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 15 BP Products North America, Inc., and  
 BP Corporation North American, Inc.  
 16 and ConocoPhillips Company

17  
 18 **UNITED STATES DISTRICT COURT**  
 19 **NORTHERN DISTRICT OF CALIFORNIA**

20 Maria Barrous, an individual and as  
 Trustee of the Barrous Living Trust,  
 Demetrios Barrous, an individual, dba  
 21 Jimmy's Restaurant  
 Plaintiffs,

22  
 23 v.

24 BP p.l.c., BP Exploration and Oil, Inc.,  
 BP Products North America, Inc., BP  
 Corporation North America, Inc.,  
 25 ConocoPhillips Company and DOES 1-  
 20  
 26 Defendants.

CASE NO. C 10-02944 LHK

XXXXXXXXXXXX **STIPULATED  
 PROTECTIVE ORDER**

1           1.     PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may be  
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
6 following Stipulated Protective Order. The parties acknowledge that this Order does not  
7 confer blanket protections on all disclosures or responses to discovery and that the  
8 protection it affords from public disclosure and use extends only to the limited information  
9 or items that are entitled to confidential treatment under the applicable legal principles. The  
10 parties further acknowledge, as set forth in Section 12.3 below, that this Stipulated  
11 Protective Order does not entitle them to file confidential information under seal. Civil  
12 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will  
13 be applied when a party seeks permission from the court to file material under seal.

14           2.     DEFINITIONS

15           2.1    Challenging Party: a Party or Non-Party that challenges the designation  
16 of information or items under this Order.

17           2.2    “CONFIDENTIAL” Information or Items: information (regardless of  
18 how it is generated, stored or maintained) or tangible things that qualify for protection under  
19 Federal Rule of Civil Procedure 26(c).

20           2.3    Counsel (without qualifier): Outside Counsel of Record and House  
21 Counsel (as well as their support staff).

22           2.5    Designating Party: a Party or Non-Party that designates information or  
23 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
24 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

25           2.6    Disclosure or Discovery Material: all items or information, regardless  
26 of the medium or manner in which it is generated, stored, or maintained (including, among  
27 other things, testimony, transcripts, and tangible things), that are produced or generated in  
28 disclosures or responses to discovery in this matter.

1           2.7    Expert: a person with specialized knowledge or experience in a matter  
2 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an  
3 expert witness or as a consultant in this action, (2) is not a past or current employee of a  
4 Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become  
5 an employee of a Party or of a Party's competitor.

6           2.8    "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
7 Information or Items: extremely sensitive "Confidential Information or Items," disclosure of  
8 which to another Party or Non-Party would create a substantial risk of serious harm that  
9 could not be avoided by less restrictive means.

10          2.09   House Counsel: attorneys who are employees of a party to this action.  
11 House Counsel does not include Outside Counsel of Record or any other outside counsel.

12          2.10   Non-Party: any natural person, partnership, corporation, association, or  
13 other legal entity not named as a Party to this action.

14          2.11   Outside Counsel of Record: attorneys who are not employees of a party  
15 to this action but are retained to represent or advise a party to this action and have appeared  
16 in this action on behalf of that party or are affiliated with a law firm which has appeared on  
17 behalf of that party.

18          2.12   Party: any party to this action, including all of its officers, directors,  
19 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
20 staffs).

21          2.13   Producing Party: a Party or Non-Party that produces Disclosure or  
22 Discovery Material in this action.

23          2.14   Professional Vendors: persons or entities that provide litigation support  
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,  
25 and organizing, storing, or retrieving data in any form or medium) and their employees and  
26 subcontractors.

27          2.15   Protected Material: any Disclosure or Discovery Material that is  
28 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS'

1 EYES ONLY.”

2                   2.16 Receiving Party: a Party that receives Disclosure or Discovery Material  
3 from a Producing Party.

4           3.     SCOPE

5           The protections conferred by this Stipulated Protective Order cover not only  
6 Protected Material (as defined above), but also (1) any information copied or extracted from  
7 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
8 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel  
9 that might reveal Protected Material. However, the protections conferred by this Stipulated  
10 Protective Order do not cover the following information: (a) any information that is in the  
11 public domain at the time of disclosure to a Receiving Party or becomes part of the public  
12 domain after its disclosure to a Receiving Party as a result of publication not involving a  
13 violation of this Order, including becoming part of the public record through trial or  
14 otherwise; and (b) any information known to the Receiving Party prior to the disclosure or  
15 obtained by the Receiving Party after the disclosure from a source who obtained the  
16 information lawfully and under no obligation of confidentiality to the Designating Party.  
17 Any use of Protected Material at trial shall be governed by a separate agreement or order.

