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3 All future discovery filings shall
4 include the following language
5 on the cover page:
6 "[Referred to Magistrate Judge
7 Suzanne H. Segal]"
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 **CHRIS B. SIRKO, on behalf of**
12 **himself, and all others similarly**
13 **situated and the general public,**

14 **Plaintiff,**

15 **v.**

16 **INTERNATIONAL BUSINESS**
17 **MACHINES CORPORATION, a**
18 **New York Corporation; and**
19 **DOES 1 through 500, Inclusive.,**

20 **Defendants.**

Case No. 2:13-cv-03192-DMG-SSx

(PROPOSED) ORDER
GOVERNING CONFIDENTIAL
INFORMATION

21 Having reviewed the parties' Stipulation Regarding Protective Order
22 Governing Confidential Information, the Court hereby orders as follows:

23 1. A party may designate as "CONFIDENTIAL" or "HIGHLY
24 CONFIDENTIAL – ATTORNEYS' EYES ONLY" any documents, discovery
25 responses, electronic data, deposition transcripts, exhibits or other materials
26 produced or generated in this matter that it reasonably believes should be subject to
27 the terms of this Order. Material that may be designated as CONFIDENTIAL or
28 HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY consists of documents
and information whose disclosure would create a risk of injury that could not be

1 avoided by less restrictive means, and includes, but is not limited to, customer
2 information, personnel information, and personal information of any current or
3 former IBM employee.

4 2. Designations in conformity with this Order may be made as
5 follows:

6 (a) for information in documentary form (other than depositions or
7 other transcripts), by stamping or labeling the first page of each such document
8 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY
9 or by any other reasonable means of giving notice of the party's intent to claim
10 protected status of the material in question;

11 (b) for testimony or exhibits offered in a deposition or other
12 proceeding, by notifying opposing counsel on the record during or at the conclusion
13 of the proceeding that the information provided in the deposition or other
14 proceeding is considered CONFIDENTIAL or HIGHLY CONFIDENTIAL –
15 ATTORNEYS' EYES ONLY and that the transcript (or portions thereof) shall be
16 subject to the provisions of this Order; if practicable, portions of deposition
17 transcripts designated CONFIDENTIAL or HIGHLY CONFIDENTIAL –
18 ATTORNEY'S EYES ONLY shall be labeled as such and bound separately by the
19 Court Reporter; in addition, a party may reserve the right on the record during or at
20 the conclusion of the deposition or proceeding to make CONFIDENTIAL or
21 HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY designations up to
22 thirty (30) days after receipt of the final transcript, and if such right is reserved in
23 conformity herewith, the information shall be treated as CONFIDENTIAL until
24 such designation is made or the thirty (30) day period expires (whichever occurs
25 first); and

26 (c) for information or items produced in other forms, by stamping
27 or labeling the exterior of the container(s) in which the information or item is stored
28 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY

1 or by any other reasonable means of providing notice of the designations.

2 3. Documents and information designated CONFIDENTIAL in
3 accordance with this Order shall be used solely for the purpose of preparation, trial,
4 and/or appeal of this action, and, unless the Court rules otherwise, such documents
5 or information shall not be disclosed to any person other than (a) counsel of record
6 to any party to this Order; (b) the legal, clerical, paralegal, or other staff of such
7 counsel to this action employed during the preparation for and trial and appeal of
8 this action; (c) Plaintiff Chris Sirko, so long as disclosure is reasonably necessary
9 for purposes of this litigation and he agrees to comply with and be bound by the
10 terms of this Order (but under no circumstances shall Sirko be shown payroll data
11 or other personal information pertaining to another employee of Defendant); (d) the
12 principals, officers, agents and employees of Defendant whom Defendant believes
13 in good faith have a need to review such documents or information; (e) persons
14 retained by either party to this Order to furnish expert services or advice or to give
15 expert testimony in this action (and their employees); (f) trial witnesses and court
16 reporters in this action; (g) deponents, but only those who had access to the
17 documents or information independent of this litigation and only so long as the
18 disclosure is reasonably necessary for purposes of this litigation; and (h) the Court,
19 Court personnel and jurors. CONFIDENTIAL documents or information disclosed
20 to any such person shall not be disclosed by him/her to any other person not
21 included within the foregoing subparagraphs (a) through (h) of this paragraph.

