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7 UNITED STATES DISTRICT COURT
8
9 NORTHERN DISTRICT OF CALIFORNIA

10 Romelia McGraw, individually and as
guardian for minor Sylveria McGraw, and
11 Rudy McGraw,

Action C 08-CV-5483 HRL
STIPULATED PROTECTIVE ORDER

12 Plaintiffs and Petitioners,

13 vs.

14 Alum Rock Union Elementary School
District, et al,

15 Defendants.
16 _____/

17 1. PURPOSES AND LIMITATIONS

18 Disclosure and discovery activity in this action are likely to involve production of
19 confidential, proprietary, or private information for which special protection from public
20 disclosure and from use for any purpose other than prosecuting this litigation would be
21 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
22 following Stipulated Protective Order. The parties acknowledge that this Order does not
23 confer blanket protections on all disclosures or responses to discovery and that the
24 protection it affords extends only to the limited information or items that are entitled
25 under the applicable legal principles to treatment as confidential. The parties further
26 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
5 medium or manner generated, stored, or maintained (including, among other things,
6 testimony, transcripts, or tangible things) that are produced or generated in disclosures
7 or responses to 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
10 developed under F.R.Civ.P. 26(c).

11 2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items: extremely
12 sensitive "Confidential Information or Items" whose disclosure to another Party or
13 nonparty would create a substantial risk of serious injury that could not be avoided by
14 less restrictive means.

15 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
16 Producing Party.

17 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
18 Material in this action.

19 2.7. Designating Party: a Party or non-party that designates information or items
20 that it produces in disclosures or in responses to discovery as "Confidential" or "Highly
21 Confidential — Attorneys' Eyes Only."

22 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
23 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

24 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
25 retained to represent or advise a Party in this action.

26 2.10 House Counsel: attorneys who are employees of a Party.

27 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
28 their support staffs).

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

2.13 Professional Vendors: persons or entities that provide litigation support

1 services (e.g., photocopying; videotaping; translating; preparing exhibits or
2 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
employees and subcontractors.

3 3. SCOPE

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

8 4. DURATION

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

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
13 Party or non-party that designates information or items for protection under this Order
14 must take care to limit any such designation to specific material that qualifies under the
15 appropriate standards. A Designating Party must take care to designate for protection
16 only those parts of material, documents, items, or oral or written communications that
17 qualify – so that other portions of the material, documents, items, or communications for
18 which protection is not warranted are not swept unjustifiably within the ambit of this
19 Order. Mass, indiscriminate, or routinized designations are prohibited. Designations that
20 are shown to be clearly unjustified, or that have been made for an improper purpose
21 (e.g., to unnecessarily encumber or retard the case development process, or to impose
22 unnecessary expenses and burdens on other parties), expose the Designating Party to
sanctions. If it comes to a Party's or a non-party's attention that information or items that
it designated for protection do not qualify for protection at all, or do not qualify for the
level of protection initially asserted, that Party or non-party must promptly notify all other
parties that it is withdrawing the mistaken designation.

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

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (apart from transcripts of depositions or
28 other pretrial or trial proceedings), that the Producing Party affix the legend

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

23 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
24 the Party or non-party offering or sponsoring the testimony identify on the record, before
25 the close of the deposition, hearing, or other proceeding, all protected testimony, and
26 further specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL –
27 ATTORNEYS' EYES ONLY." When it is impractical to identify separately each portion of
28 testimony that is entitled to protection, and when it appears that substantial portions of
the testimony may qualify for protection, the Party or non-party that sponsors, offers, or
gives the testimony may invoke on the record (before the deposition or proceeding is
concluded) a right to have up to 20 days to identify the specific portions of the testimony
as to which protection is sought and to specify the level of protection being asserted
("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"). Only
those portions of the testimony that are appropriately designated for protection within the
20 days shall be covered by the provisions of this Stipulated Protective Order. Transcript
pages containing Protected Material must be separately bound by the court reporter, who

1 must affix to the top of each such page the legend "CONFIDENTIAL" or "HIGHLY
2 CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or nonparty
offering or sponsoring the witness or presenting the testimony.

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

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

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

26 6.3 Judicial Intervention. A Party that elects to press a challenge to a
27 confidentiality designation after considering the justification offered by the Designating
Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil
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1 Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in
2 detail the basis for the challenge. Each such motion must be accompanied by a
3 competent declaration that affirms that the movant has complied with the meet and
4 confer requirements imposed in the preceding paragraph and that sets forth with
5 specificity the justification for the confidentiality designation that was given by the
6 Designating Party in the meet and confer dialogue. The burden of persuasion in any
7 such challenge proceeding shall be on the Designating Party. Until the court rules on the
8 challenge, all parties shall continue to afford the material in question the level of
9 protection to which it is entitled under the Producing Party's designation.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a non-party in connection with this case
11 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
12 Material may be disclosed only to the categories of persons and under the conditions
13 described in this Order. When the litigation has been terminated, a Receiving Party must
14 comply with the provisions of section 11, below (FINAL DISPOSITION).

