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 16

17 UNITED STATES DISTRICT COURT
 18 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 19

20 BRAD M. WILLIAMS,
 21 Plaintiffs,
 22 v.
 23 UNITED STATES OF AMERICA,
 24 Defendant.

No. 2:17-cv-1870-AG (JCx)
**STIPULATED PROTECTIVE
 ORDER**
[CHANGES MADE BY COURT]

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1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential or
3 private information of, or pertaining to, Plaintiff Brad M. Williams, for which
4 special protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the Court to enter the following Stipulated Protective
7 Order. The parties acknowledge that this Order does not confer blanket protections
8 on all disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items that are
10 entitled to confidential treatment under the applicable legal principles. The parties
11 further acknowledge that, as set forth in Section 12.3, below, this Stipulated
12 Protective Order does not entitle them to file confidential information under seal.
13 Rather, when the parties seek permission from the court to file material under seal,
14 the parties must comply with Civil Local Rule 79-5 and with any pertinent orders
15 of the assigned District Judge and Magistrate Judge.

16 B GOOD CAUSE STATEMENT

17 This action is likely to involve patient, medical, financial or other
18 information pertaining to Plaintiff for which special protection from public
19 disclosure and from use for any purpose other than prosecution of this action is
20 warranted. Such confidential information (including information implicating
21 privacy rights of third parties) consists of information otherwise generally
22 unavailable to the public, or which may be privileged or otherwise protected from
23 disclosure under state or federal statutes, court rules, case decisions, or common
24 law. Accordingly, to expedite the flow of information, to facilitate the prompt
25 resolution of disputes over confidentiality of discovery materials, to adequately
26 protect information the parties are entitled to keep confidential, to ensure that the
27 parties are permitted reasonable necessary uses of such material in preparation for
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1 and in the conduct of trial, to address their handling at the end of the litigation, and
2 serve the ends of justice, a protective order for such information is justified in this
3 matter. It is the intent of the parties that information will not be designated as
4 confidential for tactical reasons and that nothing be so designated without a good
5 faith belief that it has been maintained in a confidential, non-public manner, and
6 there is good cause why it should not be part of the public record of this case.

7 2. DEFINITIONS

8 2.1 Action: The above-captioned federal law suit.

9 2.2 Challenging Party: a Party or Non-Party that challenges the
10 designation of information or items under this Order.

11 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for
13 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
14 the Good Cause Statement.

15 2.4 Counsel: Counsel of Record and House Counsel (as well as their
16 support staff).

17 2.5 Designating Party: a Party or Non-Party that designates information
18 or items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

20 2.6 Disclosure of Discovery Material: all items or information, regardless
21 of the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced
23 or generated in disclosures or responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a
25 matter pertinent to the litigation who has been retained by a Party or its counsel to
26 serve as an expert witness or as a consultant in this Action.

1 2.8 House Counsel: attorneys who are employees of a party to this
2 Action. House Counsels does not include Outside Counsel of Record or any other
3 outside counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association,
5 or other legal entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a
7 party to this Action but are retained to represent or advise a party to this Action
8 and have appeared in this Action on behalf of that party or are affiliated with a law
9 firm that has appeared on behalf of that party, and includes support staff.

10 2.11 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 2.13 Professional Vendors: persons or entities that provide litigation
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 2.14 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL.”

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery
22 Material from a Producing Party.

23 3. SCOPE

24 The protections conferred by this Order cover not only Protected Material
25 (as defined above), but also (1) any information copied or extracted from Protected
26 Material; (2) all copies, excerpts, summaries, or compilations of Protected
27 Material; and (3) any deposition testimony, conversations, or presentations by
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1 Parties or their Counsel that might reveal Protected Material, other than during a
2 court hearing or at trial.

3 Any use of Protected Material during a court hearing or at trial shall be
4 governed by the orders of the presiding judge. This Order does not govern the use
5 of Protected Material during a court hearing or at trial.

6 4. DURATION

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

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection
18 under this Order must take care to limit any such designation to specific material
19 that qualifies under appropriate standards. The Designating Party must designate
20 for protection only those parts of material, documents, items, or oral or written
21 communications that qualify so that other portions of the material, documents,
22 items, or communications for which protection is not warranted are not swept
23 unjustifiably within the ambit of this Order.

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

3 If it comes to a Designating Party's attention that information or items that it
4 designated for protection do not qualify for protection, that Designating Party must
5 promptly notify all other Parties that it is withdrawing the inapplicable designation.

6 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
7 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
9 under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

12 (a) For information in documentary form (e.g., paper or
13 electronic documents, but excluding transcripts of depositions or other
14 pretrial or trial proceedings), that the Producing Party affix at a minimum,
15 the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend") to
16 each page that contains protected material. If only a portion or portions of
17 the material on a page qualifies for protection, the Producing Party also must
18 clearly identify the protected portion(s) (e.g., by making appropriate
19 markings in the margins).

