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9 Attorneys for Defendants CITY OF SUNNYVALE,
 10 CHIEF DON JOHNSON, OFFICER STEVEN ROCHEVILLE,
 11 LIEUTENANT TRACY HERN, OFFICER SCOTT CORTESE,
 12 And CAPTAIN KELLY FITZGERALD

13 UNITED STATE DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 RUSSELL COLE and STEPHANIE OBERG,

Case No.: C08-05017 RMW (PSG)

16 Plaintiffs,

STIPULATED PROTECTIVE ORDER

17 vs.

18 SUNNYVALE, CHIEF DON JOHNSON,
 19 OFFICER STEVEN ROCHEVILLE,
 20 LIEUTENANT TRACY HERN, OFFICER
 21 SCOTT CORTESE, and CAPTAIN KELLY
 22 FITZGERALD,

23 Defendants.

24 1. PURPOSES AND LIMITATIONS

25 Disclosure and discovery activity in this action are likely to involve production of
 26 confidential, proprietary, or private information for which special protection from public disclosure
 27 and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly,
 28 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

1 that must be followed and reflects the standards that will be applied when a party seeks permission
2 from the court to file material under seal.

3 2. DEFINITIONS

4 2.1 Party: any party to this action, including all of its officers, directors, employees,
5 consultants, retained experts, and outside counsel (and their support staff).

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

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

13 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely
14 sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would
15 create a substantial risk of serious injury that could not be avoided by less restrictive means.

16 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
17 Producing Party.

18 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
19 Material in this action.

20 2.7. Designating Party: a Party or non-party that designates information or items that it
21 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential —
22 Attorneys’ Eyes Only.”

23 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
24 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

25 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained
26 to represent or advise a Party in this action.

27 2.10 House Counsel: attorneys who are employees of a Party.
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1 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
2 support staffs).

3 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent
4 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
5 consultant in this action and who is not a past or a current employee of a Party or of a competitor of a
6 Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a
7 competitor of a Party's. This definition includes a professional jury or trial consultant retained in
8 connection with this litigation.

9 2.13 Professional Vendors: persons or entities that provide litigation support services
10 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
11 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

12 3. SCOPE

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

17 4. DURATION

18 Even after the termination of this litigation, the confidentiality obligations imposed by this
19 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
20 otherwise directs.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
23 or non-party that designates information or items for protection under this Order must take care to
24 limit any such designation to specific material that qualifies under the appropriate standards. A
25 Designating Party must take care to designate for protection only those parts of material, documents,
26 items, or oral or written communications that qualify – so that other portions of the material,
27 documents, items, or communications for which protection is not warranted are not swept
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1 unjustifiably within the ambit of this Order.

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

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

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
11 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material
12 that qualifies for protection under this Order must be clearly so designated before the material is
13 disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (apart from transcripts of depositions
16 or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL"
17 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on each page that contains
18 protected material. If only a portion or portions of the material on a page qualifies for protection, the
19 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
20 markings in the margins) and must specify, for each portion, the level of protection being asserted
21 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

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

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

24 (c) for information produced in some form other than documentary, and for
25 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
26 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
27 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or
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1 item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
2 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’
3 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’ Eyes
6 Only” does not, standing alone, waive the Designating Party’s right to secure protection under this
7 Order for such material. If material is appropriately designated as “Confidential” or “Highly
8 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,
9 on timely notification of the designation, must make reasonable efforts to assure that the material is
10 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 waive its
15 right to challenge a confidentiality designation by electing not to mount a challenge promptly after
16 the original designation is disclosed.

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

25 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
26 designation after considering the justification offered by the Designating Party may file and serve a
27 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
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1 identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion
2 must be accompanied by a competent declaration that affirms that the movant has complied with the
3 meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity
4 the justification for the confidentiality designation that was given by the Designating Party in the
5 meet and confer dialogue.

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

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
11 produced by another Party or by a non-party in connection with this case only for prosecuting,
12 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
13 categories of persons and under the conditions described in this Order. When the litigation has been
14 terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
15 DISPOSITION).

