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**\*ORDER E-FILED 1/22/2009\***

5 Attorneys for Defendants  
 6 COUNTY OF SANTA CLARA AND  
 7 COUNTY OF SANTA CLARA SHERIFF'S  
 8 DEPARTMENT

9 UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11 (San Jose)

12 GARY H. KIDGELL,

13 Plaintiff,

14 v.

15 COUNTY OF SANTA CLARA et al.,

16 Defendants.

No. C08-03396 JW

**STIPULATED PROTECTIVE ORDER  
 WITH ADDENDUM**

**(MODIFIED BY THE COURT)**

17  
18 1. PURPOSES AND LIMITATIONS

19 Disclosure and discovery activity in this action are likely to involve production of  
 20 confidential, proprietary, or private information, including confidential juvenile court records,  
 21 for which special protection from public disclosure and from use for any purpose other than  
 22 prosecuting this litigation would be warranted.

23 Defendants specifically claim official information privilege with respect to videotapes  
 24 concerning Main Jail booking which include detainees who are not the subject of this action and  
 25 are entitled to protection of their privacy rights. Defendants claim official information privilege  
 26 also as to a restricted use of force policy. Defendants also claim official information privilege  
 27 with respect to Classification records which are rigorously held and maintained in strict  
 28 confidentiality. The Classification Unit creates and maintains records regarding how DOC

1 makes security and housing assignment decisions for each inmate, according to various  
2 objective factors, including the inmate’s criminal history, judicial status, medical or psychiatric  
3 conditions, and past and present behavior patterns. This privilege is asserted in order to  
4 safeguard highly sensitive law enforcement methods and codes used in inmate classification and  
5 in the safe and orderly operation of the facilities of the Santa Clara County Department of  
6 Correction (“DOC”). The documents are currently redacted on the basis of the official  
7 information privilege on the ground that they reflect highly sensitive law enforcement methods  
8 used in inmate classification. These records designated as “restricted,” are highly confidential,  
9 in that if such documents were disclosed, current and future inmates would obtain sufficient  
10 knowledge to manipulate the classification system and their housing in order, for example, to  
11 plan and carry out assaults on other inmates and on DOC staff. Inmates who gain such  
12 knowledge could obtain personal information about other inmates in violation of their  
13 constitutional privacy rights and use it to manipulate those inmates or otherwise threaten their  
14 safety. In DOC’s experience Inmates will intentionally “bait” and otherwise harass DOC  
15 officers with the intention of being reclassified and rehoused into a different cell within the  
16 Main Jail. Revealing sensitive, confidential Classification records that would reveal to an  
17 inmate (and to those to whom he distributes the records) how to manipulate the Classification  
18 process and jeopardize the safety and security of the jails.

19 Accordingly, the parties hereby stipulate to and petition the court to enter the following  
20 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket  
21 protections on all disclosures or responses to discovery and that the protection it affords extends  
22 only to the limited information or items that are entitled under the applicable legal principles to  
23 treatment as confidential. The parties further acknowledge, as set forth in Section 10, below,  
24 that this Stipulated Protective Order creates no entitlement to file confidential information under  
25 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the  
26 standards that will be applied when a party seeks permission from the court to file material  
27 under seal.

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1           2.    DEFINITIONS

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

4           2.2   Disclosure or Discovery Material: all items or information, regardless of the  
5 medium 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  
9 generated, stored or maintained) or tangible things that qualify for protection under standards  
10 developed under F.R.Civ.P. 26(c).

11          2.4   Receiving Party: a Party that receives Disclosure or Discovery Material from a  
12 Producing Party.

13          2.5   Producing Party: a Party or non-party that produces Disclosure or Discovery  
14 Material in this action.

15          2.6   Designating Party: a Party or non-party that designates information or items  
16 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly  
17 Confidential — Attorneys’ Eyes Only.”

18          2.7   Protected Material: any Disclosure or Discovery Material that is designated as  
19 “Confidential.”

20          2.8   Expert: a person with specialized knowledge or experience in a matter  
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
22 witness or as a consultant in this action and who is not a past or a current employee of a Party or  
23 of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an  
24 employee of a Party or a competitor of a Party’s. This definition includes a professional jury or  
25 trial consultant retained in connection with this litigation.

26           3.    SCOPE

27           The protections conferred by this Stipulation and Order cover not only Protected Material  
28 (as defined above), but also any information copied or extracted therefrom, as well as all copies,

1 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
2 parties or counsel to or in court or in other settings that might reveal Protected Material.

3 4. DURATION

4 Even after the termination of this litigation, the confidentiality obligations imposed by this  
5 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
6 order otherwise directs, based on its own motion or a motion brought by a Designating Party.

7 **For a period of six months after the final termination of this action, this court will retain**  
8 **5. DESIGNATING PROTECTED MATERIAL jurisdiction to enforce the terms of**  
9 **this order.**

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

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

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

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
26 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or  
27 ordered, material that qualifies for protection under this Order must be clearly so designated  
28 before the material is disclosed or produced.

Designation in conformity with this Order requires:

- (a) for information in documentary form (apart from transcripts of

1 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
2 “CONFIDENTIAL” at the top of each page that contains protected material. If only a portion  
3 or portions of the material on a page qualifies for protection, the Producing Party also must  
4 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

5 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
6 that the Party or non-party offering or sponsoring the testimony identify on the record, before  
7 the close of the deposition, hearing, or other proceeding, all protected testimony. When it is  
8 impractical to identify separately each portion of testimony that is entitled to protection, and  
9 when it appears that substantial portions of the testimony may qualify for protection, the Party  
10 or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the  
11 deposition or proceeding is concluded) a right to have up to 20 days to identify the specific  
12 portions of the testimony as to which protection is sought. Only those portions of the testimony  
13 that are appropriately designated for protection within the 20 days shall be covered by the  
14 provisions of this Stipulated Protective Order.