20 A Party or Non-Party that makes original documents available for inspection
21 need not designate them for protection until after the inspecting Party has indicated
22 which documents it would like copied and produced. During the inspection and
23 before the designation, all of the material made available for inspection shall be
24 deemed "CONFIDENTIAL." After the inspecting Party has identified the
25 documents it wants copied and produced, the Producing Party must determine
26 which documents, or portions thereof, qualify for protection under this Order.
27 Then, before producing the specified documents, the Producing Party must affix
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1 the “CONFIDENTIAL” legend to each page that contains Protected Material. If
2 only a portion or portions of the material on a page qualifies for protection, the
3 Producing Party also must clearly identify the protected portion(s) (e.g., by making
4 appropriate makings in the margins).

5 (b) For testimony given in deposition that the Designating
6 Party identify the Disclosure or Discovery Material on the record, before the
7 close of the deposition all protected testimony.

8 (c) For information produced in some form other than
9 documentary and for any other tangible items, that the Producing Party affix
10 in a prominent place on the exterior of the container or containers in which
11 the information is stored the legend “CONFIDENTIAL.” If only a portion
12 or portions of the information warrants protections, the Producing Party, to
13 the extent practicable, shall identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
15 failure to designate qualified information or items does not, standing alone, waive
16 the Designating Party’s right to secure protection under this Order for such
17 material. Upon timely correction of a designation, the Receiving Party must make
18 reasonable efforts to assure that the material is treated in accordance with the
19 provisions of this Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
22 designation of confidentiality at any time that is consistent with the Court’s
23 Scheduling Order.

24 6.2 Meet and Confer. The challenging Party shall initiate the dispute
25 resolution process under Local Rule 37.1 et seq.

26 6.3 The burden of persuasion in any such challenge proceeding shall be
27 on the Designating Party. Frivolous challenges, and those made for an improper
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1 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
2 parties) may expose the Challenging Party to sanctions. Unless the Designating
3 Party has waived or withdrawn the confidentiality of designation, all parties shall
4 continue to afford the material in question the level of protection to which it is
5 entitled under the Producing Party's designation until the Court rules on the
6 challenge.

7 7. ACCESS TO AND USE OF PROTECTED MATERIAL

8 7.1 Basic Principles. A receiving Party may use Protected Material that is
9 disclosed or produced by another Party or by a Non-Party in connection with this
10 Action only for prosecuting, defending, or attempting to settle this Action. Such
11 Protected Material may be disclosed only to the categories of persons and under
12 the conditions described in this Order. When the Action has been terminated, a
13 Receiving Party must comply with the provisions of section 13 below (FINAL
14 DISPOSITION).

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

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
19 otherwise ordered by the Court or permitted in writing by the Designating Party, a
20 Receiving Party may disclose any information or item designated
21 "CONFIDENTIAL" only to:

22 (a) the Receiving Party's Outside Counsel of Records in this
23 Action, as well as employees of said Outside Counsel of Record to whom it is
24 reasonably necessary to disclose the information for this Action;

25 (b) the officers, directors, and employees (including House
26 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
27 this Action;
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1 (c) Experts (as defined in this Order) of the Receiving Party to
2 whom disclosure is reasonably necessary for this Action and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and
7 Professional Vendors to whom disclosure is reasonably necessary for this Action
8 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
9 A);

10 (g) the author or recipient of a document containing the
11 information or a custodian or other person who otherwise possessed or knew the
12 information;

13 (h) during their depositions, witnesses, and attorneys for witnesses,
14 in the Action to whom disclosure is reasonably necessary provided: (1) the
15 deposing party requests that the witness sign the form attached as Exhibit 1 hereto;
16 and (2) they will not be permitted to keep any confidential information unless they
17 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
18 otherwise agreed by the Designating Party or ordered by the Court. Pages of
19 transcribed deposition testimony or exhibits to depositions that reveal Protected
20 Material may be separately bound by the court reporter and may not be disclosed
21 to anyone except as permitted under this Stipulated Protective Order; and

22 (i) any mediator or settlement officer, and their supporting
23 personnel, mutually agreed upon by any of the parties engaged in settlement
24 discussions.

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) Promptly notify in writing the Designating Party. Such
7 notification shall include a copy of the subpoena or court order;

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

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

15 If the Designating Party timely seeks a protective order, the Party served
16 with the subpoena or court order shall not produce any information designated in
17 this action as “CONFIDENTIAL” before a determination by the court from which
18 the subpoena or order issued, unless the Party has obtained the Designating Party’s
19 permission, or unless otherwise required by the law or court order. The
20 Designating Party shall bear the burden and expense of seeking protection in that
21 court of its confidential material and nothing in these provisions should be
22 construed as authorizing or encouraging a Receiving Party in this Action to
23 disobey a lawful directive from another court.

