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11
 12 UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 14 WESTERN DIVISION

15 SANDRA KLEIN ,
 16 Plaintiff,
 17 v.
 18 UNITED STATES OF AMERICA, et
 al.,
 19 Defendant,
 20

No. EDCV 16-0450 BRO (KKx)
Joint Stipulation For Protective Order
 Discovery Matter
 Honorable Kenly Kiya Kato
 United States Magistrate Judge

21
 22 1. A. PURPOSES AND LIMITATIONS

23 Discovery in this action is likely to involve production of confidential, proprietary,
 24 or private information for which special protection from public disclosure and from use
 25 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
 26 parties hereby stipulate to and petition the Court to enter the following Stipulated
 27 Protective Order. The parties acknowledge that this Order does not confer blanket
 28 protections on all disclosures or responses to discovery and that the protection it affords

1 from public disclosure and use extends only to the limited information or items that are
2 entitled to confidential treatment under the applicable legal principles. The parties
3 further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
4 Order does not entitle them to file confidential information under seal; Civil Local Rule
5 79-5 sets forth the procedures that must be followed and the standards that will be
6 applied when a party seeks permission from the court to file material under seal.

7 **B. GOOD CAUSE STATEMENT**

8 Plaintiff's complaint alleges that, a U.S. Forest Service firefighter, while operating
9 a fire engine in route to a fire caused a collision between the fire engine and Plaintiff's
10 vehicle. Plaintiff brought this case under the Federal Tort Claims Act, asserting a claim
11 for negligence.

12 The United States possesses the following categories of documents and
13 information from the U.S. Forest Service driver's personnel file that may be relevant to
14 the parties' claims or defenses but that are protected against disclosure by the Privacy
15 Act¹, common law privacy statutes and employment regulations:

16 a. Drug Test results for the U.S. Forest Service employee driving the subject
17 fire engine.

18 The parties submit that the need for disclosure of these documents and information
19 outweighs any potential harm to nonparties, provided that appropriate safeguards are
20 imposed and that the disclosed documents and information are not used outside this case.
21 Accordingly, to facilitate production of documents responsive to Plaintiff's discovery
22 request, to adequately protect information the parties are entitled to keep confidential, to
23 ensure that the parties are permitted reasonable, necessary uses of such material in
24 preparation for and in the conduct of trial, to address their handling at the end of the
25

26
27
28 ¹ The Privacy Act generally prohibits disclosure of "records" of individuals without their consent. *See* 5 U.S.C. § 552a(a)(4), (b). Disclosure is permitted, however, if made "pursuant to the order of a court of competent jurisdiction." *Id.* § 552a(b)(11).

1 litigation, and serve the ends of justice, a protective order for such information is
2 justified in this matter.

3 2. DEFINITIONS

4 2.1 Action: This pending federal lawsuit, Klein v U.S., EDCV 16-0450 BRO
5 (KKx).

6 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
7 information or items under this Order.

8 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
9 is generated, stored or maintained) or tangible things that qualify for protection under
10 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
11 Statement.

12 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
13 support staff).

14 2.5 Designating Party: a Party or Non-Party that designates information or
15 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

16 2.6 Disclosure or Discovery Material: all items or information, regardless of the
17 medium or manner in which it is generated, stored, or maintained (including, among
18 other things, testimony, transcripts, and tangible things), that are produced or generated
19 in disclosures or responses to discovery in this matter.

20 2.7 Expert: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
22 expert witness or as a consultant in this Action.

23 2.8 House Counsel: attorneys who are employees of a party to this Action.
24 House Counsel does not include Outside Counsel of Record or any other outside
25 counsel.

26 2.9 Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.

1 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
2 this Action but are retained to represent or advise a party to this Action and have
3 appeared in this Action on behalf of that party or are affiliated with a law firm which has
4 appeared on behalf of that party, and includes support staff.

5 2.11 Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staffs).

8 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
9 Discovery Material in this Action.

10 2.13 Professional Vendors: persons or entities that provide litigation support
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
13 their employees and subcontractors.

14 2.14 Protected Material: any Disclosure or Discovery Material that is designated
15 as “CONFIDENTIAL.”

16 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
17 from a Producing Party.

18
19 3. SCOPE

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

25 Any use of Protected Material at trial shall be governed by the orders of the trial
26 judge. This Order does not govern the use of Protected Material at trial.

1 4. DURATION

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

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection

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

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

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

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this
27 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
28

1 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
2 must be clearly so designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 a) for information in documentary form (e.g., paper or electronic documents,
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
6 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
7 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
8 portion or portions of the material on a page qualifies for protection, the Producing Party
9 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
10 in the margins).

