

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

KARISSA FENWICK, an individual;

Plaintiff,

v.

UNIVERSITY OF SOUTHERN
CALIFORNIA; ERICK G.
GUERRERO; and DOES 1-25, inclusive,

Defendants.

Case No. 2:17-CV-08673-MRW

**STIPULATED PROTECTIVE
ORDER**

1 1. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
7 enter the following Stipulated Protective Order. The parties acknowledge that this
8 Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends
10 only to the limited information or items that are entitled to confidential treatment
11 under the applicable legal principles. The parties further acknowledge, as set forth in
12 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
13 file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when a party
15 seeks permission from the court to file material under seal.

16 1.2 GOOD CAUSE STATEMENT

17 Plaintiff Karissa Fenwick (“Plaintiff”), a PhD student at the University of
18 Southern California (“USC”), filed this action against USC and Erick G. Guerrero,
19 PhD (“Guerrero”), her former professor. She has asserted various causes of action,
20 including alleging that Dr. Guerrero sexually harassed her and discouraged her from
21 reporting the incident. Plaintiff also alleges USC’s response to her complaint about
22 Dr. Guerrero was inadequate. To investigate her claims, she has propounded
23 discovery seeking information regarding Dr. Guerrero’s employment history,
24 complaints made about Dr. Guerrero, and email communications between herself
25 and USC employees. Some of the documents Plaintiff requested are likely to
26 contain private information regarding USC employees and/or students. USC
27 contends its employees and students have a right to privacy in their personnel
28 records and student records and will not produce such records absent a Court order

1 or a stipulated protective order requiring the parties to maintain the confidentiality
2 of private documents. *See Mintz v. Mark Bartelstein and Associates Inc.*, 906
3 F.Supp.2d 1017, 1033 (C.D. Cal. 2012); *Board of Trustees, Stanford University v.*
4 *Superior Court*, 119 Cal. App. 3d 516 (1981); *Harding Lawson Associates v.*
5 *Superior Court*, 10 Cal. App. 4th 7, 10 (1992); Family Education Rights Privacy Act
6 (“FERPA”), 20 U.S.C. § 1232g.

7 In addition, some of the documents Plaintiff requested are likely to include
8 confidential, unpublished drafts of USC’s employees’ and/or students’ academic
9 research. USC, its employees, and its students’ interests may be damaged if their
10 unpublished research becomes public.

11 Finally, in response to USC’s discovery, Plaintiff is likely to produce certain
12 private medical records. Accordingly, to facilitate the production of confidential
13 and private documents, the parties stipulate to this protective order.

14 2. DEFINITIONS

15 2.1 Action: the above-entitled proceeding, *Karissa Fenwick v. University of*
16 *Southern California, et al.*, Case No. 2:17-CV-08673-MRW.

17 2.2 Challenging Party: a Party or Non-Party that challenges the designation
18 of information or items under this Order.

19 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
20 how it is generated, stored or maintained) or tangible things that qualify for
21 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
22 the Good Cause Statement. This specifically includes, but is not necessarily limited
23 to, Plaintiff’s medical records, any investigation documentation that discusses third
24 parties, harassment training documentation that is proprietary in nature, and any and
25 all draft research and unpublished data.

26 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
27 their support staff).

28 2.5 Designating Party: a Party or Non-Party that designates information or

1 items that it produces in disclosures or in responses to discovery as
2 “CONFIDENTIAL.”

3 2.6 Disclosure or Discovery Material: all items or information, regardless
4 of the medium or manner in which it is generated, stored, or maintained (including,
5 among other things, testimony, transcripts, and tangible things), that are produced or
6 generated in disclosures or responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a matter
8 pertinent to the litigation who has been retained by a Party or its counsel to serve as
9 an expert witness or as a consultant in this Action.

10 2.8 House Counsel: attorneys who are employees of a party to this Action.
11 House Counsel does not include Outside Counsel of Record or any other outside
12 counsel.

13 2.9 Non-Party: any natural person, partnership, corporation, association, or
14 other legal entity not named as a Party to this action.

15 2.10 Outside Counsel of Record: attorneys who are not employees of a party
16 to this Action but are retained to represent or advise a party to this Action and have
17 appeared in this Action on behalf of that party or are affiliated with a law firm which
18 has appeared on behalf of that party, and includes support staff.

19 2.11 Party: any party to this Action, including all of its officers, directors,
20 employees, consultants, retained experts, and Outside Counsel of Record (and their
21 support staffs).

22 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this Action.