18           4.     DURATION

19           Even after final disposition of this litigation, the confidentiality obligations imposed  
20 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a  
21 court order otherwise directs. Final disposition shall be deemed to be the later of (1)  
22 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final  
23 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,  
24 trials, or reviews of this action, including the time limits for filing any motions or  
25 applications for extension of time pursuant to applicable law.

26           5.     DESIGNATING PROTECTED MATERIAL

27           5.1    Exercise of Restraint and Care in Designating Material for Protection.

28 Each Party or Non-Party that designates information or items for protection under this Order

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

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

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 stipulated or  
17 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must  
18 be clearly so designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic documents,  
21 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
22 Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
23 ATTORNEYS' EYES ONLY" to each page that contains protected material. If only a  
24 portion or portions of the material on a page qualifies for protection, the Producing Party  
25 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in  
26 the margins) and must specify, for each portion, the level of protection being asserted.

27 A Party or Non-Party that makes original documents or materials available for  
28 inspection need not designate them for protection until after the inspecting Party has

1 indicated which material it would like copied and produced. During the inspection and  
2 before the designation, all of the material made available for inspection shall be deemed  
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party  
4 has identified the documents it wants copied and produced, the Producing Party must  
5 determine which documents, or portions thereof, qualify for protection under this Order.  
6 Then, before producing the specified documents, the Producing Party must affix the  
7 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
8 EYES ONLY”) to each page that contains Protected Material. If only a portion or portions  
9 of the material on a page qualifies for protection, the Producing Party also must clearly  
10 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and  
11 must specify, for each portion, the level of protection being asserted.

12 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
13 that the Designating Party identify on the record, before the close of the deposition, hearing,  
14 or other proceeding, all protected testimony and specify the level of protection being  
15 asserted. When it is impractical to identify separately each portion of testimony that is  
16 entitled to protection and it appears that substantial portions of the testimony may qualify  
17 for protection, the Designating Party may invoke on the record (before the deposition,  
18 hearing, or other proceeding is concluded) a right to have up to 21 days to identify the  
19 specific portions of the testimony as to which protection is sought and to specify the level of  
20 protection being asserted. Only those portions of the testimony that are appropriately  
21 designated for protection within the 21 days shall be covered by the provisions of this  
22 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the  
23 deposition or up to 21 days afterwards if that period is properly invoked, that the entire  
24 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
25 ATTORNEYS’ EYES ONLY.”

26 Parties shall give the other parties notice if they reasonably expect a  
27 deposition, hearing or other proceeding to include Protected Material so that the other  
28 parties can ensure that only authorized individuals who have signed the “Acknowledgment

1 and Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a  
2 document as an exhibit at a deposition shall not in any way affect its designation as  
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

4 Transcripts containing Protected Material shall have an obvious legend on the  
5 title page that the transcript contains Protected Material, and the title page shall be followed  
6 by a list of all pages (including line numbers as appropriate) that have been designated as  
7 Protected Material and the level of protection being asserted by the Designating Party. The  
8 Designating Party shall inform the court reporter of these requirements. Any transcript that  
9 is prepared before the expiration of a 21-day period for designation shall be treated during  
10 that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
11 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the  
12 transcript shall be treated only as actually designated.

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

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
21 failure to designate qualified information or items does not, standing alone, waive the  
22 Designating Party’s right to secure protection under this Order for such material. Upon  
23 timely correction of a designation, the Receiving Party must make reasonable efforts to  
24 assure that the material is treated in accordance with the provisions of this Order.

## 25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
27 designation of confidentiality at any time. Unless a prompt challenge to a Designating  
28 Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness,

1 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party  
2 does not waive its right to challenge a confidentiality designation by electing not to mount a  
3 challenge promptly after the original designation is disclosed.

