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14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16 MARIA IRMA DELA TORRE)
 17 DECEASED, THROUGH HER)
 18 SUCCESSOR IN INTEREST, JOSE)
 19 MAXIMILIANO LICEA ABACA; MARIA)
 20 DELA TORRE, Individually; and)
 21 JOSE MAXIMILIANO LICEA ABACA,)
 22 Individually,)

No: C-09-00626 PVT

STIPULATION AND PROTECTIVE ORDER, AS MODIFIED BY THE COURT (See Sections 2.3 & 2.4)

Plaintiffs,

vs.

23 CITY OF SALINAS, a public entity,)
 24 CITY OF SALINAS POLICE CHIEF)
 25 DANIEL ORTEGA in his individual and)
 26 official capacities, POLICE OFFICER)
 27 STEVEN MATTOCKS, Individually,)
 28 POLICE OFFICER ROBERT)
 BALAORO, Individually, and DOES 1)
 through 10, Jointly and Severally,)

Defendants.

1 The parties, by and through their respective attorneys of record, hereby stipulate to
2 the following protective order being issued in this matter:

3 1. PURPOSES AND LIMITATIONS

4 Disclosure and discovery activity in this action are likely to involve production of
5 confidential, proprietary, or private information for which special protection from public
6 disclosure and from use for any purpose other than prosecuting this litigation would be
7 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
8 following Stipulated Protective Order. The parties acknowledge that this Order does not
9 confer blanket protections on all disclosures or responses to discovery and that the
10 protection it affords extends only to the limited information or items that are entitled under
11 the applicable legal principles to treatment as confidential. The parties further
12 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order
13 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets
14 forth the procedures that must be followed and reflects the standards that will be applied
15 when a party seeks permission from the court to file material under seal.
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17

18 2. DEFINITIONS

19 2.1 Party: any party to this action, including all of its officers, directors,
20 employees, consultants, retained experts, and outside counsel (and their support staff).

21 2.2 Disclosure or Discovery Material: all items or information, regardless
22 of the medium or manner generated, stored or maintained (including, among other things,
23 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
24 responses to discovery by any Party in this matter.
25

26 2.3 "Confidential" Information or Items: information (regardless of how
27 generated, stored or maintained) or tangible things that qualify for protection under
28

1 standards developed under F.R.Civ.P. 26(c). This determination must be made in
2 accordance with Section 5.1.

3 ///

4 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
5 extremely sensitive “Confidential Information or Items” whose disclosure to another Party
6 or non-party would create a substantial risk of serious injury that could not be avoided by
7 less restrictive means. This determination must be made in accordance with Section 5.1.

8 ///

9 ///

10 2.5 Receiving Party: a Party that receives Disclosure or Discovery
11 Material from a Producing Party.

12 2.6 Producing Party: a Party or non-party that produces Disclosure or
13 Discovery Material in this action.

14 2.7 Designating Party: a Party or non-party that designates information or
15 items that it produces in disclosures or in responses to discovery as “Confidential” or
16 “Highly Confidential – Attorneys’ Eyes Only.”

17 2.8 Protected Material: any Disclosure or Discovery Material that is
18 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

19 2.9 Outside Counsel: attorneys who are not employees of a Party but
20 who are retained to represent or advise a Party in this action.

21 2.10 House Counsel: attorneys who are employees of a Party.

22 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as
23 well as their support staffs).

1 2.12 Expert: a person with specialized knowledge or experience in a
2 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
3 as an expert witness or as a consultant in this action and who is not a past or a current
4 employee of a Party or of a competitor of a Party's and who, at the time of retention, is not
5 anticipated to become an employee of a Party or a competitor of a Party's.
6

7 2.13 Professional Vendors: persons or entities that provide litigation
8 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
9 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
10 employees and subcontractors.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected Material
13 (as defined above), but also any information copied or extracted therefrom, as well as all
14 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
15 presentations by parties or counsel to or in court or in other settings that might reveal
16 Protected Material.
17

18 4. DURATION

19 Even after the termination of this litigation, the confidentiality obligations imposed by this
20 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
21 order otherwise directs.
22

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.

