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 14 COMPANY

15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**
 17 **WESTERN DIVISION**

18 ADAM TROTTER,
 19
 20 Plaintiff,
 21
 22 v.
 23 EXXON MOBIL CORP., et al.,
 24
 25 Defendants.

Case No. 2:17-cv-02279-PSG (JCx)

**MODIFIED STIPULATED
 PROTECTIVE ORDER
 REGARDING
 CONFIDENTIALITY OF
 DISCOVERY MATERIAL**

**[MODIFICATIONS MADE TO
 PARAGRAPHS III, VIII, IX]**

**[DISCOVERY DOCUMENT:
 REFERRED TO MAGISTRATE
 JUDGE JACQUELINE
 CHOOLJIAN]**

1 WHEREAS, pursuant to Federal Rules of Civil Procedure 26(c) and 29,
2 Local Rule 79-5, it is appropriate for the Court to limit the disclosure of certain
3 confidential information produced in the course of discovery;

4 WHEREAS, there is a good cause for entry of this Stipulated Protective
5 Order;

6 NOW THEREFORE Plaintiff Adam Trotter (“Plaintiff”), and Defendants
7 Exxon Mobil Corporation, ExxonMobil Oil Corporation, and ExxonMobil Refining
8 and Supply Company (“Defendants”) (collectively, the “Parties”), hereby stipulate,
9 subject to the Court’s approval, as follows:

10 **I. INTRODUCTION**

11 **A. PURPOSES AND LIMITATIONS**

12 Discovery in this action is likely to involve production of confidential,
13 proprietary, or private information for which special protection from public
14 disclosure and from use for any purpose other than prosecuting this litigation may
15 be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to
16 enter the following Protective Order. The Parties acknowledge that this Order does
17 not confer blanket protections on all disclosures or responses to discovery and that
18 the protection it affords from public disclosure and use extends only to the limited
19 information or items that are entitled to confidential treatment under the applicable
20 legal principles. The Parties further acknowledge, as set forth in Section XII.C,
21 *infra*, that this Order does not entitle them to file confidential information under
22 seal; Local Rule 79-5 sets forth the procedures that must be followed and the
23 standards that will be applied when a party seeks permission from the Court to file
24 materials under seal.

25 **B. GOOD CAUSE STATEMENT**

26 Plaintiff has brought this lawsuit claiming, *inter alia*, that he suffered
27 personal injuries as a result of the operation of the refinery in Torrance, California
28 (the “Torrance Refinery”).

1 **II. DEFINITIONS**

2 “Action” means *Trotter v. ExxonMobil Corp.*, No. 2:17-cv-02279-PSG
3 (JCx).

4 “Challenging Party” means a Party or Non-Party that challenges the
5 designation applied to any Disclosure or Discovery Material under this Order.

6 “CONFIDENTIAL” is a designation that may be applied to any Disclosure
7 or Discovery Material to denote that it is Confidential Information. Information
8 designated as “CONFIDENTIAL” may be used and communicated only as
9 provided in this Protective Order.

10 “Confidential Information” is any Disclosure or Discovery Material that
11 qualifies for protection under Federal Rule of Civil Procedure 26(c), and as
12 specified above in the Good Cause Statement. Confidential Information must be
13 marked with the “CONFIDENTIAL” designation according to the terms of this
14 Order.

15 “Counsel” means Outside Counsel of Record and In-House Counsel as well
16 as the support staff of each.

17 “Designating Party” means any Party or any Non-Party from whom
18 discovery is sought in this action and who invokes the protections of this Order.

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

24 “Expert” means a person with specialized knowledge or experience in a
25 matter pertinent to the litigation who has been retained by a Party or counsel to
26 serve as an expert witness or as a non-testifying consultant in this Action.

27 “In-House Counsel” means an attorney who is an employee of a Party and
28 whose responsibilities consist of performing legal services for such Party.

1 “Non-Party” means any natural person, partnership, corporation, association,
2 or other legal entity not named as a Party to this Action.

3 “Outside Counsel” means outside counsel of record for each Party who are
4 not employees of a Party to this Action but are retained to represent or advise a
5 Party to this Action and have appeared in this Action on behalf of that Party or are
6 affiliated with a law firm which has appeared on behalf of that Party, including all
7 attorneys, staff, and clerical and support personnel.

