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ATTORNEY FOR PLAINTIFF

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

BARBARA NICANDER,
Plaintiff,
v.
LAW OFFICES OF LAURENCE A.
HECKER, ATTORNEY AT LAW,
LAURENCE A. HECKER, and GREG
CHANDLER,
Defendants.

) Case# 07-05838 JF HRL
)
) ~~Proposed~~ **Stipulated Protective**
) **Order**
)
) **(MODIFIED BY THE COURT)**
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1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal. **Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.**

1 **2. DEFINITIONS**

2 2.1 Party: any party to this action, including all of its officers, directors, employees,
3 consultants, retained experts, and outside counsel (and their support staff).

4 2.2 Disclosure or Discovery Material: all items or information, regardless of the medium
5 or manner generated, stored, or maintained (including, among other things, testimony,
6 transcripts, or tangible things) that are produced or generated in disclosures or responses to
7 discovery in this matter.

8 2.3 “Confidential” Information or Items: information (regardless of how generated,
9 stored or maintained) or tangible things that qualify for protection under standards developed
10 under
11 F.R.Civ.P. 26(c).

12 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely
13 sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty
14 would create a substantial risk of serious injury that could not be avoided by less restrictive
15 means.
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17 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
18 Producing Party.

19 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material
20 in this action.

21 2.7. 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 Confidential
23 — Attorneys’ Eyes Only.”
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1 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
2 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

3 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to
4 represent or advise a Party in this action.

5 2.10 House Counsel: attorneys who are employees of a Party.

6 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
7 support staffs).

8 2.12 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
10 witness or as a consultant in this action and who is not a past or a current employee of a Party or
11 of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an
12 employee of a Party or a competitor of a Party’s. This definition includes a professional jury or
13 trial consultant retained in connection with this litigation.

14 2.13 Professional Vendors: persons or entities that provide litigation support
15 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
16 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
17 subcontractors.
18

19 **3. SCOPE**

20 The protections conferred by this Stipulation and Order cover not only Protected Material (as
21 defined above), but also any information copied or extracted therefrom, as well as all copies,
22 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
23 parties or counsel to or in court or in other settings that might reveal Protected Material.

24 **4. DURATION**
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1 Even after the termination of this litigation, the confidentiality obligations imposed by this
2 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
3 otherwise directs. **For a period of six months after the final termination of this action, this
4 court will retain jurisdiction to enforce the terms of this order.**

5. DESIGNATING PROTECTED MATERIAL

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

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

16 If it comes to a Party's or a non-party's attention that information or items that it designated
17 for protection do not qualify for protection at all, or do not qualify for the level of protection
18 initially asserted, that Party or non-party must promptly notify all other parties that it is
19 withdrawing the mistaken designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
21 e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material
22 that qualifies for protection under this Order must be clearly so designated before the material is
23 disclosed or produced.
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3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (apart from transcripts of depositions or
5 other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL”
6 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top of each page that
7 contains protected material. If only a portion or portions of the material on a page qualifies for
8 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
9 making appropriate markings in the margins) and must specify, for each portion, the level of
10 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
11 ATTORNEYS’ EYES ONLY”).

12 A Party or non-party that makes original documents or materials available for inspection
13 need not designate them for protection until after the inspecting Party has indicated which
14 material it would like copied and produced. During the inspection and before the designation, all
15 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
17 copied and produced, the Producing Party must determine which documents, or portions thereof,
18 qualify for protection under this Order, then, before producing the specified documents, the
19 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that contains
21 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
22 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
23 appropriate markings in the margins) and must specify, for each portion, the level of protection
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1 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY”).

3 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
4 the Party or non-party offering or sponsoring the testimony identify on the record, before the
5 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
6 any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’
7 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is
8 entitled to protection, and when it appears that substantial portions of the testimony may qualify
9 for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on
10 the record (before the deposition or proceeding is concluded) a right to have up to 20 days to
11 identify the specific portions of the testimony as to which protection is sought and to specify the
12 level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately
14 designated for protection within the 20 days shall be covered by the provisions of this Stipulated
15 Protective Order.
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17 Transcript pages containing Protected Material must be separately bound by the court
18 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or
20 nonparty offering or sponsoring the witness or presenting the testimony.

21 (c) for information produced in some form other than documentary, and for any
22 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
23 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
24 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the
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1 information or item warrant protection, the Producing Party, to the extent practicable, shall
2 identify the protected portions, specifying whether they qualify as “Confidential” or as “Highly
3 Confidential – Attorneys’ Eyes Only.”

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
5 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’
6 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection
7 under this Order for such material. If material is appropriately designated as “Confidential” or
8 “Highly Confidential – Attorneys’ Eyes Only” after the material was initially produced, the
9 Receiving Party, on timely notification of the designation, must make reasonable efforts to
10 assure that the material is treated in accordance with the provisions of this Order.

11 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
13 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
14 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
15 waive its right to challenge a confidentiality designation by electing not to mount a challenge
16 promptly after the original designation is disclosed.

17 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s
18 confidentiality designation must do so in good faith and must begin the process by conferring
19 directly (in voice to voice dialogue; other forms of communication are not sufficient) with
20 counsel for the Designating Party. In conferring, the challenging Party must explain the basis for
21 its belief that the confidentiality designation was not proper and must give the Designating Party
22 an opportunity to review the designated material, to reconsider the circumstances, and, if no
23 change in designation is offered, to explain the basis for the chosen designation. A challenging
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1 Party may proceed to the next stage of the challenge process only if it has engaged in this meet
2 and confer process first.