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

22 b) for testimony given in depositions that the Designating Party identify the
23 Disclosure or Discovery Material on the record, before the close of the deposition all
24 protected testimony.

25 c) for information produced in some form other than documentary and for any
26 other tangible items, that the Producing Party affix in a prominent place on the exterior
27 of the container or containers in which the information is stored the legend
28

1 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
2 the Producing Party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items does not, standing alone, waive the
5 Designating Party’s right to secure protection under this Order for such material. Upon
6 timely correction of a designation, the Receiving Party must make reasonable efforts to
7 assure that the material is treated in accordance with the provisions of this Order.

8
9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time that is consistent with the Court’s Scheduling
12 Order.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
14 resolution process under Local Rule 37.1 et seq.

15 6.3 The burden of persuasion in any such challenge proceeding shall be on the
16 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
17 to harass or impose unnecessary expenses and burdens on other parties) may expose the
18 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
19 the confidentiality designation, all parties shall continue to afford the material in
20 question the level of protection to which it is entitled under the Producing Party’s
21 designation until the Court rules on the challenge.

22
23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this Action
26 only for prosecuting, defending, or attempting to settle this Action. Such Protected
27 Material may be disclosed only to the categories of persons and under the conditions
28

1 described in this Order. When the Action has been terminated, a Receiving Party must
2 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

6 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
7 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
8 may disclose any information or item designated "CONFIDENTIAL" only to:

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

12 (b) the officers, directors, and employees (including House Counsel) of the
13 Receiving Party to whom disclosure is reasonably necessary for this Action;

14 (c) Experts (as defined in this Order) of the Receiving Party to whom
15 disclosure is reasonably necessary for this Action and who have signed the
16 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

17 (d) the court and its personnel;

18 (e) court reporters and their staff;

19 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
20 to whom disclosure is reasonably necessary for this Action and who have signed the
21 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

24 (h) during their depositions, witnesses, and attorneys for witnesses, in the
25 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
26 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not
27 be permitted to keep any confidential information unless they sign the
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed

1 by the Designating Party or ordered by the court. Pages of transcribed deposition
2 testimony or exhibits to depositions that reveal Protected Material may be separately
3 bound by the court reporter and may not be disclosed to anyone except as permitted
4 under this Stipulated Protective Order; and

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

7
8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
9 OTHER LITIGATION

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

13 (a) promptly notify in writing the Designating Party. Such notification shall
14 include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order to
16 issue in the other litigation that some or all of the material covered by the subpoena or
17 order is subject to this Protective Order. Such notification shall include a copy of this
18 Stipulated Protective Order; and

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

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

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
2 IN THIS LITIGATION

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

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

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

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

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

20 (c) If the Non-Party fails to seek a protective order from this court within 14
21 days of receiving the notice and accompanying information, the Receiving Party may
22 produce the Non-Party's confidential information responsive to the discovery request. If
23 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
24 information in its possession or control that is subject to the confidentiality agreement
25 with the Non-Party before a determination by the court. Absent a court order to the
26 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
27 court of its Protected Material.
28

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

10
11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED MATERIAL

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

22
23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
25 person to seek its modification by the Court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this
27 Protective Order no Party waives any right it otherwise would have to object to
28 disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground
2 to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
4 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
5 under seal pursuant to a court order authorizing the sealing of the specific Protected
6 Material at issue. If a Party's request to file Protected Material under seal is denied by the
7 court, then the Receiving Party may file the information in the public record unless
8 otherwise instructed by the court.

9
10 13. FINAL DISPOSITION

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

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

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 Dated: June 13, 2017

BECKERMAN ANDERSON APC

5 
6 JOHN M. ANDERSON

7 Attorneys for Plaintiff
8 Sandra Klein

9 Dated: June 14th, 2017

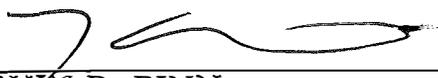
VEACH CARLSON, LLP

10 
11 Richard Dieffenbach

12 Attorneys for Cross-Defendant
13 Sandra Klein

14 Dated: ~~June~~ July 5, 2017

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17 
18 KEVIN B. FINN
19 Assistant United States Attorney

20 Attorneys for Defendant
21 United States of America

22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23
24 DATED: July 6, 2017 _

25  _

26 The Honorable KENLY KIYA KATO
27 UNITED STATES MAGISTRATE JUDGE

28

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
5 penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District
7 Court for the Central District of California on _____ [date] in the case
8 of Sandra Klein v. United States of America EDCV 16-0450 BRO (KKx). I
9 agree to comply with and to be bound by all the terms of this Stipulated
10 Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of
12 contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to
14 any person or entity except in strict compliance with the provisions of this
15 Order.

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

25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____