8 “Party” means any Party to this Action, including all directors, officers,
9 managers, managing entities, consultants, partners, members, or employees (or the
10 functional equivalent).

11 “Producing Party” means any Party or Non-Party that produces Disclosure or
12 Discovery Material in this Action.

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

17 “Privilege” or “Privileged” refers to the attorney-client privilege, attorney
18 work-product doctrine, or any other claim of privilege to justify withholding
19 otherwise discoverable information.

20 “Protected Material” means any Disclosure or Discovery Material that is
21 designated as “CONFIDENTIAL.”

22 “Receiving Party” means a Party that receives Disclosure or Discovery
23 Material from a Producing Party.

24 **III. SCOPE**

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also: (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
28 compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected Material, other
2 than during a 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 **IV. 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 prejudice, or (2) final judgment after the completion and exhaustion of all
12 appeals, rehearings, remands, trials, or reviews of this Action, including the time
13 limits for filing any motions or applications for extension of time pursuant to
14 applicable law.

15 **V. DESIGNATING PROTECTED MATERIAL**

16 **A. EXERCISE OF RESTRAINT AND CARE**

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 the appropriate standards. The Designating Party must
20 designate for protection only those parts of material, documents, items, or oral or
21 written communications that qualify so that other portions of the material,
22 documents, items, or communications for which protection is not warranted are not
23 swept unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited (with the
25 exception of third-party designations, as noted below). Designations that are shown
26 to be clearly unjustified or that have been made for an improper purpose (e.g., to
27 unnecessarily encumber the case development process or to impose unnecessary
28

1 expenses and burdens on other Parties) may expose the Designating Party to
2 sanctions.

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

7 **B. MANNER AND TIMING**

8 Except as otherwise provided in this Order, or as otherwise stipulated or
9 ordered, Disclosure or Discovery Material that qualifies for protection under this
10 Order must be clearly so designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 i. For Information in Documentary Form

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

20 ii. For Testimony Given in Depositions

21 The Designating Party must identify the Disclosure or Discovery Material
22 and all protected testimony on the record as Confidential before the close of the
23 deposition. Alternatively, counsel for any Party or Non-Party, or the deponent may
24 elect to take twenty (20) days to designate the portions of the deponent's transcript
25 that qualify as Confidential by transcript page and line number. Until the expiration
26 of this twenty-day period the transcript shall be treated as Confidential. Such
27 designation shall be communicated in writing to all Parties.

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1 iii. Other Information

2 For information produced in some form other than documentary (such as a
3 DVD containing documents) and for other tangible items, the Producing Party must
4 affix in a prominent place on the exterior of the container or containers in which the
5 information is stored the legend “CONFIDENTIAL.” If only a portion or portions
6 of the information warrants protection, the Producing Party, to the extent
7 practicable, shall identify the protected portion(s).

8 **C. DESIGNATING NON-PARTY DOCUMENTS**

9 Notwithstanding Section V.A, in order to avoid undue burdens on Non-
10 Parties producing materials in this litigation, a third party’s Disclosures or
11 Discovery Materials may be designated as Confidential Information in bulk.
12 However, such materials will remain subject to challenge under the procedures
13 specified in Section VI, *infra*.

14 Additionally, within thirty (30) days of a Non-Party’s production of any
15 Disclosure or Discovery Material, any Party may designate such Disclosure or
16 Discovery Material as Confidential if, in the good faith opinion of that Party, the
17 Disclosure or Discovery Material contains that Party’s Confidential Information.
18 The designation must be in writing, and provided to all Parties as well as to the
19 Non-Party that produced the Disclosure or Discovery Material. All Disclosure or
20 Discovery Material produced by a Non-Party shall be treated as Confidential
21 Information for a period of thirty (30) days following the date of production.

