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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

CURTIS W. PHILBERT,  
Plaintiff,  
v.  
DAVID J. SHULKIN, Secretary of  
Veterans Affairs,  
Defendant.

No. CV 17-00929-CAS (KKx)

**STIPULATED PROTECTIVE ORDER**

1. A. PURPOSES AND LIMITATIONS

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

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

7 **B. GOOD CAUSE STATEMENT**

8 This is an action brought under Title VII of the Civil Rights Act of 1964  
9 and the Equal Pay Act. This action is likely to involve confidential and private  
10 information for which special protection from public disclosure and from use for any  
11 purpose other than prosecution of this action is warranted. Such confidential and private  
12 materials and information consist of, among other things, confidential job-related  
13 applications (including information implicating privacy rights of third parties),  
14 information otherwise generally unavailable to the public, or which may be privileged or  
15 otherwise protected from disclosure under state or federal statutes, court rules, case  
16 decisions, or common law.

17 Accordingly, to expedite the flow of information, to facilitate the prompt  
18 resolution of disputes over confidentiality of discovery materials, to adequately protect  
19 information the parties are entitled to keep confidential, to ensure that the parties are  
20 permitted reasonable necessary uses of such material in preparation for and in the  
21 conduct of trial, to address their handling at the end of the litigation, and serve the ends  
22 of justice, a protective order for such information is justified in this matter. It is the  
23 intent of the parties that information will not be designated as confidential for tactical  
24 reasons and that nothing be so designated without a good faith belief that it has been  
25 maintained in a confidential, non-public manner, and there is good cause why it should  
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1 not be part of the public record of this case.

2 2. DEFINITIONS

3 2.1 Action: Philbert v. Shulkin, case no. EDCV 17-00929 CAS (KKx)

4 2.2 Challenging Party: a Party or Non-Party that challenges the designation of  
5 information or items under this Order.

6 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it  
7 is generated, stored or maintained) or tangible things that qualify for protection under  
8 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause  
9 Statement.

10 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
11 support staff).

12 2.5 Designating Party: a Party or Non-Party that designates information or  
13 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

14 2.6 Disclosure or Discovery Material: all items or information, regardless of the  
15 medium or manner in which it is generated, stored, or maintained (including, among  
16 other things, testimony, transcripts, and tangible things), that are produced or generated  
17 in disclosures or responses to discovery in this matter.

18 2.7 Expert: a person with specialized knowledge or experience in a matter  
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
20 expert witness in this Action.

21 2.8 House Counsel: attorneys who are employees of a party to this Action.  
22 House Counsel does not include Outside Counsel of Record or any other outside  
23 counsel.

24 2.9 Non-Party: any natural person, partnership, corporation, association, or  
25 other legal entity not named as a Party to this action.

26 2.10 Outside Counsel of Record: attorneys who are not employees of a party to  
27 this Action but are retained to represent or advise a party to this Action and have  
28 appeared in this Action on behalf of that party or are affiliated with a law firm which has

1 appeared on behalf of that party, and includes support staff.

2       2.11 Party: any party to this Action, including all of its officers, directors,  
3 employees, consultants, retained experts, and Outside Counsel of Record (and their  
4 support staffs).

5       2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
6 Discovery Material in this Action.

7       2.13 Professional Vendors: persons or entities that provide litigation support  
8 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
9 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
10 their employees and subcontractors.

11       2.14 Protected Material: any Disclosure or Discovery Material that is designated  
12 as “CONFIDENTIAL.”

13       2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
14 from a Producing Party.

15 3. SCOPE

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

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

23 4. DURATION

24       Even after final disposition of this litigation, the confidentiality obligations  
25 imposed by this Order shall remain in effect until a Designating Party agrees otherwise  
26 in writing or a court order otherwise directs. Final disposition shall be deemed to be the  
27 later of (1) dismissal of all claims and defenses in this Action, with or without prejudice;  
28 and (2) final judgment herein after the completion and exhaustion of all appeals,

1 rehearings, remands, trials, or reviews of this Action, including the time limits for filing  
2 any motions or applications for extension of time pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection: Each  
5 Party or Non-Party that designates information or items for protection under this Order  
6 must take care to limit any such designation to specific material that qualifies under the  
7 appropriate standards. The Designating Party must designate for protection only those  
8 parts of material, documents, items, or oral or written communications that qualify so  
9 that other portions of the material, documents, items, or communications for which  
10 protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

18 5.2 Manner and Timing of Designations: Except as otherwise provided in this  
19 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
20 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
21 must be clearly so designated before the material is disclosed or produced.