4           6.2    Meet and Confer. The Challenging Party shall initiate the dispute  
5 resolution process by providing written notice of each designation it is challenging and  
6 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has  
7 been made, the written notice must recite that the challenge to confidentiality is being made  
8 in accordance with this specific paragraph of the Protective Order. The parties shall attempt  
9 to resolve each challenge in good faith and must begin the process by conferring directly (in  
10 voice to voice dialogue; other forms of communication are not sufficient) within 14 days of  
11 the date of service of notice. In conferring, the Challenging Party must explain the basis for  
12 its belief that the confidentiality designation was not proper and must give the Designating  
13 Party an opportunity to review the designated material, to reconsider the circumstances, and,  
14 if no change in designation is offered, to explain the basis for the chosen designation. A  
15 Challenging Party may proceed to the next stage of the challenge process only if it has  
16 engaged in this meet and confer process first or establishes that the Designating Party is  
17 unwilling to participate in the meet and confer process in a timely manner.

18           6.3    Judicial Intervention. If the Parties cannot resolve a challenge without  
19 court intervention, the Designating Party shall file and serve a motion to retain  
20 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
21 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties  
22 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.  
23 Each such motion must be accompanied by a competent declaration affirming that the  
24 movant has complied with the meet and confer requirements imposed in the preceding  
25 paragraph. Failure by the Designating Party to make such a motion including the required  
26 declaration within 21 days (or 14 days, if applicable) shall automatically waive the  
27 confidentiality designation for each challenged designation. In addition, the Challenging  
28 Party may file a motion challenging a confidentiality designation at any time if there is good

1 cause for doing so, including a challenge to the designation of a deposition transcript or any  
2 portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
3 competent declaration affirming that the movant has complied with the meet and confer  
4 requirements imposed by the preceding paragraph.

5           The burden of persuasion in any such challenge proceeding shall be on the  
6 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to  
7 harass or impose unnecessary expenses and burdens on other parties) may expose the  
8 Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality  
9 designation by failing to file a motion to retain confidentiality as described above, all parties  
10 shall continue to afford the material in question the level of protection to which it is entitled  
11 under the Producing Party's designation until the court rules on the challenge.

## 12           7.     ACCESS TO AND USE OF PROTECTED MATERIAL

13           7.1     Basic Principles. A Receiving Party may use Protected Material that is  
14 disclosed or produced by another Party or by a Non-Party in connection with this case only  
15 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material  
16 may be disclosed only to the categories of persons and under the conditions described in this  
17 Order.

18           When the litigation has been terminated, a Receiving Party must comply with  
19 the provisions of section 13 below (FINAL DISPOSITION). Protected Material must be  
20 stored and maintained by a Receiving Party at a location and in a secure manner that ensures  
21 that access is limited to the persons authorized under this Order.

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

25           (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
26 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose  
27 the information for this litigation and who have signed the "Acknowledgment and  
28 Agreement to Be Bound" that is attached hereto as Exhibit A;

1 (b) the officers, directors, and employees (including House Counsel) of the  
2 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
3 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

4 (c) Experts (as defined in this Order) of the Receiving Party to whom  
5 disclosure is reasonably necessary for this litigation and who have signed the  
6 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7 (d) the court and its personnel;

8 (e) court reporters and their staff, professional jury or trial consultants, and  
9 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
10 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

11 (f) during their depositions, witnesses in the action to whom disclosure is  
12 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be  
13 Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
14 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
15 Protected Material must be separately bound by the court reporter and may not be disclosed  
16 to anyone except as permitted under this Stipulated Protective Order.

17 (g) the author or recipient of a document containing the information or a  
18 custodian or other person who otherwise possessed or knew the information.

19 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
20 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing  
21 by the Designating Party, a Receiving Party may disclose any information or item  
22 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
24 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose  
25 the information for this litigation and who have signed the "Acknowledgment and  
26 Agreement to Be Bound" that is attached hereto as Exhibit A;

27 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
28 necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to

1 Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2),  
2 below, have been followed;

3 (c) the court and its personnel;

4 (d) court reporters and their staff, professional jury or trial consultants, and  
5 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
6 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

7 (e) the author or recipient of a document containing the information or a  
8 custodian or other person who otherwise possessed or knew the information.

9 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated  
11 House Counsel or Experts.

12 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the  
13 Designating Party, a Party that seeks to disclose to Designated House Counsel any  
14 information or item that has been designated “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written  
16 request to the Designating Party that (1) sets forth the full name of the Designated House  
17 Counsel and the city and state of his or her residence, and (2) describes the Designated  
18 House Counsel’s current and reasonably foreseeable future primary job duties and  
19 responsibilities in sufficient detail to determine if House Counsel is involved, or may  
20 become involved, in any competitive decision-making.

