



1 IT IS HEREBY stipulated, by and between plaintiff Dwayne Sutherland,  
2 defendant Kevin Baker and defendant the United States of America, through their  
3 respective counsel, subject to the approval of the Court as required, as follows:

4 The parties hereto agree that the Court should enter a Protective Order to  
5 permit defendants Baker and the United States (collectively, "Defendants") to  
6 release confidential or sensitive information and documents which the Defendants  
7 deem to be appropriate subjects for initial and other disclosures, for responses to  
8 discovery, for use in motions, for preparation for trial and for use in trial. The  
9 parties further agree that the proposed Protective Order shall apply to confidential  
10 or sensitive information and documents produced by third-party federal, state and  
11 local agencies, and their respective officials, employees or agents.

12 **A. The Basis for the Stipulation**

13 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the parties  
14 file this joint stipulation because Defendants have identified as confidential or  
15 sensitive information the policies, methods, techniques, procedures, guidelines and  
16 intelligence for federal law enforcement operations and detention of aliens, as well  
17 as information about governmental personnel. If disseminated, individuals who  
18 have access to such information might use it to undermine the efforts of federal  
19 agencies to enforce the government's immigration and customs laws. It is in the  
20 public interest to protect against any risk of circumvention of the law that might  
21 result from disclosure of confidential or sensitive information as described in the  
22 proposed Protective Order.

23 Further, pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a, Defendants  
24 and third-party government agencies are prohibited from disclosing records  
25 containing information regarding individuals who have not consented to such  
26 release, unless an exception applies, such as a court order. The Privacy Act  
27 regulates the collection, maintenance, use and dissemination of personal  
28 information by government agencies and provides, in pertinent part:

1 "No agency shall disclose any record which is contained in a system  
2 of records by any means of communication to any person, or to  
3 another agency, except pursuant to a written consent of, the individual  
4 to whom the record pertains, unless disclosure of the record would be.  
5 . . . (11) pursuant to the order of a court of competent jurisdiction"

6 5 U.S.C. § 552a(b)(11). The essential point of such a court order exception is that  
7 the Privacy Act "cannot be used to block the normal course of court proceedings,  
8 including court-ordered discovery." *Clavir v. United States*, 84 F.R.D. 612, 614  
9 (S.D. N.Y. 1979); *see also Martin v. United States*, 1 Cl. Ct. 775, 780-82 (Cl. Ct.  
10 1983). The Court may order the disclosure of such documents where the Court  
11 merely finds the documents meet the relevance standard under Fed. R. Civ. P. 26.  
12 *Wallman v. Tower Air, Inc.*, 189 F.R.D. 566, 569 (N.D. Cal. 1999) (finding "no  
13 basis" for requiring a showing of need beyond that already required by the Federal  
14 Rules of Civil Procedure (FRCP) in issuing an 552(a)(b)(11) order); *Laxalt v.*  
15 *McClatchy*, 890 F.2d 885, 889-90 (D.C. Cir. 1987) (the "plain language" of  
16 552a(b)(11) gives no "basis for inferring that [a higher standard of discovery]  
17 replaces the usual discovery standards of the [Federal Rules of Civil Procedure].").  
18 Thus, the Court is not required to weigh the need for disclosure against the  
19 potential harm to the subjects of disclosure.

20 As discussed below, the information and documents to be disclosed are  
21 relevant to this action and the need for the information clearly outweighs any  
22 potential harm to the parties or non-parties at issue. In this action, plaintiff asserts  
23 federal constitutional claims and state common law tort claims based upon  
24 allegations that defendant Baker intentionally shot and injured him. Plaintiff  
25 alleges that defendant Baker was acting as a member of a U.S. Immigration and  
26 Customs Enforcement task force at the time of the shooting. Plaintiff also asserts  
27 claims relating to his detention at ICE's San Pedro Detention Center. Plaintiff

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1 further alleges that there was a conspiracy to cover up the shooting and in the  
2 manner he was detained by ICE for immigration violations.