24 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
25 PRODUCED IN THIS LITIGATION

26 (a) the terms of this Order are applicable to information produced
27 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
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1 information produced by Non-Parties in connection with this litigation is protected
2 by the remedies and relief provided by this Order. Nothing in these provisions
3 should be construed as prohibiting a Non-Party from seeking additional
4 protections.

5 (b) in the event that a Party is required, by a valid discovery
6 request, to produce a Non-Party's confidential information in its possession, and
7 the Party is subject to an agreement with the Non-Party not to produce the Non-
8 Party's confidential information, then the Party shall:

9 (1) promptly notify in writing the Requesting Party and the
10 Non-Party that some or all of the information requested is subject to a
11 confidentiality agreement with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the
13 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
14 reasonably specific description of the information requested; and

15 (3) make the information requested available for inspection by
16 the Non-Party, if requested.

17 (c) If a Non-Party represented by counsel fails to commence the
18 process called for by Local Rules 45-1 and 37-1, et seq. within 14 days of
19 receiving the notice and accompanying information or fails contemporaneously to
20 notify the Receiving Party that it has done so, the Receiving Party may produce the
21 Non-Party's confidential information responsive to the discovery request. If an
22 unrepresented Non-Party fails to seek a protective order from this court within 14
23 days of receiving the notice and accompanying information, the Receiving Party
24 may produce the Non-Party's confidential information responsive to the discovery
25 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
26 not produce any information in its possession or control that is subject to the
27 confidentiality agreement with the Non-Party before a determination by the court
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1 unless otherwise required by the law or court order. Absent a court order to the
2 contrary, the Non-Party shall bear the burden and expense of seeking protection in
3 this court of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
15 PROTECED MATERIAL

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

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1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in
7 this Stipulated Protective Order. Similarly, no Party waives any right to object on
8 any ground to use in evidence of any of the material covered by this Protective
9 Order.

10 12.3 Filing Protected Material. A Party that seeks to file under seal any
11 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
12 orders of the assigned District Judge and Magistrate Judge. Protected Material
13 may only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue. If a Party's request to file Protected Material
15 under seal is denied by the court, then the Receiving Party may file the information
16 in the public record unless otherwise instructed by the court.

17 13. FINAL DISPOSITION

18 After the final disposition of this Action, as defined in paragraph 4, within
19 60 days of a written request by the Designating Party, each Receiving Party must
20 return all Protected Material to the Producing Party or destroy such material. As
21 used in this subdivision, "all Protected Material" includes all copies, abstracts,
22 compilations, summaries, and any other format reproducing or capturing any of the
23 Protected Material. Whether the Protected Material is returned or destroyed, the
24 Receiving Party must submit a written certification to the Producing Party (and, if
25 not the same person or entity, to the Designating Party) by the 60 day deadline that
26 (1) identifies (by category, where appropriate) all the Protected Material that was
27 returned or destroyed and (2) affirms that the Receiving Party has not retained any
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1 copies, abstracts, compilations, summaries or any other format reproducing or
2 capturing any of the Protected Material. Notwithstanding this provision, Counsel
3 are entitled to retain an archival copy of all pleadings, motion papers, trial,
4 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
5 and trial exhibits, expert reports, attorney work product, and consultant and expert
6 work product, even if such materials contain Protected Material. Any such archival
7 copies that contain or constitute Protected Material remain subject to this
8 Protective Order as set forth in Section 4 (DURATION).

9 14. Any violation of this Order may be punished by any and all appropriate
10 measures including, without limitation, contempt proceedings and/or monetary
11 sanctions.

12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 DATED: 7/21/2017

14 /s/ T. L. Lyons

15 TIMOTHY L. LYONS

16 TIM LYONS LAW

17 Attorney for Plaintiff

18 Brad M. Williams

19 DATED: 7/21/2017

20 /s/ Thomas K. Buck

21 THOMAS K. BUCK

22 Assistant United States Attorney

23 Attorney for Defendant

24 United States of America

25 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED AS MODIFIED.

26 DATED: August 3, 2017

27 /s/

28 Honorable Jacqueline Chooljian

United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty
5 of perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United States District Court for the Central District of
7 California on August 3, 2017 in case of Brad M. Williams v. United States of
8 America, United States District Court, Central District of California, Case No. CV
9 17-1870 AG(JCx). I agree to comply with and to be bound by all the terms of this
10 Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item
13 that is subject to this Stipulated Protective Order to any person or entity except in
14 strict compliance with the provisions of this Order. I further agree to submit to the
15 jurisdiction of the United States District Court for the Central District of California
16 for the purpose of enforcing the terms of this Stipulated Protective Order, even if
17 such enforcement proceedings occur after termination of this action. I hereby
18 appoint _____ [print or type full address and telephone
19 number] as my California agent for service of process in connection with this
20 action or any proceedings related to enforcement of this Stipulated Protective
21 Order.
22

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____