manner in which it is generated, stored, or maintained (including, among other things,
22 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
23 responses to discovery in this matter.

24 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
25 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
26 consultant in this action.

27 2.7 House Counsel: attorneys who are employees of a party to this action. House
28 Counsel does not include Outside Counsel of Record or any other outside counsel.

1 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
2 entity not named as a Party to this action.

3 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
4 action but are retained to represent or advise a party to this action and have appeared in this action
5 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

6 2.10 Party: any party to this action, including all of its officers, directors, employees,
7 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

8 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
9 Material in this action.

10 2.12 Professional Vendors: persons or entities that provide litigation support services
11 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
12 organizing, storing, or retrieving data in any form or medium) and their employees and
13 subcontractors.

14 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
15 “CONFIDENTIAL.”

16 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
17 Producing Party.

18 3. SCOPE

19 The protections conferred by this Stipulation and Order cover not only Protected Material
20 (as defined above), but also (1) any information copied from Protected Material; (2) all copies,
21 excerpts, summaries, or compilations of Protected Material that reveal the source of the Protected
22 Material or that reveal specific information entitled to confidentiality as a matter of law; and (3)
23 any testimony, conversations, or presentations by Parties or their Counsel that might reveal
24 Protected Material. However, the protections conferred by this Stipulation and Order do not cover
25 the following information: (a) any information that is in the public domain at the time of
26 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
27 Receiving Party as a result of publication not involving a violation of this Order, including
28 becoming part of the public record through trial or otherwise; and (b) any information known to

1 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure
2 from a source who obtained the information lawfully and under no obligation of confidentiality to
3 the Designating Party. Any use of Protected Material at trial shall be governed by a separate
4 agreement or order.

5 4. DURATION

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

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
15 or Non-Party that designates information or items for protection under this Order must take care to
16 limit any such designation to specific material that qualifies under the appropriate standards. The
17 Designating Party must designate for protection only those parts of material, documents, items, or
18 oral or written communications that qualify – so that other portions of the material, documents,
19 items, or communications for which protection is not warranted are not swept unjustifiably within
20 the ambit of this Order.

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

25 If it comes to a Designating Party’s attention that information or items that it designated
26 for protection do not qualify for protection, that Designating Party must promptly notify all other
27 Parties that it is withdrawing the mistaken designation.

28 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order

1 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
2 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
3 designated before the material is disclosed or produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic documents, but
6 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
7 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a
8 portion or portions of the material on a page qualifies for protection, the Producing Party also must
9 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins). A
10 Party or Non-Party that makes original documents or materials available for inspection need not
11 designate them for protection until after the inspecting Party has indicated which material it would
12 like copied and produced. During the inspection and before the designation, all of the material
13 made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
14 identified the documents it wants copied and produced, the Producing Party must determine which
15 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
16 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page
17 that contains Protected Material. If only a portion or portions of the material on a page qualifies
18 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
19 making appropriate markings in the margins).

20 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
21 Designating Party identify on the record, before the close of the deposition, hearing, or other
22 proceeding, all protected testimony.

23 (c) for information produced in some form other than documentary and for any other
24 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
25 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a
26 portion or portions of the information or item warrant protection, the Producing Party, to the
27 extent practicable, shall identify the protected portion(s).

28 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to

1 designate qualified information or items does not, standing alone, waive the Designating Party's
2 right to secure protection under this Order for such material. Upon timely correction of a
3 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
4 in accordance with the provisions of this Order.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
27 intervention, the parties shall follow the Court's Standing Order in Civil Cases regarding
28 Discovery and Discovery Motions. The parties may file a joint letter brief regarding retaining

1 confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties
2 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.
3 Failure by a Designating Party to file such discovery dispute letter within the applicable 21 or 14
4 day period (set forth above) with the Court shall automatically waive the confidentiality
5 designation for each challenged designation. If, after submitting a joint letter brief, the Court
6 allows that a motion may be filed, any such motion must be accompanied by a competent
7 declaration affirming that the movant has complied with the meet and confer requirements
8 imposed in the preceding paragraph. The Court, in its discretion, may elect to transfer the
9 discovery matter to a Magistrate Judge.

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

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

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
26 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
27 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
28 the categories of persons and under the conditions described in this Order. When the litigation has
been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL

1 DISPOSITION).

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
5 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
6 information or item designated “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
8 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
9 information for this litigation (counsel and law firms appearing in this action are deemed to have
10 agreed to be bound by this Protective Order);

11 (b) the officers, directors, and employees (including House Counsel) of the Receiving
12 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

17 (d) the court and its personnel;

18 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
19 and Professional Vendors to whom disclosure is reasonably necessary for this litigation;

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

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

28 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER

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LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

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

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

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

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

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement

1 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

2 (1) promptly notify in writing the Requesting Party and the Non-Party that some or
3 all of the information requested is subject to a confidentiality agreement with a Non-Party;

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

7 (3) make the information requested available for inspection by the Non-Party.

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

15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
24 MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain inadvertently
26 produced material is subject to a claim of privilege or other protection, the obligations of the
27 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
28 provision is not intended to modify whatever procedure may be established in an e-discovery order

1 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
2 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
3 communication or information covered by the attorney-client privilege or work product protection,
4 the parties may incorporate their agreement in the stipulated protective order submitted to the
5 court.

6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
8 seek its modification by the court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
10 Order no Party waives any right it otherwise would have to object to disclosing or producing any
11 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
12 Party waives any right to object on any ground to use in evidence of any of the material covered
13 by this Protective Order.

14 12.3 Filing Protected Material. Without written permission from the Designating Party
15 or a court order secured after appropriate notice to all interested persons, a Party may not file in
16 the public record in this action any Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
18 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
19 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
20 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
21 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
22 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving
23 Party may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless
24 otherwise instructed by the court.

25 13. FINAL DISPOSITION

26 Within 60 days after the final disposition of this action, as defined in paragraph 4, upon
27 written notification served by Producing or Designating Party, each Receiving Party must return
28 all Protected Material to the Producing Party or destroy such material. As used in this subdivision,

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

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 Dated: October 31, 2016

HADDAD & SHERWIN LLP

16 /s/

17 Michael J. Haddad, Esq.
Attorney for Plaintiff

18 Dated: October 31, 2016

EDRINGTON, SCHIRMER & MURPHY LLP

19 /s/

20 Timothy P. Murphy
Attorneys for Defendants
ALAMEDA COUNTY and SHERIFF
21 GREGORY J. AHERN
22

23 Dated: October 31, 2016

CLAPP MORONEY BELLAGAMBA
VUCINICH BEEMAN & SCHELEY

24 /s/

25 Jeffrey M. Vucinich, Esq.
Attorneys for Defendant PAUL WEIBER
26

27 Dated: October 31, 2016

MCNAMARA, NEY, BEATTY, SLATTERY,
BORGES & AMBACHER LLP
28

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 read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court for the
6 Northern District of California on _____ [date] in the case of *Petrov v. Alameda County,*
7 *et al.*, 4:16-cv-04323 YGR. I agree to comply with and to be bound by all the terms of this
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
10 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
13 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
14 Order, even if such 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
17 my California agent for service of process in connection with this action or any proceedings related
18 to enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____

24
25 Signature: _____