3 It is anticipated that discovery in this matter may involve the disclosure of  
4 confidential or sensitive information relating to federal government officials,  
5 employees or agents; state and local law enforcement officials, employees or  
6 agents; undercover law enforcement personnel; non-party witnesses; plaintiff's  
7 relatives and associates; the ICE surveillance operation conducted on the day of the  
8 shooting; the subsequent investigation into the shooting; plaintiff's certified alien  
9 file and certified detention file; plaintiff's detention at ICE's San Pedro Detention  
10 Center; and persons whose information may be otherwise protected by the Privacy  
11 Act.

12 Therefore, in order to permit disclosure of such confidential and sensitive  
13 information, while at the same times observing the requirements of Rule 26 of the  
14 Federal Rules of Civil Procedure, the parties seek an order permitting them to  
15 produce such information and documents relevant to the subject matter of this case  
16 to counsel for the other parties and to permit the parties to use such information  
17 and documents solely for the purposes of this litigation as set forth below.

18 **B. Designation of Information Subject to the Proposed Protective Order**

19 1. The proposed Protective Order shall cover any and all information and  
20 documents including, but not limited to, federal government officials, employees  
21 or agents; state and local law enforcement officials, employees or agents;  
22 undercover law enforcement personnel; non-party witnesses; plaintiff's relatives  
23 and associates; government sensitive and confidential law enforcement information  
24 regarding the policies, methods, techniques, procedures, guidelines and intelligence  
25 for ICE operations and detention of aliens; the ICE surveillance operation  
26 conducted on the day of the shooting; the subsequent investigation into the  
27 shooting; plaintiff's certified alien file and certified detention file; plaintiff's

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1 detention at ICE’s San Pedro Detention Center; and persons whose information  
2 may be otherwise protected by the Privacy Act.

3         2. As used in the proposed Protective Order, the term “Confidential  
4 Information” shall include any information that is disclosed by Defendants to  
5 plaintiff’s counsel and which at or before the time of disclosure has been  
6 designated as “**Confidential - Subject to Protective Order**” by Defendants in one  
7 or more of the following ways:

8             a. Information set forth in a response to any written discovery may  
9 be so designated by including the word “Confidential - Subject to Protective  
10 Order” in the response;

11             b. Information contained in any document or part thereof may be  
12 so designated by marking the word “Confidential- Subject to Protective Order” on  
13 the document or by giving written notice to counsel for plaintiff describing the  
14 document or part thereof either specifically or by category.

15             c. Information contained in any statement made during an oral  
16 deposition may be so designated through a statement made on the record, or by  
17 providing plaintiff’s counsel a list of designated lines from any deposition  
18 transcript containing information covered by the proposed Protective Order within  
19 fifteen (15) business days of receiving the deposition transcript.

20         3. “Confidential Information” may be further designated “Highly  
21 Confidential Information” by placing the phrase “**Highly Confidential -**  
22 **Attorneys’ Eyes Only**” conspicuously on each page to be afforded such treatment  
23 under the proposed Protective Order. Such designation shall be by one of the  
24 methods described above in **paragraph B, part 2.**

25         4. “Confidential” or “Highly Confidential” information shall also  
26 include any information that is disclosed by third-party government entities or  
27 personnel to plaintiff’s counsel. Defendants shall have fifteen (15) business days  
28 from the receipt of such information from plaintiff, his counsel or third-party

1 vendor (*i.e.*, U.S. Legal Support, or court reporting service) to notify any of the  
2 parties that any information shall be designated as “Confidential” or “Highly  
3 Confidential.” Such designation shall be by one of the methods described above in  
4 **paragraph B, part 2.**

5 **C. Disclosure And Use of Information to be Protected By the Proposed**  
6 **Protective Order**

7 1. “Confidential Information” may be disclosed by plaintiff’s counsel  
8 only to the following persons:

9 A. Named plaintiff;

10 B. Attorneys of record for plaintiff, including any attorneys  
11 employed by a law firm or legal organization of record that represents plaintiff;

12 C. Secretarial, clerical, paralegal, or student personnel employed  
13 full-time or part-time by attorneys or a law firm or legal organization of record that  
14 represents plaintiff;

15 D. Independent (non-employee) expert witnesses or consulting  
16 experts retained by plaintiff, attorneys, law firm or legal organization of record in  
17 connection with this action;