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
16 designate qualified information or items as “Confidential” does not, standing alone, waive the  
17 Designating Party’s right to secure protection under this Order for such material. If material is  
18 appropriately designated as “Confidential” after the material was initially produced, the  
19 Receiving Party, on timely notification of the designation, must make reasonable efforts to  
20 assure that the material is treated in accordance with the provisions of this Order.

## 21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
23 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
24 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
25 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
26 promptly after the original designation is disclosed.

27 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating  
28 Party’s confidentiality designation must do so in good faith and must begin the process by

1 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)  
2 with counsel for the Designating Party. In conferring, the challenging Party must explain the  
3 basis for its belief that the confidentiality designation was not proper and must give the  
4 Designating Party an opportunity to review the designated material, to reconsider the  
5 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
6 designation. A challenging Party may proceed to the next stage of the challenge process only if  
7 it has engaged in this meet and confer process first.

8           6.3 Judicial Intervention. A Party that elects to press a challenge to a  
9 confidentiality designation after considering the justification offered by the Designating Party  
10 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule  
11 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for  
12 the challenge. Each such motion must be accompanied by a competent declaration that affirms  
13 that the movant has complied with the meet and confer requirements imposed in the preceding  
14 paragraph and that sets forth with specificity the justification for the confidentiality designation  
15 that was given by the Designating Party in the meet and confer dialogue.

16           The burden of persuasion in any such challenge proceeding shall be on the  
17 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the  
18 material in question the level of protection to which it is entitled under the Producing Party's  
19 designation.

20           7. ACCESS TO AND USE OF PROTECTED MATERIAL

21           7.1 Basic Principles. A Receiving Party may use Protected Material that is  
22 disclosed or produced by another Party or by a non-party in connection with this case only for  
23 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
24 disclosed only to the categories of persons and under the conditions described in this Order.  
25 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
26 section 11, below (FINAL DISPOSITION).

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

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

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

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

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

16 (d) the Court and its personnel;

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

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

25 (g) the author of the document or the original source of the information.

26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
27 OTHER LITIGATION.

28 If a Receiving Party is served with a subpoena or an order issued in other litigation that

1 would compel disclosure of any information or items designated in this action as  
2 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by  
3 fax, if possible) immediately and in no event more than three court days after receiving the  
4 subpoena or order. Such notification must include a copy of the subpoena or court order.

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

10 The purpose of imposing these duties is to alert the interested parties to the existence of  
11 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
12 protect its confidentiality interests in the court from which the subpoena or order issued.

(See Addendum).

13 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

21 10. FILING PROTECTED MATERIAL.

22 Without written permission from the Designating Party or a court order secured after  
23 appropriate notice to all interested persons, a Party may not file in the public record in this  
24 action any Protected Material. A Party that seeks to file under seal any Protected Material must  
25 comply with Civil Local Rule 79-5.

26 11. FINAL DISPOSITION.

27 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
28 after the final termination of this action, each Receiving Party must return all Protected Material



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

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person  
17 to seek its modification by the Court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
19 Order no Party waives any right it otherwise would have to object to disclosing or producing  
20 any information or item on any ground not addressed in this Stipulated Protective Order.  
21 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
22 material covered by this Protective Order.

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1 EXHIBIT A  
2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, Norman Newhouse [print or type full name], of 483 Seaport Court,  
4 Suite 103, Redwood City, CA 94063 [print or type full address], declare under penalty of  
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Northern District of California on  
7 \_\_\_\_\_ in the case of *Kidgell v. Santa Clara County*; **Case No. C06-03396JW**. I  
8 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
9 understand and acknowledge that failure to so comply could expose me to sanctions and  
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
11 any information or item that is subject to this Stipulated Protective Order to any person or entity  
12 except in strict compliance with the provisions of this Order.

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

16 I hereby appoint Howard L. Johnson [print or type full name] of 483 Seaport Court,  
17 Suite 103, Redwood City, CA 94063 - phone (650) 630-5616 [print or type full address and  
18 telephone number] as my California agent for service of process in connection with this action  
19 or any proceedings related to enforcement of this Stipulated Protective Order.

20  
21 Date: January 5, 2009

22 City and State where sworn and signed: Redwood City, California

23 Printed name: Norman Newhouse  
24 [printed name]

25 Signature: \_\_\_\_\_  
26 [signature]

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28 **EXHIBIT A**

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**ADDENDUM TO PROTECTIVE ORDER**

Gary H. Kidgell v. County of Santa Clara et al.  
Case No. C08-03396 JW (HRL)

IT IS HEREBY ORDERED as follows:

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

The Designating Party shall bear the burdens and expenses 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.

1 **5:08-cv-3396 Notice has been electronically mailed to:**

2 David Michael Rollo david.rollo@cco.sccgov.org, anna.espiritu@cco.sccgov.org

3 Norman Charles Newhouse norm@normannewhouse.com, hjohnson@normannewhouse.com

4 Rima Harbans Singh rima.singh@cco.sccgov.org

5 **Counsel are responsible for distributing copies of this document to co-counsel who have not**  
6 **registered for e-filing under the court's CM/ECF program.**

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