

1 BROWNSTEIN THOMAS, LLP
 2 MARK C. THOMAS SBN: 215580
 3 180 Montgomery Street, Suite 940
 4 San Francisco, CA 94104
 5 415-986-1338
 6 415-986-1231 facsimile

E-FILED 04-13-2010

7 Attorneys for Plaintiff
 8 Rabbia Alhozbur

9 JOSEPH P. RUSSONIELLO (SBN 44332)
 10 United States Attorney
 11 JOANN M. SWANSON (CSBN 88143)
 12 Chief, Civil Division
 13 JENNIFER S WANG (CSBN 233155)
 14 CLAIRE T. CORMIER (CSBN 154364)
 15 Assistant United States Attorney

16 450 Golden Gate Avenue, Box 36055
 17 San Francisco, California 94102-3495
 18 Telephone: (415) 436-6967
 19 FAX: (415) 436-6748

20 Attorneys for Federal Defendant

21 UNITED STATES DISTRICT COURT
 22 NORTHERN DISTRICT OF CALIFORNIA
 23 SAN JOSE DIVISON

24 RABBIA ALHOZBUR, an individual,
 25 Plaintiff,

Case No.: CV 09 1576 (JW)

STIPULATED PROTECTIVE ORDER

26 vs.

Judge: Honorable James Ware
Courtroom: 8, 4th Floor

27 JOHN MCHUGH, Secretary of the Army,
 28 Defendant.

1. PURPOSES AND LIMITATIONS

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

1 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
2 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
3 blanket protections on all disclosures or responses to discovery and that the protection it affords
4 extends only to the limited information or items that are entitled under the applicable legal
5 principles to treatment as confidential. The parties further acknowledge, as set forth in Section
6 10, below, that this Stipulated Protective Order creates no entitlement to file confidential
7 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
8 and reflects the standards that will be applied when a party seeks permission from the court to
9 file material under seal.

10 2. DEFINITIONS

11 2.1 Party: any party to this action, including all of its officers, directors,
12 employees, consultants, retained experts, and outside counsel (and their support staff).

13 2.2 Disclosure or Discovery Material: all items or information, regardless of the
14 medium or manner generated, stored, or maintained (including, among other things, testimony,
15 transcripts, or tangible things) that are produced or generated in disclosures or responses to
16 discovery in this matter.

17 2.3 “Confidential” Information or Items: information (regardless of how
18 generated, stored or maintained) or tangible things that qualify for protection under standards
19 developed under F.R.Civ.P. 26(c).

20 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
21 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or
22 nonparty would create a substantial risk of serious injury that could not be avoided by less
23 restrictive means.

24 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from
25 a Producing Party.

26 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
27 Material in this action.

1 2.7. Designating Party: a Party or non-party that designates information or items
2 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
3 Confidential — Attorneys’ Eyes Only.”

4 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
5 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

6 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
7 retained to represent or advise a Party in this action.

8 2.10 House Counsel: attorneys who are employees of a Party.

9 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
10 their support staffs).

11 2.12 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
13 witness or as a consultant in this action and who is not a past or a current employee of a Party or
14 of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an
15 employee of a Party or a competitor of a Party’s. This definition includes a professional jury or
16 trial consultant retained in connection with this litigation.

17 2.13 Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
19 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
20 subcontractors.

21 3. SCOPE

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

27 ///

28 ///

1 4. DURATION

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

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
7 Party or non-party that designates information or items for protection under this Order must take
8 care to limit any such designation to specific material that qualifies under the appropriate
9 standards. A Designating Party must take care to designate for protection only those parts of
10 material, documents, items, or oral or written communications that qualify – so that other
11 portions of the material, documents, items, or communications for which protection is not
12 warranted are not swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or
13 routinized designations are prohibited. Designations that are shown to be clearly unjustified, or
14 that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case
15 development process, or to impose unnecessary expenses and burdens on other parties), expose
16 the Designating Party to sanctions. If it comes to a Party’s or a non-party’s attention that
17 information or items that it designated for protection do not qualify for protection at all, or do not
18 qualify for the level of protection initially asserted, that Party or non-party must promptly notify
19 all other parties that it is withdrawing the mistaken designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this
21 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or
22 ordered, material that qualifies for protection under this Order must be clearly so designated
23 before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (apart from transcripts of depositions or
26 other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL”
27 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top of each page that
28 contains protected material. If only a portion or portions of the material on a page qualifies for