18 E. the Court and its personnel, and any court reporters and  
19 stenographers engaged in recording testimony and proceedings and their  
20 employees, however, that counsel wishing to file such materials with the Court  
21 must comply with **paragraph C, part 5** herein; and

22 F. such other persons as hereafter may be authorized by the Court  
23 upon motion of any of the parties.

24 2. “Highly Confidential Information” may be disclosed by plaintiff or  
25 his counsel only to the following persons:

26 A. Attorneys of record for plaintiff, including any attorneys  
27 employed by a law firm or legal organization of record to whom such disclosure is  
28 deemed reasonably necessary by such counsel to conduct this litigation;

1           B.     Secretarial, clerical, paralegal, or student personnel employed  
2 full-time or part-time by attorneys or a law firm or legal organization to whom  
3 such disclosure is deemed reasonably necessary by such counsel to conduct this  
4 litigation;

5           C.     Independent (non-employee) expert witnesses or consulting  
6 experts retained by plaintiff, attorneys, law firm or legal organization of record to  
7 whom such disclosure is deemed reasonably necessary by such counsel to conduct  
8 this litigation; and

9           D.     the Court and its personnel, and any court reporters and  
10 stenographers engaged in recording testimony and proceedings and their  
11 employees, however, that counsel wishing to file such materials with the Court  
12 must comply with **paragraph C, part 5** herein.

13           3.     A copy of the proposed Protective Order shall be delivered to each of  
14 the named parties and to each person identified in **paragraph C, parts 1 and 2** to  
15 whom a disclosure of “Confidential” or “Highly Confidential” information is  
16 made, at or before the time of disclosure, by counsel for plaintiff. The provisions  
17 of the proposed Protective Order shall be binding upon each person to whom  
18 disclosure is made and no such person shall make disclosure of such information to  
19 any other person unless disclosure is reasonably and in good faith calculated to aid  
20 in preparation of this action. In addition, plaintiff’s counsel shall ensure prior to  
21 disclosure of “Confidential” or “Highly Confidential” information to persons listed  
22 in **paragraph C, part 1, sub-part d and f**, that such persons must have read,  
23 understood and acknowledge in writing his or her agreement to be bound by the  
24 Protective Order, as follows:

25           **I, \_\_\_\_\_, declare under the penalty that I have read and**  
26           **understand the terms of this Protective Order issued by the**  
27           **United States District Court on \_\_\_\_\_, 2009. I understand that**  
28           **this Protective Order remains in effect during and after the**

1 **conclusion of this litigation, and I agree to be bound by it. I**  
2 **understand that I may be subject to penalties for contempt of**  
3 **Court if I violate this Protective Order.**

4 **Dated:** \_\_\_\_\_

5 To the extent that “Confidential” or “Highly Confidential” information may  
6 be identified or referred to in depositions in this action, the court reporter  
7 transcribing the deposition shall sign the statement set forth above herein. Any  
8 questions intended to elicit testimony regarding the contents of the protected  
9 documents or information shall be conducted only in the presence of persons  
10 authorized to review the protected documents as provided in the proposed  
11 Protective Order. Any deposition transcript containing such questions and  
12 testimony shall be subject to the same protections and precautions as the protected  
13 documents themselves.

14 Plaintiff’s counsel shall be responsible for maintain the signed original of  
15 each such written agreement until the conclusion of this action, including any  
16 appeal, and shall produce such written statements to Defendants for inspection  
17 upon demand.

18 4. The provisions of the proposed Protective Order shall not be  
19 construed to prevent any disclosure of “Confidential” or “Highly Confidential”  
20 information by Defendants; any judge, magistrate or employee of this Court for  
21 purposes of this action; or for the purposes of enforcement of the criminal laws.

22 5. Before counsel for plaintiff may file with the Court any pleadings,  
23 motions or other papers disclosing “Confidential” or “Highly Confidential”  
24 information provided by Defendants or third-party government agency, it shall  
25 give no less than five business days notice to Defendants identifying the  
26 information that would be disclosed. Defendants may make an application to the  
27 Court requesting that the papers or confidential portions thereof be filed under seal.  
28 If such an application is made, the papers in question shall not be filed until the



1 Court renders a decision on that application. In addition, Defendants may make an  
2 application to the Court requesting that any pleadings, motions or other papers  
3 disclosing their own “Confidential” or “Highly Confidential” information be filed  
4 under seal and the papers in question shall not be filed until the Court renders a  
5 decision on that application.