25 Each Party or non-party that designates information or items for protection under this
26 Order must take care to limit any such designation to specific material that qualifies under
27 the appropriate standards. A Designating Party must take care to designate for protection
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1 only those parts of material, documents, items, or oral or written communications that
2 qualify – so that other portions of the material, documents, items or communications for
3 which protection is not warranted are not swept unjustifiably within the ambit of this Order.
4 Mass, indiscriminate, or routine designations are prohibited. Designations that are shown
5 to be clearly unjustified, or that have been made for an improper purpose (e.g., to
6 unnecessarily encumber or retard the case development process, or to impose
7 unnecessary expenses and burdens on other parties), expose the Designating Party to
8 sanctions.

10 If it comes to a Party's or a non-party's attention that information or items that it designated
11 for protection do not qualify for protection at all, or do not qualify for the level of protection
12 initially asserted, that Party or non-party must promptly notify all other parties that it is
13 withdrawing the mistaken designation.
14

15 5.2 Manner and Timing of Designations. Except as otherwise provided in
16 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
17 stipulated or ordered, material that qualifies for protection under this Order must be clearly
18 so designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

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

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

17
18 (b) for testimony given in deposition or in other pretrial or trial
19 proceedings, that the Party or non-party offering or sponsoring the testimony identify on
20 the record, before the close of the deposition, hearing, or other proceeding, all protected
21 testimony, and further specify any portions of the testimony that qualify as “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When it is impractical to identify
23 separately each portion of testimony that is entitled to protection, and when it appears that
24 substantial portions of the testimony may qualify for protection, the Party or non-party that
25 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
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1 proceeding is concluded) a right to have up to twenty (20) days to identify the specific
2 portions of the testimony as to which protection is sought and to specify the level of
3 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately
5 designated for protection within the 20 days shall be covered by the provisions of this
6 Stipulated Protective Order.
7

8 Transcript pages containing Protected Material must be separately
9 bound by the court reporter, who must affix to the top of each such page the legend
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as
11 instructed by the Party or non-party offering or sponsoring the witness or presenting the
12 testimony.
13

14 (c) for information produced in some form other than documentary,
15 and for any other tangible items, that the Producing Party affix in a prominent place on the
16 exterior of the container or containers in which the information or item is stored the legend
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
18 portions of the information or item warrant protection, the Producing Party, to the extent
19 practicable, shall identify the protected portions, specifying whether they qualify as
20 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
21

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
23 failure to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” does not, standing alone, waive the
25 Designating Party’s right to secure protection under this Order for such material. If
26 material is appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY” after the material was initially produced, the Receiving Party,
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1 on timely notification of the designation, must make reasonable efforts to assure that the
2 material is treated in accordance with this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
5 Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness,
6 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a
7 Party does not waive its right to challenge a confidentiality designation by electing not to
8 mount a challenge promptly after the original designation is disclosed.

9
10 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
11 Designating Party's confidentiality designation must do so in good faith and must begin the
12 process by conferring directly (in voice-to-voice dialogue; other forms of communication
13 are not sufficient) with counsel for the Designating Party. In conferring, the challenging
14 Party must explain the basis for its belief that the confidentiality designation was not proper
15 and must give the Designating Party an opportunity to review the designated material, to
16 reconsider the circumstances, and, if no change in designation is offered, to explain the
17 basis for the chosen designation. A challenging Party may proceed to the next stage of
18 the challenge process only if it has engaged in this meet and confer process first.

19
20 6.3 Judicial Intervention. A Party that elects to press a challenge to a
21 confidentiality designation after considering the justification offered by the Designating
22 Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil
23 Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail
24 the basis for the challenge. Each such motion must be accompanied by a competent
25 declaration that affirms that the movant has complied with the meet and confer
26 requirements imposed in the preceding paragraph and that sets forth with specificity the
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1 justification for the confidentiality designation that was given by the Designating Party in
2 the meet and confer dialogue.

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

8 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

9 7.1 Basic Principles. A Receiving Party may use Protected Material that
10 is 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

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

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated CONFIDENTIAL only to:
22

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

26 (b) the officers, directors, and employees (including House
27 Counsel) of the Receiving Party 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
2 A);

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

6 (d) the Court and its personnel;

7 (e) court reporters, their staffs, and professional vendors to whom
8 disclosure is reasonably necessary for this litigation;

9 (f) during their depositions, witnesses in the action to whom
10 disclosure is reasonably necessary. Pages of transcribed deposition testimony or exhibits
11 to depositions that reveal Protected Material must be separately bound by the court
12 reporter and may not be disclosed to anyone except as permitted under this Stipulated
13 Protective Order.