24 2.13 Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or
26 demonstrations, and organizing, storing, or retrieving data in any form or medium)
27 and their employees and subcontractors.

28 2.14 Protected Material: any Disclosure or Discovery Material that is

1 designated as “CONFIDENTIAL.”

2 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
3 from a Producing Party.

4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only
6 Protected Material (as defined above), but also (1) any information copied or
7 extracted from Protected Material; (2) all copies, excerpts, summaries, or
8 compilations of Protected Material; and (3) any testimony, conversations, or
9 presentations by Parties or their Counsel that might reveal Protected Material.

10 Any use of Protected Material at trial will be governed by the orders of the
11 trial judge. This Order does not govern the use of Protected Material at trial.

12 4. DURATION

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

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection.

23 Each Party or Non-Party that designates information or items for protection under
24 this Order must take care to limit any such designation to specific material that
25 qualifies under the appropriate standards. The Designating Party must designate for
26 protection only those parts of material, documents, items, or oral or written
27 communications that qualify so that other portions of the material, documents,
28 items, or communications for which protection is not warranted are not swept

1 unjustifiably within the ambit of this Order.

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

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

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

15 Designation in conformity with this Order requires:

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

23 A Party or Non-Party that makes original documents available for inspection
24 need not designate them for protection until after the inspecting Party has indicated
25 which documents it would like copied and produced. During the inspection and
26 before the designation, all of the material made available for inspection will be
27 deemed "CONFIDENTIAL." After the inspecting Party has identified the
28 documents it wants copied and produced, the Producing Party must determine which

1 documents, or portions thereof, qualify for protection under this Order. Then, before
2 producing the specified documents, the Producing Party must affix the
3 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
4 portion or portions of the material on a page qualifies for protection, the Producing
5 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
6 markings in the margins).

7 (b) for testimony given in depositions that the Designating Party identify
8 the Disclosure or Discovery Material on the record, before the close of the
9 deposition all protected testimony.

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

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

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

26 6.2 Meet and Confer. If there is a dispute that cannot be resolved, the
27 Designating Party has the burden of filing a motion to have the information at issue
28 be deemed to be “Confidential” under Local Rule 37.1 et seq.

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

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

20 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
21 otherwise ordered by the court or permitted in writing by the Designating Party,¹ a
22

23 ¹ Defendant USC wishes to designate the Office of Equity and Diversity’s investigation report as
24 Confidential to protect the privacy rights of Non-Parties. In the event a Receiving Party believes it
25 is necessary to publicly file the Office of Equity and Diversity’s investigation report (or otherwise
26 use any information or item designated CONFIDENTIAL outside the scope of the litigation), the
27 Receiving Party will provide the Designating Party with a redacted version of the documents or
28 item, fully redacting the true name(s), identifying information, and confidential and/or private
information of Non-Parties (and where applicable, Parties) and seek the Designating Party’s
written permission to use a redacted version of the document or item for a specific purpose. As
long as the third party information is properly redacted, the Designating Party will not

1 Receiving Party may disclose any information or item designated

2 “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this Action,
4 as well as employees of said Outside Counsel of Record to whom it is reasonably
5 necessary to disclose the information for this Action;

6 (b) House Counsel for USC;

7 (c) the officers, directors, and employees of the Receiving Party to
8 whom disclosure is reasonably necessary for this Action;

9 (d) Experts (as defined in this Order) of the Receiving Party to
10 whom disclosure is reasonably necessary for this Action and who have signed the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (e) the Court and its personnel;

13 (f) court reporters and their staff;

14 (g) professional jury or trial consultants, mock jurors, and

15 Professional Vendors to whom disclosure is reasonably necessary for this Action
16 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
17 A);

18 (h) the author or recipient of a document containing the information
19 or a custodian or other person who otherwise possessed or knew the information;

20 (i) during their depositions, witnesses, and attorneys for witnesses,
21

22 unreasonably withhold such permission. The Designating Party will have seven days to respond
23 to the Receiving Party’s request. If the Designating Party does not respond within seven days, or
24 will not agree to allow the Receiving Party to use the redacted document or item for their proposed
25 purpose, the Receiving Party may initiate the dispute resolution process (and, if necessary, file a
26 discovery motion or other motion) under Local Rule 37.1 *et seq.* Unless the Designating Party has
27 waived or withdrawn the confidentiality designation, all parties will continue to afford the material
28 in question the level of protection to which it is entitled under the Designating Party’s designation
until the Court rules on the challenge. Provided the parties comply with this Stipulated Protective
Order, no party shall be limited in being able to fully participate in and contribute to any
committees or task forces in regards to university policies.