6 6. “Confidential” and “Highly Confidential” information disclosed to  
7 plaintiff or his counsel in this action shall be used by plaintiff or his counsel only  
8 for purposes of this action, and shall not be published to the public in any form by  
9 plaintiff or his counsel, nor used by them for any business, commercial or  
10 advocacy purposes.

11 7. The parties and their counsel may use “Confidential” or “Highly  
12 Confidential” information and documents, subject to the limitations in the  
13 Protective Order, in conducting further discovery in this case, in law and motion  
14 proceedings, and in all preparations for trial.

15 8. The parties and their counsel may use “Confidential” or “Highly  
16 Confidential” information and documents, subject to the limitations in the  
17 Protective Order, at trial in this matter, including without limitation, in the  
18 examination of any witness, and in the presentation of evidence, in making and  
19 defending trial motions, in trial briefs and in oral argument.

20 9. The parties and their counsel may use “Confidential” or “Highly  
21 Confidential” information and documents, subject to the limitations in the  
22 Protective Order, in any appellate proceedings.

23 10. Upon the conclusion of this litigation, all “Confidential Information”  
24 or “Highly Confidential Information” shall be returned to the producing party, or  
25 shall be certified to be destroyed.

26 **D. Objections And Modification to Confidential Treatment of Information**

27 1. A party to the proposed Protective Order shall not be obligated to  
28 challenge the propriety of the designation of information as “Confidential” or

1 “Highly Confidential” information at the time made, and failure to do so shall not  
2 preclude a subsequent challenge thereof, provided that such challenge is made  
3 prior to the close of discovery. If a party disputes the designation of any  
4 information, the party shall attempt to informally resolve the issue with the other  
5 parties. If the parties are unable to resolve the issue, counsel may file an  
6 appropriate motion with the Court designating the information or documents at  
7 issue and why the party is seeking to change or remove the “Confidential” or  
8 “Highly Confidential” designation. Until a resolution is achieved through  
9 agreement or court order, all persons must treat the documents or information in  
10 question as “Confidential” or “Highly Confidential” information.

11 2. The proposed Protective Order may be modified if the parties agree to  
12 such modification or if such modification is ordered by the Court.

13 3. Any person may at any time move, on notice to all parties, for  
14 modification of, or other relief from, the proposed Protective Order.

15 **E. The Scope of the Proposed Protective Order**

16 1. Nothing herein is intended to preclude Defendants from asserting the  
17 law enforcement and investigatory privileges, or any other applicable privilege or  
18 restriction, including the Privacy Act, with respect to information and documents  
19 which they deem to be sensitive to criminal investigations, informants or law  
20 enforcement personnel, and declining to produce such information or documents.

21 2. Nothing herein is intended to preclude plaintiff or any other party  
22 from challenging the confidentiality designation, or the assertion of privilege  
23 pursuant to the Federal Rules of Evidence or the Federal Rules of Civil Procedure,  
24 by defendants Baker or the United States.

25 3. Nothing herein is intended to compromise the rights of any party to  
26 object to discovery or the admission into evidence of any document, record,  
27 testimony or other information pursuant to the Federal Rules of Evidence or the

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1 Federal Rules of Civil Procedure, nor is it intended to alter any burden of proof  
2 regarding any assertion of privilege in this matter.

3 4. Nothing herein constitutes a decision by the Court concerning  
4 discovery disputes or the admission into evidence of any specific document,  
5 testimony, or liability for payment of any costs of production or reproduction of  
6 documents.

7 5. Neither termination of this action, nor the termination of employment,  
8 engagement, or agency of any person who had access to any protected information  
9 or documents shall relieve any person from the obligation of maintaining both the  
10 confidentiality and the restrictions on use of the protected information or  
11 documents.

12 6. The Court shall retain jurisdiction to enforce the terms of the proposed  
13 Protective Order.