21 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the  
22 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
23 information or item that has been designated “HIGHLY CONFIDENTIAL –  
24 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written  
25 request to the Designating Party that (1) identifies the general categories of “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party  
27 seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the  
28 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 or funding for work in his or her areas of  
3 expertise or to whom the expert has provided professional services, including in connection  
4 with a litigation, at any time during the preceding five years, and (6) identifies (by name and  
5 number of the case, filing date, and location of court) any litigation in connection with  
6 which the Expert has offered expert testimony, including through a declaration, report, or  
7 testimony at a deposition or trial, during the preceding five years.

8 (b) A Party that makes a request and provides the information specified in  
9 the preceding respective paragraphs may disclose the subject Protected Material to the  
10 identified Designated House Counsel or Expert unless, within 14 days of delivering the  
11 request, the Party receives a written objection from the Designating Party. Any such  
12 objection must set forth in detail the grounds on which it is based.

13 (c) A Party that receives a timely written objection must meet and confer with  
14 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
15 agreement within seven days of the written objection. If no agreement is reached, the Party  
16 seeking to make the disclosure to Designated House Counsel or the Expert may file a  
17 motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
18 applicable) seeking permission from the court to do so. Any such motion must describe the  
19 circumstances with specificity, set forth in detail the reasons why the disclosure to  
20 Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm  
21 that the disclosure would entail, and suggest any additional means that could be used to  
22 reduce that risk. In addition, any such motion must be accompanied by a competent  
23 declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent  
24 and the content of the meet and confer discussions) and setting forth the reasons advanced  
25 by the Designating Party for its refusal to approve the disclosure.

26 In any such proceeding, the Party opposing disclosure to Designated House  
27 Counsel or the Expert shall bear the burden of proving that the risk of harm that the  
28

1 disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's  
2 need to disclose the Protected Material to its Designated House Counsel or Expert.

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
4 IN OTHER LITIGATION. If a Party is served with a subpoena or a court order issued in  
5 other litigation that compels disclosure of any information or items designated in this action  
6 as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
7 that Party must:

8 (a) promptly notify in writing the Designating Party. Such notification shall  
9 include a copy of the subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to  
11 issue in the other litigation that some or all of the material covered by the subpoena or order  
12 is subject to this Protective Order. Such notification shall include a copy of this Stipulated  
13 Protective Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued  
15 by the Designating Party whose Protected Material may be affected.

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

19 If the Designating Party timely seeks a protective order, the Party served with the  
20 subpoena or court order shall not produce any information designated in this action as  
21 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
22 before a determination by the court from which the subpoena or order issued, unless the  
23 Party has obtained the Designating Party's permission. The Designating Party shall bear the  
24 burden and expense of seeking protection in that court of its confidential material – and  
25 nothing in these provisions should be construed as authorizing or encouraging a Receiving  
26 Party in this action to disobey a lawful directive from another court.

1           9.     A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
2 PRODUCED IN THIS LITIGATION

3           (a)     The terms of this Order are applicable to information produced by a  
4 Non-Party in this action and designated as "CONFIDENTIAL" or "HIGHLY  
5 CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced by Non-  
6 Parties in connection with this litigation is protected by the remedies and relief provided by  
7 this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from  
8 seeking additional protections.

9           (b)     In the event that a Party is required, by a valid discovery request, to  
10 produce a Non-Party's confidential information in its possession, and the Party is subject to  
11 an agreement with the Non-Party not to produce the Non-Party's confidential information,  
12 then the Party shall:

13                   1.     promptly notify in writing the Requesting Party and the Non-  
14 Party that some or all of the information requested is subject to a confidentiality agreement  
15 with a Non-Party;

16                   2.     promptly provide the Non-Party with a copy of the Stipulated  
17 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
18 specific description of the information requested; and

19                   3.     make the information requested available for inspection by the  
20 Non-Party.

21           (c)     If the Non-Party fails to object or seek a protective order from this  
22 court within 14 days of receiving the notice and accompanying information, the Receiving  
23 Party may produce the Non-Party's confidential information responsive to the discovery  
24 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not  
25 produce any information in its possession or control that is subject to the confidentiality  
26 agreement with the Non-Party before a determination by the court. Absent a court order to  
27 the contrary, the Non-Party shall bear the burden and expense of seeking protection in this  
28 court of its Protected Material.

