

1 SEYFARTH SHAW LLP
 Michael J. Burns (SBN 172614) mburns@seyfarth.com
 2 Aryeh M. Hersher (SBN 260321) ahersher@seyfarth.com
 560 Mission Street, Suite 3100
 3 San Francisco, California 94105
 Telephone: (415) 397-2823
 4 Facsimile: (415) 397-8549

5 Attorneys for Defendant
 EAGLE TEST SYSTEMS, INC.

6 BOHN & BOHN LLP
 7 Robert H. Bohn (SBN 36283) bbohn@bohnlaw.com
 152 North Third Street, Suite 200
 8 San Jose, California 95112
 Telephone: (408) 279-4222
 9 Facsimile: (408) 295-2222

E-FILED - 12/21/09

10 Attorney for Plaintiff
 DALE ROYAL BUXTON

11 UNITED STATES DISTRICT COURT
 12 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE OFFICE

14 DALE ROYAL BUXTON,)	Case No. C08-04404 RMW
15 Plaintiff,)	
16 v.)	STIPULATION AND [XXXXXXXXXX
17 EAGLE TEST SYSTEMS, INC.,)	ORDER FOR LEAVE TO FILE
18 Defendant.)	SECOND AMENDED COMPLAINT
19)	AND COUNTERCLAIM

20 The Parties to the above entitled action, Eagle Test Systems, Inc. ("Defendant") and Dale
 21 Royal Buxton ("Plaintiff") (collectively referred to as the "Parties"), by and through their
 22 undersigned counsel, enter into the following Stipulation:

23 WHEREAS, Plaintiff filed his initial Complaint on September 19, 2008,
 24 WHEREAS, Plaintiff filed his First Amended Complaint on February 9, 2009,
 25 WHEREAS, the Parties have exchanged discovery requests and responses, and have
 26 produced hundreds of pages of responsive documents,

27
 28

1 WHEREAS, through the process of discovery, Plaintiff now believes that he has an
2 additional cause of action against Defendant, which he contends arises out of the same
3 transactions and occurrences that are the subject matter of Plaintiff's claims. A copy of the
4 proposed Second Amended Complaint is attached at Tab A.

5 WHEREAS, through the process of discovery and investigation, Defendant now believes
6 that it has several causes of action against Plaintiff, which it contends arise out of the same
7 transactions and/or occurrences that are the subject matter of Plaintiff's claims, and further
8 believes that Plaintiff's claims are subject to an arbitration agreement he signed on December 11,
9 2005.

10 WHEREAS, the Parties have met and conferred on these issues (they have not yet met
11 and conferred regarding the arbitration agreement), and have mutually agreed to allow Plaintiff
12 to file a Second Amended Complaint against Defendant and to allow Defendant to file a
13 Counterclaim against Plaintiff. A copy of Defendant's proposed Counterclaim is attached at Tab
14 B.

15 NOW THEREFORE, the Parties stipulate to grant Plaintiff leave to file a Second
16 Amended Complaint against Defendant. The Parties further stipulate to grant Defendant leave to
17 file a Counterclaim against Plaintiff.

18 Defendant will have twenty (20) days from the date of service of Plaintiff's Second
19 Amended Complaint to file a responsive pleading. Plaintiff will have twenty (20) days from the
20 date of service of Defendant's Counterclaim to file a responsive pleading. For purposes of this
21 stipulation, the date of service shall be five business days after the Court approves this
22 stipulation.

23 The Parties agree that by executing to this stipulation, Defendant does not waive its right
24 to compel arbitration, pursuant to the arbitration agreement executed by Plaintiff on December
25 11, 2005.

26 ///

27 ///

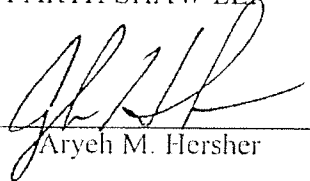
28

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

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: November 10, 2009

SEYFARTH SHAW LLP


By 

Aryeh M. Hersher

Attorney for Defendant
EAGLE TEST SYSTEMS, INC.

DATED: November 20, 2009

BOHN & BOHN LLP

BY 

Robert H. Bohn

Attorney for Plaintiff
DALE ROYAL BUXTON

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 12/21/09



Hon. Ronald M. Whyte
United States District Judge

SF1 28372940.1