14  
15 Respectfully submitted by:

16 DATED: June \_\_, 2009

CRANDALL, WADE & LOWE

17 See attached signature page

18 JANET G. HARRIS  
19 GEOFFREY T. HILL  
20 Attorneys for Plaintiff Dwayne Sutherland

21 DATED: June \_\_, 2009

MARSHA JONES MOUTRIE  
22 CITY ATTORNEY, SANTA MONICA

23  
24 See attached signature page

25 By ANTHONY SERRITELLA  
26 Deputy City Attorney  
Attorneys for Defendant Kevin Baker

27 ///

28 ///

1 DATED: June \_\_, 2009

THOMAS P. O'BRIEN  
United States Attorney  
LEON W. WEIDMAN  
Assistant United States Attorney  
Chief, Civil Division

4 See attached signature page

5  
6 TIM L. LASKE  
Assistant United States Attorney  
Attorneys for Federal Defendant the  
7 United States of America

8  
9 **[PROPOSED] PROTECTIVE ORDER**

10 **BASED UPON THE STIPULATION OF THE PARTIES**

11 Pursuant to the provisions of Rule 26(c) of the Federal Rules of Civil  
12 Procedure, the Court enters this Protective Order upon the joint stipulation of the  
13 parties, filed herein, and it appearing to the Court that such order should be issued,  
14 therefore,

15 IT IS HEREBY ORDERED THAT:

16 **A. Designation of Information Subject to this Protective Order**

17 1. This Protective Order shall cover any and all information and documents  
18 including, but not limited to, federal government officials, employees or agents; state  
19 and local law enforcement officials, employees or agents; undercover law enforcement  
20 personnel; non-party witnesses; plaintiff's relatives and associates; government  
21 sensitive and confidential law enforcement information regarding the policies,  
22 methods, techniques, procedures, guidelines and intelligence for ICE operations and  
23 detention of aliens; the ICE surveillance operation conducted on the day of the  
24 shooting; the subsequent investigation into the shooting; plaintiff's certified alien file  
25 and certified detention file; plaintiff's detention at ICE's San Pedro Detention Center;  
26 and persons whose information may be otherwise protected by the Privacy Act.

27 2. As used in this Protective Order, the term "Confidential Information"  
28 shall include any information that is disclosed by Defendants to plaintiff's counsel and

1 which at or before the time of disclosure has been designated as “**Confidential -**  
2 **Subject to Protective Order**” by Defendants in one or more of the following ways:

3 a. Information set forth in a response to any written discovery may  
4 be so designated by including the word “Confidential - Subject to Protective Order”  
5 in the response;

6 b. Information contained in any document or part thereof may be so  
7 designated by marking the word “Confidential- Subject to Protective Order” on the  
8 document or by giving written notice to counsel for plaintiff describing the document  
9 or part thereof either specifically or by category.

10 c. Information contained in any statement made during an oral  
11 deposition may be so designated through a statement made on the record, or by  
12 providing plaintiff’s counsel a list of designated lines from any deposition transcript  
13 containing information covered by this Protective Order within fifteen (15) business  
14 days of receiving the deposition transcript.

15 3. “Confidential Information” may be further designated “Highly  
16 Confidential Information” by placing the phrase “**Highly Confidential - Attorneys’**  
17 **Eyes Only**” conspicuously on each page to be afforded such treatment under this  
18 Protective Order. Such designation shall be by one of the methods described above  
19 in **paragraph A, part 2.**

20 4. “Confidential” or “Highly Confidential” information shall also include  
21 any information that is disclosed by third-party government entities or personnel to  
22 plaintiff’s counsel. Defendants shall have fifteen (15) business days from the receipt  
23 of such information from plaintiff, his counsel or third-party vendor (*i.e.*, U.S. Legal  
24 Support, or court reporting service) to notify any of the parties that any information  
25 shall be designated as “Confidential” or “Highly Confidential.” Such designation  
26 shall be by one of the methods described above in **paragraph A, part 2.**

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1 **B. Disclosure And Use of Information to be Protected By this Protective**  
2 **Order**

3 1. “Confidential Information” may be disclosed by plaintiff’s counsel only  
4 to the following persons:

5 A. Named plaintiff;

6 B. Attorneys of record for plaintiff, including any attorneys employed  
7 by a law firm or legal organization of record that represents plaintiff;

8 C. Secretarial, clerical, paralegal, or student personnel employed full-  
9 time or part-time by attorneys or a law firm or legal organization of record that  
10 represents plaintiff;

11 D. Independent (non-employee) expert witnesses or consulting  
12 experts retained by plaintiff, attorneys, law firm or legal organization of record in  
13 connection with this action;

14 E. the Court and its personnel, and any court reporters and  
15 stenographers engaged in recording testimony and proceedings and their  
16 employees, however, that counsel wishing to file such materials with the Court  
17 must comply with **paragraph B, part 5** herein; and

18 F. such other persons as hereafter may be authorized by the Court  
19 upon motion of any of the parties.

20 2. “Highly Confidential Information” may be disclosed by plaintiff or  
21 his counsel only to the following persons:

22 A. Attorneys of record for plaintiff, including any attorneys  
23 employed by a law firm or legal organization of record to whom such disclosure is  
24 deemed reasonably necessary by such counsel to conduct this litigation;

25 B. Secretarial, clerical, paralegal, or student personnel employed  
26 full-time or part-time by attorneys or a law firm or legal organization to whom  
27 such disclosure is deemed reasonably necessary by such counsel to conduct this  
28 litigation;

1 C. Independent (non-employee) expert witnesses or consulting  
2 experts retained by plaintiff, attorneys, law firm or legal organization of record to  
3 whom such disclosure is deemed reasonably necessary by such counsel to conduct  
4 this litigation; and

5 D. the Court and its personnel, and any court reporters and  
6 stenographers engaged in recording testimony and proceedings and their  
7 employees, however, that counsel wishing to file such materials with the Court  
8 must comply with **paragraph B, part 5** herein.

9 3. A copy of this Protective Order shall be delivered to each of the  
10 named parties and to each person identified in **paragraph B, parts 1 and 2** to  
11 whom a disclosure of “Confidential” or “Highly Confidential” information is  
12 made, at or before the time of disclosure, by counsel for plaintiff. The provisions  
13 of this Protective Order shall be binding upon each person to whom disclosure is  
14 made and no such person shall make disclosure of such information to any other  
15 person unless disclosure is reasonably and in good faith calculated to aid in  
16 preparation of this action. In addition, plaintiff’s counsel shall ensure prior to  
17 disclosure of “Confidential” or “Highly Confidential” information to persons listed  
18 in **paragraph B, part 1, sub-part d and f**, that such persons must have read,  
19 understood and acknowledge in writing his or her agreement to be bound by the  
20 Protective Order, as follows:

21 **I, \_\_\_\_\_, declare under the penalty that I have read and**  
22 **understand the terms of this Protective Order issued by the**  
23 **United States District Court on \_\_\_\_\_, 2009. I understand that**  
24 **this Protective Order remains in effect during and after the**  
25 **conclusion of this litigation, and I agree to be bound by it. I**  
26 **understand that I may be subject to penalties for contempt of**  
27 **Court if I violate this Protective Order.**

28 **Dated:** \_\_\_\_\_

1 To the extent that “Confidential” or “Highly Confidential” information may  
2 be identified or referred to in depositions in this action, the court reporter  
3 transcribing the deposition shall sign the statement set forth above herein. Any  
4 questions intended to elicit testimony regarding the contents of the protected  
5 documents or information shall be conducted only in the presence of persons  
6 authorized to review the protected documents as provided in this Protective Order.  
7 Any deposition transcript containing such questions and testimony shall be subject  
8 to the same protections and precautions as the protected documents themselves.

9 Plaintiff’s counsel shall be responsible for maintain the signed original of  
10 each such written agreement until the conclusion of this action, including any  
11 appeal, and shall produce such written statements to Defendants for inspection  
12 upon demand.

13 4. The provisions of this Protective Order shall not be construed to  
14 prevent any disclosure of “Confidential” or “Highly Confidential” information by  
15 Defendants; any judge, magistrate or employee of this Court for purposes of this  
16 action; or for the purposes of enforcement of the criminal laws.

