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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ALICE SMITHEN,

Plaintiff,

v.

UNITED STATES OF AMERICA,
MATTHEW ITKOWITZ, et al.,

Defendants.

No. CV 09-0414 GW (PJWx)

~~{PROPOSED}~~ PROTECTIVE ORDER

NOTE: CHANGES MADE BY
THE COURT

UNDER SEAL FILINGS GOVERNED
BY LOCAL RULE 79-5.

IT IS HEREBY ORDERED:

1. In connection with discovery proceedings in this action, the parties may designate any document, thing, material, testimony or other information derived therefrom, as "Confidential" under the terms of this Stipulated Protective Order (hereinafter "Order"). Confidential information is information which has not been made public and which concerns or relates to sensitive documents, including personnel files or other information subject to the Privacy Act (codified at 5 U.S.C. § 552a), law enforcement techniques, policies and procedures, and criminal investigative files. By designating a document, thing, material, testimony or other information derived therefrom as "confidential," under the terms of this order, the party making the designation is certifying to the court that there is a good faith basis both in law and in fact for the

1 designation within the meaning of Federal Rule of Civil Procedure
2 26(g).

3 2. Confidential documents shall be so designated by
4 stamping copies of the document produced to a party with the
5 legend "CONFIDENTIAL." Stamping the legend "CONFIDENTIAL" on the
6 cover of any multipage document shall designate all pages of the
7 document as confidential, unless otherwise indicated by the
8 producing party. Stamping a CD/DVD "CONFIDENTIAL" on its label
9 shall designate the contents of the entire CD/DVD as
10 confidential, unless otherwise indicated by the producing party.

11 3. Testimony taken at a deposition, conference, hearing or
12 trial may be designated as confidential by making a statement to
13 that effect on the record at the deposition or other proceeding.
14 Arrangements shall be made with the court reporter taking and
15 transcribing such proceeding to separately bind such portions of
16 the transcript containing information designated as confidential,
17 and to label such portions appropriately.

18 4. Material designated as confidential under this Order,
19 the information contained therein, and any summaries, copies,
20 abstracts, or other documents derived in whole or in part from
21 material designated as confidential (hereinafter "Confidential
22 Material") shall be used only for the purpose of the prosecution,
23 defense, or settlement of this action, and for no other purpose.

24 5. Confidential Material produced pursuant to this Order
25 may be disclosed or made available only to the Court, to counsel
26 for a party (including the paralegal, clerical, and secretarial
27 staff employed by such counsel), and to the "qualified persons
28 designated below:

- 1 (a) a party, or an officer, director, or employee of a
2 party deemed necessary by counsel to aid in the
3 prosecution, defense, or settlement of this action;
4 (b) experts or consultants (together with their clerical
5 staff) retained by such counsel to assist in the
6 prosecution, defense, or settlement of this action;
7 (c) court reporter(s) employed in this action;
8 (d) a witness at any deposition or other proceeding in this
9 action; and
10 (e) any other person as to whom the parties in writing
11 agree.

12 Prior to receiving any Confidential Material, each
13 "qualified person" shall be provided with a copy of this Order
14 and shall execute a nondisclosure agreement in the form of
15 Attachment A, a copy of which shall be provided forthwith to
16 counsel for each other party and for the parties.

17 6. Depositions shall be taken only in the presence of
18 qualified persons.

19 7. The parties may further designate certain discovery
20 material or testimony of a highly confidential and/or proprietary
21 nature as "CONFIDENTIAL--ATTORNEY'S EYES ONLY" (hereinafter
22 "Attorney's Eyes Only Material"), in the manner described in
23 paragraphs 2 and 3 above. Attorney's Eyes Only Material, and the
24 information contained therein, shall be disclosed only to the
25 Court, to counsel for the parties (including the paralegal,
26 clerical, and secretarial staff employed by such counsel), and to
27 the "qualified persons" listed in subparagraphs 5(b) through (e)
28 above, but shall not be disclosed to a party, or to an officer,

1 director or employee of a party, unless otherwise agreed or
2 ordered. If disclosure of Attorney's Eyes Only Material is made
3 pursuant to this paragraph, all other provisions in this order
4 with respect to confidentiality shall also apply.

5 8. Nothing herein shall impose any restrictions on the use
6 or disclosure by a party of material obtained by such party
7 independent of discovery in this action, whether or not such
8 material is also obtained through discovery in this action, or
9 from disclosing its own Confidential Material as it deems
10 appropriate.

11 ~~9. If Confidential Material, including any portion of a~~
12 ~~deposition transcript designated as Confidential or Attorney's~~
13 ~~Eyes Only, is included in any papers to be filed in Court, such~~
14 ~~papers shall be labeled "Confidential--Subject to Court Order"~~
15 ~~and filed under seal until further order of this Court. See Rule~~
16 ~~79-5.~~

17 10. In the event that any Confidential Material is used in
18 any court proceeding in this action, it shall not lose its
19 confidential status through such use, and the party using such
20 shall take all reasonable steps to maintain its confidentiality
21 during such use.

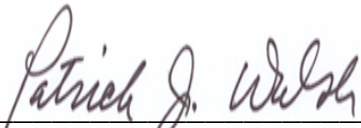
22 11. This Order shall be without prejudice to the right of
23 the parties (i) to bring before the Court at any time the
24 question of whether any particular document or information is
25 confidential or whether its use should be restricted or (ii) to
26 present a motion to the Court under FRCP 26(c) for a separate
27 protective order as to any particular document or information,
28 including restrictions differing from those as specified herein.

1 This Order shall not be deemed to prejudice the parties in any
2 way in any future application for modification of this Order.

3 12. This Order is entered solely for the purpose of
4 facilitating the exchange of documents and information between
5 the parties to this action without involving the Court
6 unnecessarily in the process. Nothing in this Order nor the
7 production of any information or document under the terms of this
8 Order nor any proceedings pursuant to this Order shall be deemed
9 to have the effect of an admission or waiver by either party or
10 of altering the confidentiality or nonconfidentiality of any such
11 document or information or altering any existing obligation of
12 any party or the absence thereof.

13 13. This Order shall survive the final termination of this
14 action, to the extent that the information contained in
15 Confidential Material is not or does not become known to the
16 public, and the Court shall retain jurisdiction to resolve any
17 dispute concerning the use of information disclosed hereunder.
18 Upon termination of this case, counsel for the parties shall
19 assemble and return to each other all documents, material and
20 deposition transcripts designated as confidential and all copies
21 of same, or shall certify the destruction thereof within 60 days
22 of the termination of this action.

23 DATED: August 5, 2011


UNITED STATES MAGISTRATE JUDGE

24 PRESENTED BY:
25 ANDRÉ BIROTTE JR.
United States Attorney
26 LEON W. WEIDMAN
Assistant United States Attorney
27 Chief, Civil Division

28 /s/ Jason K. Axe
JASON K. AXE
Assistant United States Attorney

1 Attorneys for Defendant
2 United States of America

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Attachment A

NONDISCLOSURE AGREEMENT

I, _____ do solemnly swear that I am fully familiar with the terms of the Stipulated Protective Order entered in Alice Smithen v. United States of America, et al., United States District Court for the Central District of California, Civil Action No. CV 09-0414 GW (PJWx), and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order.

DATED: _____