3 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
4 designation after considering the justification offered by the Designating Party may file and
5 serve a motion that identifies the challenged material and sets forth in detail the basis for the
6 challenge. Each such motion must be accompanied by a competent declaration that affirms that
7 the movant has complied with the meet and confer requirements imposed in the preceding
8 paragraph and that sets forth with specificity the justification for the confidentiality designation
9 that was given by the Designating Party in the meet and confer dialogue.

10 The burden of persuasion in any such challenge proceeding shall be on the Designating
11 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
12 question the level of protection to which it is entitled under the Producing Party's designation.
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14 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
16 produced by another Party or by a non-party in connection with this case only for prosecuting,
17 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
18 to the categories of persons and under the conditions described in this Order. When the litigation
19 has been terminated, a Receiving Party must comply with the provisions of section 11, below
20 (FINAL DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at a location and in a
22 secure manner that ensures that access is limited to the persons authorized under this Order.
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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 Counsel to whom it is reasonably necessary to disclose the information for this litigation and
6 who have signed the “Agreement to Be Bound by Protective Order” that is attached hereto as
7 Exhibit A;

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

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

14 (d) the Court and its personnel;

15 (e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably
16 necessary for this litigation and who have signed the “Agreement to Be Bound by Protective
17 Order” (Exhibit A);

18 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
19 necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A).

20 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
21 Material must be separately bound by the court reporter and may not be disclosed to anyone
22 except as permitted under this Stipulated Protective Order.

23 (g) the author of the document or the original source of the information.
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1 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
2 Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL
4 – ATTORNEYS’ EYES ONLY” only to:

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

9 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this
10 litigation, and (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit
11 A)

12 (c) the Court and its personnel;

13 (d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably
14 necessary for this litigation and who have signed the “Agreement to Be Bound by Protective
15 Order” (Exhibit A); and
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17 (e) the author of the document or the original source of the information.

18 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
19 **LITIGATION**

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21 If a Receiving Party is served with a subpoena or an order issued in other litigation that
22 would compel disclosure of any information or items designated in this action as
23 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
24 Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
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1 immediately and in no event more than three court days after receiving the subpoena or order.
2 Such notification must include a copy of the subpoena or court order.

3 The Receiving Party also must immediately inform in writing the Party who caused the
4 subpoena or order to issue in the other litigation that some or all the material covered by the
5 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
6 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
7 caused the subpoena or order to issue.

8 The purpose of imposing these duties is to alert the interested parties to the existence of this
9 Protective Order and to afford the Designating Party in this case an opportunity to try to protect
10 its confidentiality interests in the court from which the subpoena or order issued. The
11 Designating Party shall bear the burdens and the expenses of seeking protection in that court of
12 its confidential material – and nothing in these provisions should be construed as authorizing or
13 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

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15 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

23 **10. FILING PROTECTED MATERIAL**
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1 Without written permission from the Designating Party or a court order secured after appropriate
2 notice to all interested persons, a Party may not file in the public record in this action any
3 Protected Material. **A party that seeks to file under seal any protected material must
4 comply with Civil Local Rule 79-5.**

5 **11. FINAL DISPOSITION**

6 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after
7 the final termination of this action, each Receiving Party must return all Protected Material to the
8 Producing Party. As used in this subdivision, “all Protected Material” includes all copies,
9 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
10 Protected Material. With permission in writing from the Designating Party, the Receiving Party
11 may destroy some or all of the Protected Material instead of returning it. Whether the Protected
12 Material is returned or destroyed, the Receiving Party must submit a written certification to the
13 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
14 deadline that identifies (by category, where appropriate) all the Protected Material that was
15 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
16 abstracts, compilations, summaries or other forms of reproducing or capturing any of the
17 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
18 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
19 work product, even if such materials contain Protected Material. Any such archival copies that
20 contain or constitute Protected Material remain subject to this Protective Order as set forth in
21 Section 4 (DURATION), above.

22
23 **12. MISCELLANEOUS**

1 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
2 its modification by the Court in the future.

3 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
4 no Party waives any right it otherwise would have to object to disclosing or producing any
5 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
6 no Party waives any right to object on any ground to use in evidence of any of the material
7 covered by this Protective Order.

8 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

9
10 DATED: 2/23/09

11 /s/Ronald Wilcox
12 Ronald Wilcox, Attorney for Plaintiff

13
14 DATED: 2/23/09

15 /s/Wendy D. Vierra
16 Wendy Vierra, Attorney for Defendants

17 (AS MODIFIED BY THE COURT),
18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19
20 DATED: March 2, 2009

21
22 
23 _____
24 JUDGE HOWARD LLOYD
25 U.S. MAGISTRATE JUDGE

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
 6 the Central District of California on [date] in the case of ^ _____ ~~insert formal name of~~
 7 **Laurence A. Hecker, et al., C07-05838 JF (HRL).**
 8 ~~the case and the number and initials assigned to it by the court].~~ I agree to comply with and
 9 to be bound by all the terms of this Stipulated Protective Order and I understand and
 10 acknowledge that failure to so comply could expose me to sanctions and punishment in the
 11 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
 12 item that is subject to this Stipulated Protective Order to any person or entity except in strict
 13 compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the Central
 15 District of California for the purpose of enforcing the terms of this Stipulated Protective Order,
 16 even if such enforcement proceedings occur after termination of this action. I hereby appoint
 17 _____ [print or type full name] of
 18 _____ [print or type full address and telephone
 19 number] as my California agent for service of process in connection with this action or any
 20 proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24 [printed name]

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Signature: _____

[signature]