22 **D. INADVERTENT FAILURE TO DESIGNATE**

23 An inadvertent failure to designate qualified information or items does not,
24 standing alone, waive the Designating Party’s right to secure protection under this
25 Order for such material. Upon timely correction of a designation, the Receiving
26 Party must make reasonable efforts to assure that the material is treated in
27 accordance with the provisions of this Order. If feasible, the Designating Party
28 shall promptly provide a copy of any Disclosure or Discovery Material with the

1 proper designation to counsel for the Receiving Party, upon receipt of which the
2 Receiving Party shall promptly return or destroy all copies with the incorrect
3 designation.

4 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 **A. TIMING OF CHALLENGES**

6 Any Party or Non-Party may challenge a designation of confidentiality at any
7 time that is consistent with the Court's Scheduling Order.

8 **B. MEET AND CONFER**

9 The Challenging Party shall initiate the dispute resolution process (and, if
10 necessary, file a discovery motion seeking to change the confidentiality
11 designations) under Local Rule 37-1, *et seq.* The burden of persuasion in any such
12 challenge proceeding shall be on the Designating Party. Frivolous challenges, and
13 those made for an improper purpose (e.g., to harass or impose unnecessary
14 expenses and burdens on other parties) may expose the Challenging Party to
15 sanctions. Unless the Designating Party has waived or withdrawn the
16 confidentiality designation, all Parties shall continue to afford the material in
17 question the level of protection to which it is entitled under the Designating Party's
18 designation until the Court rules on the challenge.

19 **VII. ACCESS TO AND USE OF PROTECTED MATERIALS**

20 **A. BASIC PRINCIPLES**

21 A Receiving Party may use Protected Material that is disclosed or produced
22 by another Party or by a Non-Party in connection with this Action only for
23 prosecuting, defending, or attempting to settle this Action. Such Protected Material
24 may be disclosed only to the categories of persons and under the conditions
25 described in this Order. When the Action has been terminated, a Receiving Party
26 must comply with the provisions of Section XIII below.

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28

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

4 **B. DISCLOSURE OF CONFIDENTIAL INFORMATION**

5 Unless otherwise ordered by the Court or permitted in writing by the
6 Designating Party, a Receiving Party may disclose any Confidential Information
7 only to:

- 8 (1) the Receiving Party's Outside Counsel in this Action, as well as
9 employees of said Outside Counsel to whom it is reasonably necessary to
10 disclose the information for this Action;
- 11 (2) the officers, directors, and employees (including In-House Counsel) of
12 the Receiving Party to whom disclosure is reasonably necessary for this
13 Action;
- 14 (3) Experts of the Receiving Party to whom disclosure is reasonably
15 necessary for this Action and who have signed Exhibit A;
- 16 (4) the Court and its personnel;
- 17 (5) court reporters and their staff;
- 18 (6) professional jury or trial consultants, mock jurors, and Professional
19 Vendors to whom disclosure is reasonably necessary for this Action and who
20 have signed Exhibit A;
- 21 (7) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information;
- 23 (8) during their depositions, witnesses, and attorneys for witnesses, in the
24 Action to whom disclosure is reasonably necessary provided:
 - 25 (a) they have signed Exhibit A; and
 - 26 (b) they will not be permitted to keep any confidential information,
27 unless otherwise agreed by the Designating Party or ordered by the
28 Court. Pages of transcribed deposition testimony or exhibits to

1 depositions that reveal Protected Material may be separately bound by
2 the court reporter and may not be disclosed to anyone except as
3 permitted under this Stipulated Protective Order;

4 (9) any mediator or settlement officer, and their supporting personnel,
5 mutually agreed upon by any of the Parties engaged in settlement
6 discussions.

7 **C. REQUESTS FOR ADDITIONAL DISCLOSURE**

8 If any Party or Counsel desires to disclose Protected Material to any person
9 other than those otherwise permitted access to such information under the terms of
10 this Protective Order, such Party or Counsel must obtain written consent of the
11 Designating Party or the Court authorizing such disclosure. Except as expressly
12 agreed in writing by the Designating Party or ordered by the Court, each person to
13 whom the Protected Material is to be disclosed under this provision must execute
14 Exhibit A.

15 **D. NO EFFECT ON PARTY'S OWN USE**

16 A Designating Party's designation of information as Protected Material shall
17 not affect that Party's own right to use any information so designated.