1 in the Action to whom disclosure is reasonably necessary provided: (1) counsel
2 using CONFIDENTIAL INFORMATION for this purpose informs the deponent
3 (and their attorney, if applicable) of this Order, provides him or her with a copy of
4 this Order, and informs the deponent that they are subject to this Order; and (2) they
5 will not be permitted to keep any confidential information unless they sign the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
7 agreed by the Designating Party or ordered by the court. Pages of transcribed
8 deposition testimony or exhibits to depositions that reveal Protected Material may
9 be separately bound by the court reporter and may not be disclosed to anyone except
10 as permitted under this Stipulated Protective Order; and

11 (j) any mediator or settlement officer, and their supporting
12 personnel, mutually agreed upon by any of the parties engaged in settlement
13 discussions.

14 (k) Notwithstanding the foregoing, to the extent any Party is
15 independently aware (through sources outside of the documents, items, or
16 information produced in discovery) of any information or item designated
17 CONFIDENTIAL, this Stipulated Protective Order does not place any new
18 restrictions on the Party’s use of such independently known information or item.
19 Further, Plaintiff’s medical records will not be shown or discussed with any
20 individual who falls exclusively into categories (c) or (i) listed above.

21
22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
23 IN OTHER LITIGATION

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

27 (a) promptly notify in writing the Designating Party. Such notification will
28 include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order
2 to issue in the other litigation that some or all of the material covered by the
3 subpoena or order is subject to this Protective Order. Such notification will include a
4 copy of this Stipulated Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be
6 pursued by the Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with
8 the subpoena or court order will not produce any information designated in this
9 action as “CONFIDENTIAL” before a determination by the court from which the
10 subpoena or order issued, unless the Party has obtained the Designating Party’s
11 permission. The Designating Party will bear the burden and expense of seeking
12 protection in that court of its confidential material and nothing in these provisions
13 should be construed as authorizing or encouraging a Receiving Party in this Action
14 to disobey a lawful directive from another court.

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

17 (a) The terms of this Order are applicable to information produced by a
18 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
19 produced by Non-Parties in connection with this litigation is protected by the
20 remedies and relief provided by this Order. Nothing in these provisions should be
21 construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party will:

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

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

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

6 (c) If the Non-Party fails to seek a protective order from this court within
7 14 days of receiving the notice and accompanying information, the Receiving Party
8 may 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 will
10 not produce any information in its possession or control that is subject to the
11 confidentiality agreement with the Non-Party before a determination by the court.
12 Absent a court order to the contrary, the Non-Party will bear the burden and expense
13 of seeking protection in this court of its Protected Material.

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
16 Protected Material to any person or in any circumstance not authorized under this
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
18 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
19 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
20 persons to whom unauthorized disclosures were made of all the terms of this Order,
21 and (d) request such person or persons to execute the "Acknowledgment and
22 Agreement to Be Bound" that is attached hereto as Exhibit A.

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
24 PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other protection,
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
28 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without
2 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
3 as the parties reach an agreement on the effect of disclosure of a communication or
4 information covered by the attorney-client privilege or work product protection, the
5 parties may incorporate their agreement in the stipulated protective order submitted
6 to the court.

7 12. MISCELLANEOUS

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in this
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any
14 ground to use in evidence of any of the material covered by this Protective Order.

15 12.3 Filing Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
17 only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue. If a Party's request to file Protected Material
19 under seal is denied by the court, then the Receiving Party may file the information
20 in the public record unless otherwise instructed by the court.

21 13. FINAL DISPOSITION


22 Counsel are entitled to retain an archival copy of the entire file, including all
23 pleadings, motion papers, trial, deposition, and hearing transcripts, legal
24 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
25 work product, and consultant and expert work product, even if such materials
26 contain Protected Material. Any such archival copies that contain or constitute
27 Protected Material remain subject to this Protective Order as set forth in Section 4
28 (DURATION).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: 3/15/2018



HON. MICHAEL R. WILNER
United States Magistrate Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ **[full name]**, of _____
[full address], declare under penalty of perjury that I have read in its entirety
and understand the Stipulated Protective Order that was issued by the United States
District Court for the Central District of California on _____[date] in the case
of Karissa Fenwick v. University of Southern California, et al., Case No. 2:17-CV-
08673-MRW. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that
is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ **[full name]** of
_____ **[full address and telephone number]** as my
California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____
City and State where signed: _____
Printed name: _____
Signature: _____