22 Designation in conformity with this Order requires:

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

1 in the margins).

2 (b) for testimony given in depositions that the Designating Party identifies on the  
3 record, before the close of the deposition all protected testimony.

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

10 5.3 Inadvertent Failures to Designate: If timely corrected, an inadvertent failure  
11 to designate qualified information or items does not, standing alone, waive the  
12 Designating Party’s right to secure protection under this Order for such material. Upon  
13 timely correction of a designation, the Receiving Party must make reasonable efforts to  
14 assure that the material is treated in accordance with the provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges: Any Party or Non-Party may challenge a designation  
17 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

18 6.2 Meet and Confer: The Challenging Party shall initiate the dispute resolution  
19 process under Local Rule 37.1 et seq.

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

27 7. ACCESS TO AND USE OF PROTECTED MATERIAL

28 7.1 Basic Principles: A Receiving Party may use Protected Material that is

1 disclosed or produced by another Party or by a Non-Party in connection with this Action  
2 only for prosecuting, defending, or attempting to settle this Action. Such Protected  
3 Material may be disclosed only to the categories of persons and under the conditions  
4 described in this Order. When the Action has been terminated, a Receiving Party must  
5 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items: Unless otherwise  
10 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party  
11 may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

20 (d) the Court and its personnel;

21 (e) court reporters and their staff;

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

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

27 (h) during their depositions, witnesses ,and attorneys for witnesses, in the Action  
28 to whom disclosure is reasonably necessary provided: (1) the deposing party requests

1 that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be  
2 permitted to keep any confidential information unless they sign the “Acknowledgment  
3 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating  
4 Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to  
5 depositions that reveal Protected Material may be separately bound by the court reporter  
6 and may not be disclosed to anyone except as permitted under this Stipulated Protective  
7 Order; and

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

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
11 OTHER LITIGATION

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

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

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

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

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



1 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive  
2 from another court.

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

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

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

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

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

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

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

1 court of its Protected Material.

2 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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 12. MISCELLANEOUS

23 12.1 Right to Further Relief: Nothing in this Order abridges the right of any  
24 person to seek its modification by the Court in the future.

25 12.2 Right to Assert Other Objections: By stipulating to the entry of this  
26 Protective Order no Party waives any right it otherwise would have to object to  
27 disclosing or producing any information or item on any ground not addressed in this  
28 Stipulated Protective Order. Similarly, no Party waives any right to object on any

1 ground to use in evidence of any of the material covered by this Protective Order.

2       12.3 Filing Protected Material: A Party that seeks to file under seal any Protected  
3 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
4 under seal pursuant to a court order authorizing the sealing of the specific Protected  
5 Material at issue. If a Party’s request to file Protected Material under seal is denied by  
6 the Court, then the Receiving Party may file the information in the public record unless  
7 otherwise instructed by the Court.

8 13. FINAL DISPOSITION

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

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

2  
3 IT IS SO STIPULATED.

4 DATED: March 21, 2018

5  
6           /s/ Curtis W. Philbert          

7 Curtis W. Philbert  
8 Plaintiff Pro Se

9  
10 DATED: March 21, 2018

11 NICOLA T. HANNA  
12 United States Attorney  
13 DOROTHY A. SCHOUTEN  
14 Assistant United States Attorney  
15 Chief, Civil Division  
16 ROBYN-MARIE LYON MONTELEONE  
17 Assistant United States Attorney  
18 Chief, General Civil Section

19           /s/ Karen P. Ruckert          

20 Karen P. Ruckert  
21 Assistant United States Attorney  
22 Attorneys for Defendant David J. Shulkin, in his official capacity as  
23 Secretary of Veterans Affairs

24 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

25  
26 DATED: March 21, 2018

27           *Kenly Kiya Kato*            
28 The Honorable Kenly Kiya Kato  
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 of perjury that I  
5 have read in its entirety and understand the Stipulated Protective Order that was issued  
6 by the United States District Court for the Central District of California on [date] in the  
7 case of Philbert v. Shulkin, Case no. EDCV 17-00929 CAS (KKx). I agree to comply  
8 with and to be bound by all the terms of this Stipulated Protective Order and I  
9 understand and acknowledge that failure to so comply could expose me to sanctions and  
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
11 manner any information or item that is subject to this Stipulated Protective Order to any  
12 person or entity except in strict compliance with the provisions of this Order.

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

20 Date: \_\_\_\_\_

21 City and State where sworn and signed: \_\_\_\_\_

22 Printed name: \_\_\_\_\_

23 Signature: \_\_\_\_\_

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