18 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
19 **PRODUCED IN OTHER LITIGATION**

20 If a Party is served with a subpoena or a court order issued in other litigation
21 that compels disclosure of any Protected Materials in this Action, that Party must:

- 22 (1) promptly notify in writing the Designating Party and provide a copy of
23 the subpoena or court order unless prohibited by law;
24 (2) promptly notify in writing the party who caused the subpoena or order to
25 issue in the other litigation that some or all of the material covered by the
26 subpoena or order is subject to this Protective Order and provide a copy of
27 this Order; and
28

1 (3) cooperate with respect to all reasonable procedures sought to be pursued
2 by the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with
4 the subpoena or court order shall not produce any Protected Material before a
5 determination by the court from which the subpoena or order issued, unless the
6 Party has obtained the Designating Party's permission or unless otherwise required
7 by the law or court order. The Designating Party shall bear the burden and expense
8 of seeking protection in that court of that Party's confidential material and nothing
9 in these provisions should be construed as authorizing or encouraging a Receiving
10 Party in this Action to disobey a lawful directive from another court.

11 **IX. NON-PARTY'S PROTECTED MATERIAL**

12 The terms of this Order are applicable to Protected Materials produced by a
13 Non-Party in this Action. Such information produced by Non-Parties in connection
14 with this litigation is protected by the remedies and relief provided by this Order.
15 Nothing in these provisions should be construed as prohibiting a Non-Party from
16 seeking additional protections.

17 In the event that a Party is required, by a valid discovery request, to produce
18 a Non-Party's confidential information in the Party's possession, and the Party is
19 subject to an agreement with the Non-Party not to produce the Non-Party's
20 confidential information, then the Party shall:

- 21 (1) promptly notify in writing the Requesting Party and the Non-Party that
22 some or all of the information requested is subject to a confidentiality
23 agreement with a Non-Party;
- 24 (2) promptly provide the Non-Party with a copy of this Order, the relevant
25 discovery request(s), and a reasonably specific description of the information
26 requested; and
- 27 (3) make the information requested available for inspection by the Non-
28 Party, if requested.

1 If a Non-Party represented by counsel fails to commence the process called
2 for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the notice and
3 accompanying information or fails contemporaneously to notify the Receiving
4 Party that it has done so, the Receiving Party may produce the Non-Party's
5 confidential information responsive to the discovery request. If an unrepresented
6 Non-Party fails to seek a protective order from this Court within fourteen (14) days
7 of receiving the notice and accompanying information, the Receiving Party may
8 produce the Non-Party's confidential information responsive to the discovery
9 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
10 not produce any information that is subject to the confidentiality agreement with the
11 Non-Party before a determination by the Court unless otherwise required by the law
12 or court order. Absent a court order to the contrary, the Non-Party shall bear the
13 burden and expense of seeking protection in this Court of the Non-Party's Protected
14 Material.

15 **X. UNAUTHORIZED DISCLOSURE**

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this
18 Stipulated Protective Order, the Receiving Party must immediately:

- 19 (1) notify in writing the Designating Party of the unauthorized disclosures;
- 20 (2) use best efforts to retrieve all unauthorized copies of the Protected
21 Material;
- 22 (3) inform the person or persons to whom unauthorized disclosures were
23 made of all the terms of this Order; and
- 24 (4) request such person or persons to execute Exhibit A.

25 **XI. INADVERTENT PRODUCTION**

26 In the event that any Disclosure or Discovery Material containing or
27 constituting privileged attorney-client communications or protected by the attorney
28 work product or other applicable doctrine is inadvertently produced, the producing

1 Party and/or Non-Party shall notify the Receiving Party promptly after it is
2 discovered that such material was inadvertently produced for inspection or
3 provided. Upon receipt of such notification the Receiving Party shall promptly
4 return to counsel for the disclosing Party any and all copies of such Disclosure or
5 Discovery Material and thereafter refrain from any use whatsoever, in this case or
6 otherwise. Nothing herein shall prevent the Receiving Party from contending that
7 any such Disclosure or Discovery Material was not inadvertently produced or that
8 privilege was waived for reasons other than the mere inadvertent production
9 thereof.