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

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
20 may disclose any 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
23 information for this litigation and who have signed the "Agreement to Be Bound by
24 Protective Order" that is attached hereto as Exhibit A;

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

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

(d) the Court and its personnel;

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

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

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

6 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

Information or Items. Unless otherwise ordered by the court or permitted in writing
7 by the Designating Party, a Receiving Party may disclose any information or item
8 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

9 (a) the Receiving Party's Outside Counsel of record in this action, as well as
10 employees of said Counsel to whom it is reasonably necessary to disclose the
11 information for this litigation and who have signed the "Agreement to Be Bound by
Protective Order" that is attached hereto as Exhibit A;

12 (b) House Counsel of a Receiving Party (1) who has no involvement in
13 decision-making concerning placement or discipline related to minor Sylveria McGraw,
14 (2) to whom disclosure is reasonably necessary for this litigation, and (3) who has signed
the "Agreement to Be Bound by Protective Order" (Exhibit A);

15 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably
16 necessary for this litigation, (2) who have signed the "Agreement to Be Bound by
17 Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph
7.4, below, have been followed;

18 (d) the Court and its personnel;

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

21 (f) the author of the document or the original source of the information.

22 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL –
ATTORNEYS' EYES ONLY" Information or Items to "Experts"

23 (a) Unless otherwise ordered by the court or agreed in writing by the Designating
24 Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any
25 information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS'
26 EYES ONLY" first must make a written request to the Designating Party that (1) identifies
27 the specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks
28 permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city
and state of his or her primary residence, (3) attaches a copy of the Expert's current

1 resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity
2 from whom the Expert has received compensation for work in his or her areas of
3 expertise or to whom the expert has provided professional services at any time during
4 the preceding five years, and (6) identifies (by name and number of the case, filing date,
5 and location of court) any litigation in connection with which the Expert has provided any
6 professional services during the preceding five years.

7 (b) A Party that makes a request and provides the information specified in the
8 preceding paragraph may disclose the subject Protected Material to the identified Expert
9 unless, within seven court days of delivering the request, the Party receives a written
10 objection from the Designating Party. Any such objection must set forth in detail the
11 grounds on which it is based.

12 (c) A Party that receives a timely written objection must meet and confer with the
13 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
14 agreement. If no agreement is reached, the Party seeking to make the disclosure to the
15 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil
16 Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such
17 motion must describe the circumstances with specificity, set forth in detail the reasons for
18 which the disclosure to the Expert is reasonably necessary, assess the risk of harm that
19 the disclosure would entail and suggest any additional means that might be used to
20 reduce that risk. In addition, any such motion must be accompanied by a competent
21 declaration in which the movant describes the parties' efforts to resolve the matter by
22 agreement (i.e., the extent and the content of the meet and confer discussions) and sets
23 forth the reasons advanced by the Designating Party for its refusal to approve the
24 disclosure. In any such proceeding the Party opposing disclosure to the Expert shall bear
25 the burden of proving that the risk of harm that the disclosure would entail (under the
26 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
27 Material to its Expert.

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

If a Receiving Party is served with a subpoena or an order issued in other litigation
that would compel disclosure of any information or items designated in this action as
"CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
immediately and in no event more than three court days after receiving the subpoena or
order. Such notification must include a copy of the subpoena or court order.
The Receiving Party also must immediately inform in writing the Party who caused the

1 subpoena or order to issue in the other litigation that some or all the material covered by
2 the subpoena or order is the subject of this Protective Order. In addition, the Receiving
3 Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the
4 other action that caused the subpoena or order to issue.

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

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

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

21 **10. FILING PROTECTED MATERIAL.**

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

26 **11. FINAL DISPOSITION.** Unless otherwise ordered or agreed in writing by the
27 Producing Party, within sixty days after the final termination of this action, each Receiving
28 Party must return all Protected Material to the Producing Party. As used in this
subdivision, "all Protected Material" includes all copies, abstracts, compilations,
summaries or any other form of reproducing or capturing any of the Protected Material.
With permission in writing from the Designating Party, the Receiving Party may destroy
some or all of the Protected Material instead of returning it. Whether the Protected
Material is returned or destroyed, the Receiving Party must submit a written certification
to the Producing Party (and, if not the same person or entity, to the Designating Party) by
the sixty day deadline that identifies (by category, where appropriate) all the Protected
Material that was returned or destroyed and that affirms that the Receiving Party has not

1 retained any copies, abstracts, compilations, summaries or other forms of reproducing or
2 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
3 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
4 memoranda, correspondence or attorney work product, even if such materials contain
5 Protected Material. Any such archival copies that contain or constitute Protected Material
6 remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

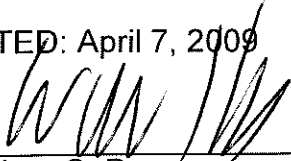
7 12. MISCELLANEOUS

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

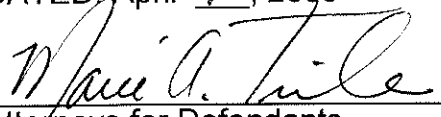
10 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
11 Order no Party waives any right it otherwise would have to object to disclosing or
12 producing any information or item on any ground not addressed in this Stipulated
13 Protective Order. Similarly, no Party waives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

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16 DATED: April 7, 2009

17 
18 _____
19 William C. Dresser
20 Attorneys for Plaintiff

21 DATED: April 10, 2009

22 
23 _____
24 Patricia A. Tule
25 Attorneys for Defendants

26 PURSUANT TO STIPULATION, IT IS SO ORDERED.

27 DATED: April 13, 2009

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of _____ **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]