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

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

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

1 (b) House Counsel of a Receiving Party (1) to whom disclosure is
2 reasonably necessary for this litigation, and (2) who has signed the “Agreement to Be
3 Bound by Protective Order” (Exhibit A);

4 (c) Experts (as defined in this Order) (1) to whom disclosure is
5 reasonably necessary for this litigation, and (2) who have signed the “Agreement to Be
6 Bound by Protective Order” (Exhibit A);

7 (d) the Court and its personnel;

8 (e) court reporters, their staffs, and professional vendors to whom
9 disclosure is reasonably necessary for this litigation;

10 (f) during their depositions, witnesses in the action to whom
11 disclosure is reasonably necessary. Pages of transcribed deposition testimony or exhibits
12 to depositions that reveal Protected Material must be separately bound by the court
13 reporter and may not be disclosed to anyone except as permitted under this Stipulated
14 Protective Order. In the event the parties cannot agree upon whether disclosure is
15 “reasonably necessary” said parties shall meet and confer on the matter and if there is no
16 resolution may seek relief from the Court.

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

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

20 If a Receiving Party is served with a subpoena or an order issued in other litigation that
21 would compel disclosure of any information or items designated in this action as
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
23 Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
24 immediately and in no event more than three court days after receiving the subpoena or
25 order. Such notification must include a copy of the subpoena or court order.
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1 The Receiving Party also must immediately inform in writing the Party who caused the
2 subpoena or order to issue in the other litigation that some or all of the material covered by
3 the subpoena or order is the subject of this Protective Order. In addition, the Receiving
4 Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the
5 other action that caused the subpoena or order to issue.
6

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

10 The Designating Party shall bear the burdens and the expenses of seeking protection in
11 that court of its confidential material – and nothing in these provisions should be construed
12 as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
13 from another court.
14

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

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
17 Material to any person or in any circumstance not authorized under this Stipulated
18 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
19 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the
20 Protected Material, (c) inform the person or persons to whom unauthorized disclosures
21 were made of all the terms of this Order, and (d) request such person or persons to
22 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
23 Exhibit A.
24

25 **10. FILING PROTECTED MATERIAL**

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

3 11. FINAL DISPOSITION

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

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
24 person to seek its modification by the Court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this
26 Protective Order no Party waives any right it otherwise would have to object to disclosing
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1 or producing any information or item on any ground not addressed in this Stipulated
2 Protective Order. Similarly, no Party waives any right to object on any ground to use in
3 evidence any of the material covered by this Protective Order.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
5

6 Dated: August 13, 2009

CITY OF SALINAS
OFFICE OF THE CITY ATTORNEY

8 By: /s/ Susan J. Matcham
9 Vanessa W. Vallarta
10 Susan J. Matcham
11 Attorneys for Defendants
CITY OF SALINAS, DANIEL ORTEGA,
STEVEN MATTOCKS, ROBERT BALAORO

12 Dated: August 13, 2009

LAW OFFICES OF VINCENT P. HURLEY

14 By: /s/ Amanda Cohen
15 Vincent P. Hurley
16 Amanda Cohen
17 Attorneys for Defendants
CITY OF SALINAS, DANIEL ORTEGA,
STEVEN MATTOCKS, ROBERT BALAORO

18 Dated: August 14, 2009

HADDAD & SHERWIN

20 By: /s/ Michael J. Haddad
21 Michael J. Haddad
22 Julia Sherwin
Attorneys for Plaintiff MARIA DELA TORRE

23 Dated: August 14, 2009

CURD GALINDO & SMITH LLP

24 By: /s/ Alexis Galindo
25 Alexis Galindo
26 Attorneys for Plaintiff
JOSE MAXIMILIANO LICEA ABACA

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 8/25/09



Hon. Patricia V. Trumbull
United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2 I, _____ [print or type full
3 name] of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety
5 and understood the Stipulated Protective Order that was issued by the United States
6 District Court for the Northern District of California on _____
7 [date] in the case of *Dela Torre v. City of Salinas, et al*, Case No. 09-00626 PVT. I agree
8 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
11 manner any information or item that is subject to this Stipulated Protective Order to any
12 person or entity 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
16 action.

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

22 Date: _____

23 City and State where sworn and signed:

24 Printed name: _____

25 Signature: _____
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