22 4. Documents and information designated HIGHLY
23 CONFIDENTIAL – ATTORNEYS' EYES ONLY in accordance with this Order
24 shall be used solely for the purpose of preparation, trial, and/or appeal of this
25 action, and, unless the Court rules otherwise, such documents and information shall
26 not be disclosed to any person other than (a) counsel of record to any party to this
27 Order; (b) the legal, clerical, paralegal, or other staff of such counsel to this action
28 employed during the preparation for and trial and appeal of this action; (c) the

1 principals, officers, agents and employees of Defendant whom Defendant believes
2 in good faith have a need to review such documents or information; (d) persons
3 retained by either party to this Order to furnish expert services or advice or to give
4 expert testimony in this action (and their employees); (e) trial witnesses and court
5 reporters in this action; (f) deponents, but only those who had access to the
6 documents or information independent of this litigation and only so long as the
7 disclosure is reasonably necessary for purposes of this litigation; and (g) the Court,
8 Court personnel and jurors. **HIGHLY CONFIDENTIAL – ATTORNEYS' EYES**
9 **ONLY** documents or information disclosed to any such person shall not be
10 disclosed by him/her to any other person not included within the foregoing
11 subparagraphs (a) through (g) of this paragraph.

12 5. Any person who is to obtain access to material subject to this
13 Order pursuant to paragraph 3(e) and/or 4(d) shall prior to receipt of such material
14 (a) be informed by the party providing access to such material of the terms of this
15 Order; and (b) agree in writing to be bound by the terms of this Order by executing
16 the attached Agreement.

17 6. If counsel for a party herein shall hereafter desire to make
18 material subject to this Order available to any person other than those referred to in
19 paragraphs 3 and 4 above, such counsel shall, prior to any such disclosure,
20 designate the material involved, identify the person to whom he/she wishes to make
21 disclosure, and inform counsel for the opposing party of their desire. If the parties
22 are subsequently unable to agree on the terms and conditions of disclosure to
23 persons not enumerated in paragraphs 3 and 4, disclosure may be made only on
24 such terms as the Court may order, and the issue shall be raised strictly pursuant to
25 Local Rule 37.

26 7. A party in receipt of materials designated by another party as
27 **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY**
28 shall not file such materials in the public record unless the party files the materials

1 under seal pursuant to the procedures set forth in Local Rule 79-5. The portions of
2 any pleadings, motion papers or other papers that contain summaries or quotations
3 of any CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEY'S EYES
4 ONLY materials shall also be filed under seal in accordance with this Court's Civil
5 Local Rule 79-5. In the event that documents are filed under seal, the parties agree
6 to comply with the Local Rules concerning filing the appropriate supporting
7 documents to submit materials under seal.

8 8. The provisions of this Order shall not terminate at the
9 conclusion of this action. Within sixty days after final termination of this action,
10 including any appeals, the parties shall destroy or return to counsel for a party that
11 produced materials subject to this Order originals and all copies of such materials.
12 At such time, each party must certify that the terms of this paragraph have been
13 complied with.

14 9. Any material subject to this order, and which is otherwise
15 admissible, may be used at trial, provided, however, that the parties agree that they
16 will work with the Court to identify trial procedures that will protect and maintain
17 the non-public nature of material subject to this Order. Prior to the use at trial of
18 material subject to this Order, all stamps, labels, or other designations placed on the
19 material pursuant to this Order shall be removed.

20 10. Nothing herein constitutes or may be interpreted as a waiver by
21 any party of the attorney-client privilege, attorney work product protection, or any
22 other privilege. Any party may request that the Court grant relief from any
23 provision of this Order. If a party disagrees with a designation of
24 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY
25 that party must notify the designating party of the disagreement by serving a letter
26 requesting a conference of counsel pursuant to Local Rule 37-1. If the parties are
27 unable to resolve the dispute at the Local Rule 37-1 conference of counsel, the
28 parties shall raise the dispute with the Court pursuant to the procedures set forth in

1 Local Rule 37-2. The documents or information that is/are the subject of the
2 confidentiality designation dispute shall remain under the protection of this Order
3 pending the Court's decision resulting from the Local Rule 37-2 filing. The parties
4 may correct initially erroneous confidentiality designations, or lack thereof, and at
5 their own expense, furnish to all counsel copies of the documents or other materials
6 for which there is a change in designation. Nothing in this Order shall prevent any
7 party from using or disclosing their own documents or information, regardless of
8 designation.