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

18 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
19 the Party or non-party offering or sponsoring the testimony identify on the record, before the
20 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
21 any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is
23 entitled to protection, and when it appears that substantial portions of the testimony may qualify
24 for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on
25 the record (before the deposition or proceeding is concluded) a right to have up to 20 days to
26 identify the specific portions of the testimony as to which protection is sought and to specify the
27 level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately

1 designated for protection within the 20 days shall be covered by the provisions of this Stipulated
2 Protective Order. Transcript pages containing Protected Material must be separately bound by
3 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or
5 nonparty offering or sponsoring the witness or presenting the testimony.

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

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

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
22 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
23 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
24 waive its right to challenge a confidentiality designation by electing not to mount a challenge
25 promptly after the original designation is disclosed.

26 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
27 Party’s confidentiality designation must do so in good faith and must begin the process by
28 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)

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

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

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

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a non-party in connection with this case only for
22 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
23 disclosed only to the categories of persons and under the conditions described in this Order.
24 When the litigation has been terminated, a Receiving Party must comply with the provisions of
25 section 11, below (FINAL DISPOSITION).

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

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
3 disclose any information or item designated CONFIDENTIAL only to:

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

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

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

14 (d) the Court and its personnel;

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

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

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

24 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
25 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
26 Designating Party, a Receiving Party may disclose any information or item designated
27 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

5 (b) House Counsel of a Receiving Party to whom disclosure is reasonably
6 necessary for this litigation, and who has signed the "Agreement to Be Bound by Protective
7 Order" (Exhibit A);

8 (c) Experts (as defined in this Order) to whom disclosure is reasonably necessary
9 for this litigation, and who have signed the "Agreement to Be Bound by Protective Order"
10 (Exhibit A);

11 (d) the Court and its personnel;

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

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

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
17 OTHER LITIGATION.

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

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

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

7 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

15 10. FILING PROTECTED MATERIAL.

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

20 11. FINAL DISPOSITION.

21 Unless otherwise ordered or agreed in writing by the Producing Party, within
22 sixty days after the final termination of this action, each Receiving Party must return all
23 Protected Material to the Producing Party. As used in this subdivision, “all Protected Material”
24 includes all copies, abstracts, compilations, summaries or any other form of reproducing or
25 capturing any of the Protected Material. With permission in writing from the Designating Party,
26 the Receiving Party may destroy some or all of the Protected Material instead of returning it.
27 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a
28 written certification to the Producing Party (and, if not the same person or entity, to the

1 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all
2 the Protected Material that was returned or destroyed and that affirms that the Receiving Party
3 has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
4 capturing any of the Protected Material.

5 Notwithstanding this provision, Counsel are entitled to retain an archival copy of
6 all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work
7 product, even if such materials contain Protected Material. Any such archival copies that contain
8 or constitute Protected Material remain subject to this Protective Order as set forth in Section 4
9 (DURATION), above.

10 12. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
12 person to seek its modification by the Court in the future.

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

18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 ///

3 BROWNSTEIN THOMAS, LLP

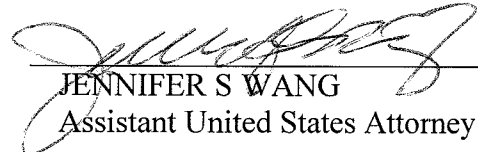
4 DATED: April 13, 2010



5
6 MARK C. THOMAS
Attorneys for Plaintiff
Rabbia Alhozbur

8 JOSEPH P. RUSSONIELLO
United States Attorney

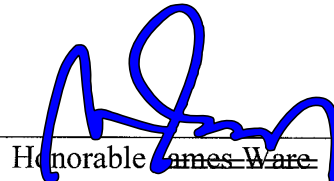
9 DATED: April 7, 2010



11 JENNIFER S WANG
Assistant United States Attorney

14 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16 DATED: April 13, 2010



18
19 Honorable ~~James Ware~~ Howard R. Lloyd
United States ~~District~~ Judge
20 Magistrate

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 *Alhozbur v. McHugh*, Case No. CV 09 1576 (JW). 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: _____

Signature: _____