10 **XII. MISCELLANEOUS**

11 **A. RIGHT TO FURTHER RELIEF**

12 Nothing in this Order abridges the right of any person to seek its
13 modification by the Court in the future.

14 **B. RIGHT TO ASSERT OTHER OBJECTIONS**

15 By stipulating to the entry of this Order, no Party waives any right to object
16 to disclosing or producing any information or item on any ground not addressed in
17 this Order. Similarly, no Party waives any right to object on any ground to use in
18 evidence any of the material covered by this Order.

19 **C. FILING PROTECTED MATERIAL**

20 A Party that seeks to file under seal any Protected Material must comply with
21 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a
22 court order authorizing the sealing of the specific Protected Material at issue. If a
23 Party's request to file Protected Material under seal is denied by the Court, then the
24 Receiving Party may file the information in the public record unless otherwise
25 instructed by the Court.

26 **XIII. FINAL DISPOSITION**

27 Within sixty (60) days after the termination of this litigation (as defined in
28 Section IV, *supra*) and the expiration of the time for appeal, each Receiving Party

1 must return all Protected Material to the Producing Party or destroy such material.
2 As used in this subdivision, “all Protected Material” includes all copies, abstracts,
3 compilations, summaries, and any other format reproducing or capturing any of the
4 Protected Material. Whether the Protected Material is returned or destroyed, the
5 Receiving Party must submit a written certification to the Producing Party (and, if
6 not the same person or entity, to the Designating Party) by the sixty-day deadline
7 that confirms compliance with the terms of this Section. Notwithstanding this
8 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
9 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
10 deposition and trial exhibits, expert reports, attorney work product, and consultant
11 and expert work product, even if such materials contain Protected Material. Any
12 such archival copies that contain or constitute Protected Material remain subject to
13 this Protective Order as set forth in Section IV.

14 **XIV. PENALTIES**

15 Any willful violation of this Order may be punished by contempt
16 proceedings, financial or evidentiary sanctions, reference to disciplinary authorities,
17 or other appropriate action at the discretion of the Court.

18
19 IT IS SO STIPULATED.

20
21 Dated: May 21, 2018

M. RANDALL OPPENHEIMER
DAWN SESTITO
O’MELVENY & MYERS LLP

22
23
24 By: /s/ Dawn Sestito
Dawn Sestito

25 *Attorneys for Defendant*
26 EXXON MOBIL CORPORATION,
27 EXXONMOBIL OIL CORPORATION,
28 EXXONMOBIL REFINING AND
SUPPLY COMPANY

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Dated: May 21, 2018

ADAM TROTTER

By: /s/ Adam Trotter
Adam Trotter

Plaintiff, Pro Se

ATTESTATION

I hereby attest that the other signatories listed, on whose behalf this filing is submitted, concur in the filing’s content and have authorized the filing.

Dated: May 21, 2018

DAWN SESTITO
O’MELVENY & MYERS LLP

By: /s/ Dawn Sestito
Dawn Sestito

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

Dated: May 23, 2018

/s/
Honorable Jacqueline Chooljian
United States Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

3 I, _____, declare under penalty of perjury under
4 the laws of the United States and California that I have read in its entirety and
5 understand the Stipulated Protective Order Regarding the Confidentiality Discovery
6 Material (the "Order") that was issued by the United States District Court for the
7 Central District of California in the matter *Trotter v. Exxon Mobil Corp.*, No. 2:17-
8 cv-02279-PSG (JCx).

9 I agree to comply with and to be bound by all the terms of the Order and I
10 understand and acknowledge that failure to so comply could expose me to sanctions
11 and punishment in the nature of contempt. I solemnly promise that I will not
12 disclose in any manner any information or item that is subject to the Order to any
13 person or entity except in strict compliance with the provisions of the Order. I
14 further agree to submit to the jurisdiction of the United States District Court for the
15 Central District of California for the purpose of enforcing the terms of the Order,
16 even if such enforcement proceedings occur after termination of this action. I
17 hereby appoint _____ [print full name] of _____
18 _____ [print full address and telephone number]
19 as my California agent for service of process in connection with this action or any
20 proceedings related to enforcement of the Order.

21
22 Dated: _____

23
24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____