17 5. Before counsel for plaintiff may file with the Court any pleadings,  
18 motions or other papers disclosing “Confidential” or “Highly Confidential”  
19 information provided by Defendants or third-party government agency, it shall  
20 give no less than five business days notice to Defendants identifying the  
21 information that would be disclosed. Defendants may make an application to the  
22 Court requesting that the papers or confidential portions thereof be filed under seal.  
23 If such an application is made, the papers in question shall not be filed until the  
24 Court renders a decision on that application. In addition, Defendants may make an  
25 application to the Court requesting that any pleadings, motions or other papers  
26 disclosing their own “Confidential” or “Highly Confidential” information be filed  
27 under seal and the papers in question shall not be filed until the Court renders a  
28 decision on that application.



1           6.     “Confidential” and “Highly Confidential” information disclosed to  
2 plaintiff or his counsel in this action shall be used by plaintiff or his counsel only  
3 for purposes of this action, and shall not be published to the public in any form by  
4 plaintiff or his counsel, nor used by them for any business, commercial or  
5 advocacy purposes.

6           7.     The parties and their counsel may use “Confidential” or “Highly  
7 Confidential” information and documents, subject to the limitations in the  
8 Protective Order, in conducting further discovery in this case, in law and motion  
9 proceedings, and in all preparations for trial.

10          8.     The parties and their counsel may use “Confidential” or “Highly  
11 Confidential” information and documents, subject to the limitations in the  
12 Protective Order, at trial in this matter, including without limitation, in the  
13 examination of any witness, and in the presentation of evidence, in making and  
14 defending trial motions, in trial briefs and in oral argument.

15          9.     The parties and their counsel may use “Confidential” or “Highly  
16 Confidential” information and documents, subject to the limitations in the  
17 Protective Order, in any appellate proceedings.

18          10.    Upon the conclusion of this litigation, all “Confidential Information”  
19 or “Highly Confidential Information” shall be returned to the producing party, or  
20 shall be certified to be destroyed.

21 **C.    Objections And Modification to Confidential Treatment of Information**

22          1.     A party to this Protective Order shall not be obligated to challenge the  
23 propriety of the designation of information as “Confidential” or “Highly  
24 Confidential” information at the time made, and failure to do so shall not preclude  
25 a subsequent challenge thereof, provided that such challenge is made prior to the  
26 close of discovery. If a party disputes the designation of any information, the party  
27 shall attempt to informally resolve the issue with the other parties. If the parties  
28 are unable to resolve the issue, counsel may file an appropriate motion with the

1 Court designating the information or documents at issue and why the party is  
2 seeking to change or remove the “Confidential” or “Highly Confidential”  
3 designation. Until a resolution is achieved through agreement or court order, all  
4 persons must treat the documents or information in question as “Confidential” or  
5 “Highly Confidential” information.

6 2. This Protective Order may be modified if the parties agree to such  
7 modification or if such modification is ordered by the Court.

8 3. Any person may at any time move, on notice to all parties, for  
9 modification of, or other relief from, this Protective Order.

10 **D. The Scope of this Protective Order**

11 1. Nothing herein is intended to preclude Defendants from asserting the  
12 law enforcement and investigatory privileges, or any other applicable privilege or  
13 restriction, including the Privacy Act, with respect to information and documents  
14 which they deem to be sensitive to criminal investigations, informants or law  
15 enforcement personnel, and declining to produce such information or documents.

16 2. Nothing herein is intended to preclude plaintiff or any other party  
17 from challenging the confidentiality designation, or the assertion of privilege  
18 pursuant to the Federal Rules of Evidence or the Federal Rules of Civil Procedure,  
19 by defendants Baker or the United States.

20 3. Nothing herein is intended to compromise the rights of any party to  
21 object to discovery or the admission into evidence of any document, record,  
22 testimony or other information pursuant to the Federal Rules of Evidence or the  
23 Federal Rules of Civil Procedure, nor is it intended to alter any burden of proof  
24 regarding any assertion of privilege in this matter.

25 4. Nothing herein constitutes a decision by the Court concerning  
26 discovery disputes or the admission into evidence of any specific document,  
27 testimony, or liability for payment of any costs of production or reproduction of  
28 documents.



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