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 7 CITY OF SUNNYVALE

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

12 D.V., a minor, Successor-in-Interest for
 13 Decedent JUAN CARLOS RUELAS, by and
 14 through his Guardian Ad Litem Rosemary
 Viramontes; JOSE RUELAS, an individual and
 REBECA RUELAS, an individual,

15 Plaintiffs,

16 v.

17 CITY OF SUNNYVALE, a municipal
 18 corporation; CITY OF SANTA CLARA; a
 19 municipal corporation; COUNTY OF SANTA
 20 CLARA, a municipal corporation, and DOES 1-
 50, inclusive,

21 Defendants.

Case No. CV14-02155 RMW

STIPULATED PROTECTIVE ORDER

Hon. Ronald M. Whyte

22
 23
 24 **1. PURPOSES AND LIMITATIONS**

25 Disclosure and discovery activity in this action are likely to involve production of confidential,
 26 proprietary, or private information for which special protection from public disclosure and from use for
 27 any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby
 28 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties

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

8 **2. DEFINITIONS**

9 2.1 Party: any party to this action, including all of its officers, directors, employees,
10 consultants, retained experts, and outside counsel (and their support staff).

11 2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or
12 manner generated, stored, or maintained (including, among other things, testimony, transcripts, or
13 tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

14 2.3 “Confidential” Information or Items: information (regardless of how generated, stored or
15 maintained) or tangible things that qualify for protection under standards developed under F.R.Civ.P.
16 26(c).

17 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely sensitive
18 “Confidential Information or Items” whose disclosure to another Party or nonparty would create a
19 substantial risk of serious injury that could not be avoided by less restrictive means.

20 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
21 Party.

22 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in
23 this action.

24 2.7. Designating Party: a Party or non-party that designates information or items that it
25 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential —
26 Attorneys’ Eyes Only.”

27 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
28 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

1 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to
2 represent or advise a Party in this action.

3 2.10 House Counsel: attorneys who are employees of a Party.

4 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support
5 staffs).

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

12 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
13 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,
14 retrieving data in any form or medium; etc.) and their employees and subcontractors.

15 **3. SCOPE**

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

20 **4. DURATION**

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

24 **5. DESIGNATING PROTECTED MATERIAL**

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-
26 party that designates information or items for protection under this Order must take care to limit any such
27 designation to specific material that qualifies under the appropriate standards. A Designating Party must
28 take care to designate for protection only those parts of material, documents, items, or oral or written

1 communications that qualify – so that other portions of the material, documents, items, or
2 communications for which protection is not warranted are not swept unjustifiably within the ambit of this
3 Order.

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

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

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

15 Designation in conformity with this Order requires:

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

23 A Party or non-party that makes original documents or materials available for inspection
24 need not designate them for protection until after the inspecting Party has indicated which material it
25 would like copied and produced. During the inspection and before the designation, all of the material
26 made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
27 ONLY." After the inspecting Party has identified the documents it wants copied and produced, the
28 Producing Party must determine which documents, or portions thereof, qualify for protection under this

1 Order, then, before producing the specified documents, the Producing Party must affix the appropriate
2 legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) on each
3 page that contains Protected Material. If only a portion or portions of the material on a page qualifies for
4 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
5 appropriate markings in the margins) and must specify, for each portion, the level of protection being
6 asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

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

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

28 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate

1 qualified information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” does
2 not, standing alone, waive the Designating Party’s right to secure protection under this Order for such
3 material. If material is appropriately designated as “Confidential” or “Highly Confidential – Attorneys’
4 Eyes Only” after the material was initially produced, the Receiving Party, on timely notification of the
5 designation, must make reasonable efforts to assure that the material is treated in accordance with the
6 provisions of this Order.

7 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

13 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s
14 confidentiality designation must do so in good faith and must begin the process by conferring directly,
15 orally or in writing, with counsel for the Designating Party. In conferring, the challenging Party must
16 explain the basis for its belief that the confidentiality designation was not proper and must give the
17 Designating Party an opportunity to review the designated material, to reconsider the circumstances, and,
18 if no change in designation is offered, to explain the basis for the chosen designation. A challenging
19 Party may proceed to the next stage of the challenge process only if it has engaged in this meet and
20 confer process first.

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

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

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

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
6 produced by another Party or by a non-party in connection with this case only for prosecuting, defending,
7 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
8 persons and under the conditions described in this Order. When the litigation has been terminated, a
9 Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

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

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the
13 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information
14 or item designated CONFIDENTIAL only to:

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

17 (b) the officers, directors, adjusters, and employees (including House Counsel) of the
18 Receiving Party to whom disclosure is reasonably necessary for this litigation;

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

22 (d) the Court and its personnel;

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

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

27 (g) during their depositions, witnesses in the action to whom disclosure is reasonably
28 necessary and who have signed the “Agreement to Be Bound by Protective Order” **(Exhibit A)**. Pages of

1 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
2 separately bound by the court reporter and may not be disclosed to anyone except as permitted under this
3 Stipulated Protective Order.

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

5 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information
6 or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
7 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY” only to:

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

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

13 (c) the Court and its personnel;

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

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

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

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

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

1 to the Party in the other action that caused the subpoena or order to issue.

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

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

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

16 **10. FILING PROTECTED MATERIAL**

17 Without written permission from the Designating Party or a court order secured after appropriate
18 notice to all interested persons, a Party may not file in the public record in this action any Protected
19 Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule
20 79-5.

21 **11. FINAL DISPOSITION**

22 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the
23 final termination of this action, each Receiving Party must return all Protected Material to the Producing
24 Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
25 summaries or any other form of reproducing or capturing any of the Protected Material. With permission
26 in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected
27 Material instead of returning it. Notwithstanding this provision, Counsel are entitled to retain an archival
28 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work

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

4 **12. MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
6 modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
8 Party waives any right it otherwise would have to object to disclosing or producing any information or
9 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
10 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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13
14
15 Dated: October 22, 2014

Respectfully submitted,
BERTRAND, FOX & ELLIOT

16
17 By: _____ /s/
18 Gregory M. Fox
19 Joanne Tran
20 Attorneys for Defendant
CITY OF SUNNYVALE

21
22 Dated: October 22, 2014

OFFICE OF THE COUNTY COUNSEL

23
24 By: _____ /s/
25 Michael C. Serverian
26 Attorney for Defendant
COUNTY OF SANTA CLARA

ORDER

Pursuant to this stipulation, IT IS SO ORDERED.



RONALD M. WHYTE
UNITED STATES SENIOR DISTRICT JUDGE

Dated: October 22, 2014

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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 October _____, 2014 in the case of *Ruelas v. City of Sunnyvale, et al., USDC Nor. Dist. CA, Case No. 5:14-cv-02155 RMW*. 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.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

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