9 11. The inadvertent or unintentional disclosure by any party of
10 documents or information protected from discovery as an attorney-client
11 communication, work product or otherwise protected under Federal Rule of Civil
12 Procedure 26 (the "Privileged Material"), regardless of whether the information was
13 designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS'
14 EYES ONLY at the time of disclosure, shall not be deemed a waiver in whole or in
15 part of that disclosing party's claim of privilege, either as to the specific documents
16 or information disclosed or as to any other documents or information relating
17 thereto or on the same or related subject matter. The recipient of such Privileged
18 Material shall (i) return it, without retaining any copy of it, upon recognizing its
19 status, or within three (3) days from a demand (the "Demand") by the disclosing
20 party, whichever occurs first; (ii) destroy all summaries, notes, memoranda or other
21 documents (or the portions thereof) referring to such Privileged Material; and
22 (iii) not use such documents containing Privileged Material for any purpose until
23 further order of the Court. If the receiving party disputes the disclosing party's
24 Demand, the matter shall be presented by the disclosing party to the Court for
25 resolution pursuant to Local Rule 37. Further, if the recipient has already shared
26 such Privileged Material prior to recognizing its protected status or prior to a
27 Demand for its return, that recipient shall promptly notify the other affected
28 persons, and collect and return all copies.

12. Plaintiff has requested, and Defendant has agreed to produce, subject to entry of this Order, (a) the full name and (b) full current or last known home address of IBM's California-based employees hired from Kaiser Permanente who held exempt transitional position code 4YYY and were later reclassified into a nonexempt position code or classified into an exempt position code in the 24A job family (other than first line manager or team lead position codes) (hereinafter, the name and address information referred to in this paragraph is called "Contact Information"). Plaintiff's counsel may use the Contact Information solely for purposes of contacting potential class action members for discovery and investigation purposes, subject to applicable limitations imposed by law, court order, and/or ethical rules. Plaintiff's counsel shall not disclose the Contact Information to anyone other than employees of Plaintiff's counsel to whom it is reasonably necessary to disclose the Contact Information for purposes of prosecuting this case; shall notify Defendant in writing immediately or in no event later than three days after receipt of a subpoena or order issued in other litigation that would compel disclosure of the Contact Information; and shall return the Contact Information (including all copies or reproductions) to Defendant's counsel within 60 days after the final termination of this action.

IT IS SO ORDERED.

Dated: Aug 5, 2013


Honorable ~~Dolly M. Gee~~
United States District Judge

All future discovery filings shall include the following language on the cover page:
"[Referred to Magistrate Judge Suzanne H. Segal]"

1
2
3 UNITED STATES DISTRICT COURT
4 CENTRAL DISTRICT OF CALIFORNIA

5 **CHRIS B. SIRKO, on behalf of**
6 **himself, and all others similarly**
7 **situated and the general public,**

8 **Plaintiff,**

9 **v.**

10 **INTERNATIONAL BUSINESS**
11 **MACHINES CORPORATION, a**
12 **New York corporation, and DOES 1**
13 **to 100, Inclusive,**

14 **Defendants.**

Case No. 2:13-cv-03192-DMG-SSx

AGREEMENT TO BE BOUND
BY PROTECTIVE ORDER

15 I, _____, the undersigned, hereby acknowledge that I have received a
16 copy of the Protective Order entered in this action, and that I have read the Order
17 and agree to be bound by all of the provisions in it. I recognize that during my
18 participation in this case, I may have occasion to read or hear matters that are
19 designated CONFIDENTIAL or HIGHLY CONFIDENTIAL - ATTORNEYS'
20 EYES ONLY. I agree not to disclose any such matter to any person not entitled to
21 receive disclosure of same under the provisions of the Order and to use any such
22 matter solely in connection with my participation in this case. I also agree to return
23 any materials protected by the Order to counsel for the party that supplied me with
24 such materials as soon as my participation in the case is concluded. I also agree to
25 submit to the authority of this Court for enforcement of the Order.

26 Dated: _____, 2013.

27 _____
Print Name

28 _____
Print Address
(PROPOSED) ORDER GOVERNING
CONFIDENTIAL INFORMATION 2:13-cv-
03192-DMG-SSx