1 The purpose of this provision is to alert the interested parties to the existence of  
2 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect  
3 its confidentiality interests in this court.

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

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
14 PROTECTED MATERIAL. When a Producing Party gives notice to Receiving Parties that  
15 certain inadvertently produced material is subject to a claim of privilege or other protection,  
16 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
17 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may  
18 be established in an e-discovery order that provides for production without prior privilege  
19 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an  
20 agreement on the effect of disclosure of a communication or information covered by the  
21 attorney-client privilege or work product protection, the parties may incorporate their  
22 agreement in the stipulated protective order submitted to the court.

23 12. MISCELLANEOUS

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

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
27 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
28 producing any information or item on any ground not addressed in this Stipulated Protective

1 Order. Similarly, no Party waives any right to object on any ground to use in evidence of  
2 any of the material covered by this Protective Order.

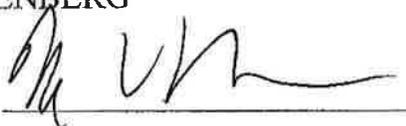
3           12.3 Filing Protected Material. Without written permission from the  
4 Designating Party or a court order secured after appropriate notice to all interested persons,  
5 a Party may not file in the public record in this action any Protected Material. A Party that  
6 seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.  
7 Protected Material may only be filed under seal pursuant to a court order authorizing the  
8 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a  
9 sealing order will issue only upon a request establishing that the Protected Material at issue  
10 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law.  
11 If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local  
12 Rule 79-5(d) is denied by the court, then the Receiving Party may file the Protected Material  
13 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the  
14 court.

15           13. FINAL DISPOSITION

16           Within 60 days after the final disposition of this action, as defined in  
17 paragraph 4, each Receiving Party must return all Protected Material to the Producing Party  
18 or destroy such material. As used in this subdivision, "all Protected Material" includes all  
19 copies, abstracts, compilations, summaries, and any other format reproducing or capturing  
20 any of the Protected Material. Whether the Protected Material is returned or destroyed, the  
21 Receiving Party must submit a written certification to the Producing Party (and, if not the  
22 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
23 (by category, where appropriate) all the Protected Material that was returned or destroyed  
24 and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations,  
25 summaries or any other format reproducing or capturing any of the Protected Material.  
26 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
27 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
28 correspondence, deposition and trial exhibits, expert reports, attorney work product, and

1 consultant and expert work product, even if such materials contain Protected Material. Any  
2 such archival copies that contain or constitute Protected Material remain subject to this  
3 Protective Order as set forth in Section 4 (DURATION).

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

<p>5 LAW OFFICES OF STEVEN A. ELLENBERG</p> <p>6</p> <p>7 BY: </p> <p>8 Attorneys for Plaintiff</p> <p>9 DATED: <u>2/17/2011</u></p> <p>10</p> <p>11</p>	<p>GLYNN &amp; FINLEY, LLP</p> <p>BY: </p> <p>Attorneys for Defendants</p> <p>DATED: <u>2/18/11</u></p>
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12  
13 PURSUANT TO STIPULATION, IT IS SO ORDERED.

14  
15 DATED: April 19, 2011

16  
17 

18 [Name of Judge] Paul S. Grewal

19  
20 United States ]XXXXXXXXX Magistrate Judge

1 EXHIBIT A

2  
3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4  
5 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
6 [print or type full address], declare under penalty of perjury that I have read in its entirety  
7 and understand the Stipulated Protective Order that was issued by the United States District  
8 Court for the Northern District of California on \_\_\_\_\_ in the case of *Barrous v. BP et.*  
9 *al.*, Case No. C 10-02944 LHK.

10 I agree to comply with and to be bound by all the terms of this Stipulated Protective  
11 Order and I understand and acknowledge that failure to so comply could expose me to  
12 sanctions and punishment in the nature of contempt. I solemnly promise that I will not  
13 disclose in any manner any information or item that is subject to this Stipulated Protective  
14 Order to any person or entity except in strict compliance with the provisions of this Order.

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

19 Date: \_\_\_\_\_

20 City and State where sworn and signed: \_\_\_\_\_

21 Printed name: \_\_\_\_\_

22  
23 Signature: \_\_\_\_\_  
24  
25  
26  
27  
28