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

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
19 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
20 information or item designated CONFIDENTIAL only to:

21 (a) the Receiving Party's Outside Counsel of record in this action, as well as
22 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
23 litigation;

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

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

3 (d) the Court and its personnel;

4 (e) court reporters and their staffs to whom disclosure is reasonably necessary
5 for this litigation;

6 (f) professional vendors to whom disclosure is reasonably necessary for this
7 litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

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

13 (h) the author of the document or the original source of the information.

14 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
15 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
16 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

18 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
19 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
20 litigation;

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

24 (c) the Court and its personnel;

25 (d) court reporters and their staffs to whom disclosure is reasonably necessary
26 for this litigation;

27 (e) professional vendors to whom disclosure is reasonably necessary for this
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1 litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A); and
2 (f) the author of the document or the original source of the information.

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
4 LITIGATION.

5 If a Receiving Party is served with a subpoena or an order issued in other litigation that would
6 compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify
8 the Designating Party, in writing (by fax, if possible) as soon as possible after receiving the subpoena
9 or order. Such notification must include a copy of the subpoena or court order. The Receiving Party
10 also must immediately inform in writing the Party who caused the subpoena or order to issue in the
11 other litigation that some or all the material covered by the subpoena or order is the subject of this
12 Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective
13 Order promptly to the Party in the other action that caused the subpoena or order to issue.

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

20 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
22 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
23 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
24 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
25 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d)
26 request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is
27 attached hereto as Exhibit A.
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1 10. FILING PROTECTED MATERIAL. Without written permission from the Designating
2 Party or a court order secured after appropriate notice to all interested persons, a Party may not file in
3 the public record in this action any Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5.

5 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the Producing
6 Party, within sixty days after the final termination of this action, each Receiving Party must return all
7 Protected Material to the Producing Party. As used in this subdivision, “all Protected Material”
8 includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing
9 any of the Protected Material. With permission in writing from the Designating Party, the Receiving
10 Party may destroy some or all of the Protected Material instead of returning it. Notwithstanding this
11 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts,
12 legal memoranda, correspondence or attorney work product, even if such materials contain Protected
13 Material. Any such archival copies that contain or constitute Protected Material remain subject to this
14 Protective Order as set forth in Section 4 (DURATION), above.

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
17 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 any
20 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
21 Party waives any right to object on any ground to use in evidence of any of the material covered by
22 this Protective Order.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 Dated: June 5, 2010

BERTRAND, FOX & ELLIOT

4
5 By: _____ /s/

6 Gregory M. Fox
7 Dana Soong
8 Attorneys for Defendants
9 SUNNYVALE, CHIEF DON JOHNSON,
10 OFFICER STEVEN ROCHEVILLE, LIEUTENANT
11 TRACY HERN, OFFICER SCOTT CORTESE, and
12 CAPTAIN KELLY FITZGERALD

13
14 Dated: April 30, 2010

KALLIS & ASSOCIATES P.C.

15
16 By: _____ /s/

17 Jeffrey Kallis
18 Attorneys for Plaintiffs
19 Russell Cole and Stephanie Oberg

20
21 Dated: April 30, 2010

BUSTAMANTE O'HARA & GAGLIASSO

22
23 By: _____ /s/

24 Andrew V. Stearns
25 Steven M. Berki
26 Attorneys for Plaintiffs
27 Russell Cole and Stephanie Oberg

28
ATTORNEY ATTESTATION

I hereby attest that I have on file all holograph signatures for any signatures indicated by a
“conformed” signature (/s/) within this E-filed document.

Dated: June 5, 2010

/s/
Gregory M. Fox

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ORDER

Pursuant to this stipulation, IT IS SO ORDERED.

Dated: January 20, 2011

Paul S. Grewal
Hon. Paul S. Grewal
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of _____ [print or type
4 full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the Northern
6 District of California on [date] in the case of *Cole v. Sunnyvale, et al., USDC Nor. Dist. CA, Case No.*
7 *C08-05017 RMW*. I agree to comply with and to be bound by all the terms of this Stipulated
8 Protective Order and I understand and acknowledge that failure to so comply could expose me to
9 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
10 manner any information or item that is subject to this Stipulated Protective Order to any person or
11 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
14 if such enforcement proceedings occur after termination of this action.

15
16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____
19 [printed name]

20 Signature: _____
[signature]