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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

TUOI THI NGO,
Plaintiff,

v.
COUNTY OF RIVERSIDE, JOSHUA
GRECO, and DOES 1 through 20,
inclusive,

Defendants.

Case No. 5:18-cv-0080-JGB (KKx)
*[Hon. Jesus G. Bernal, District Judge
Hon. Kenly Kiya Kato, Magistrate J.]*

**[PROPOSED] PROTECTIVE
ORDER RE CONFIDENTIAL
DOCUMENTS**

Complaint Filed: 01/12/2018
Trial Date: Not Yet Set

PURSUANT TO THE STIPULATION OF THE PARTIES (“Stipulation for Entry of Protective Order re Confidential Documents”), and pursuant to the Court’s inherent and statutory authority, including but not limited to the Court’s authority under the applicable Federal Rules of Civil Procedure and the United States District Court, Central District of California Local Rules; after due consideration of all of the relevant pleadings, papers, and records in this action; and upon such other evidence or argument as was presented to the Court; Good Cause appearing therefor, and in furtherance of the interests of justice,

IT IS HEREBY ORDERED that:

1. SCOPE OF PROTECTION.

The protections conferred by the parties’ Stipulation and this Order cover not

1 only Protected Material/Confidential Documents (as defined below), but also (1) any
2 information copied or extracted from Protected Material; (2) all copies, excerpts,
3 summaries, or compilations of Protected Material; and (3) any testimony,
4 conversations, or presentations by Parties or their Counsel that might reveal Protected
5 Material. However, the protections conferred by the parties' Stipulation and this Order
6 do *not* cover the following information: (a) any information that is in the public domain
7 at the time of disclosure to a Receiving Party or becomes part of the public domain after
8 its disclosure to a Receiving Party as a result of publication not involving a violation of
9 this Order, including becoming part of the public record through trial or otherwise; and
10 (b) any information known to the Receiving Party prior to the disclosure or obtained by
11 the Receiving Party after the disclosure from a source who obtained the information
12 lawfully and under no obligation of confidentiality to the Designating Party.

13 Except to the extent specified herein (if any), any use of Protected Material at
14 trial shall not be governed by this Order, but may be governed by a separate agreement
15 or order. The Definitions section of the parties' associated Stipulation (§ 2) is
16 incorporated by reference herein.

17 Any use of Protected Material at trial shall be governed by the Orders of the trial
18 judge: this Stipulation and its associated Protective Order do(es) not govern the use of
19 Protected Material at trial.

20 Nothing in the parties' Stipulation or this Order shall be construed as binding
21 upon the Court or its court personnel, who are subject only to the Court's internal
22 procedures regarding the handling of materials filed or lodged, including materials filed
23 or lodged under seal.

24 **A. PURPOSES AND LIMITATIONS.**

25 Disclosure and discovery activity in this action are likely to involve production
26 of confidential, proprietary, or private information for which special protection from
27 public disclosure and from use for any purpose other than prosecuting or defending this
28 litigation would be warranted. Accordingly, the parties have stipulated to and

1 petitioned the court to enter the following Order.

2 The parties have acknowledged that this Order does not confer blanket
3 protections on all disclosures or responses to discovery and that the protection it affords
4 extends only to the specified information or items that are entitled to treatment as
5 confidential.

6 The parties further acknowledge, as set forth below, that this Order creates no
7 entitlement to file confidential information under seal, except to the extent specified
8 herein; Central District Local Rules 79-5.1 and 79-5.2 set(s) forth the procedures that
9 must be followed and reflects the standards that will be applied when a party seeks
10 permission from the Court to file material under seal.

11 Nothing in the parties' Stipulation or in this Order shall be construed as any
12 entitlement for the parties to file any documents or materials under seal; nor shall the
13 parties' Stipulation or this Order be construed as any exemption from any of the
14 requirements of Central District Local Rule 79-5. The parties are required to comply
15 with the applicable Local Rules in their entirety. If the Court denies a party's request
16 for filing material under seal, that material may be filed in the public record unless
17 otherwise instructed by the Court.

18 Nothing in this Order shall be construed so as to require or mandate that any
19 Party disclose or produce privileged information or records that could be designated as
20 Confidential Documents/Protected Material hereunder.

21 **2. DURATION OF PROTECTION.**

22 Even after final disposition of this litigation, the confidentiality obligations
23 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
24 in writing or a court order otherwise directs.

25 Final disposition shall be deemed to be the later of (1) dismissal of all claims and
26 defenses in this action, with or without prejudice; or (2) final judgment herein after the
27 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
28 action, including the time limits for filing any motions or applications for extension of

1 time pursuant to applicable law.

2 **3. DESIGNATION OF PROTECTED MATERIAL/CONFIDENTIAL**
3 **DOCUMENTS.**

4 3.1. Exercise of Restraint and Care in Designating Material for Protection.

5 Each Party or non-party that designates information or items for protection under
6 the parties' Stipulation and this Order must take care to limit any such designation to
7 specific material that qualifies under the appropriate standards. A Designating Party
8 must take care to designate for protection only those parts of material, documents,
9 items, or oral or written communications that qualify – so that other portions of the
10 material, documents, items or communications for which protection is not warranted
11 are not swept unjustifiably within the ambit of this Order.

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

17 If it comes to a Party's or a non-party's attention that information or items that it
18 designated for protection do not qualify for protection at all, or do not qualify for the
19 level of protection initially asserted, that Party or non-party must promptly notify all
20 other parties that it is withdrawing the mistaken designation.

21 3.2. Manner and Timing of Designations. Except as otherwise provided in this
22 Order, or as otherwise stipulated or ordered, material that qualifies for protection under
23 this Order must be clearly so designated before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (apart from transcripts of depositions
26 or other pretrial or trial proceedings, and regardless of whether produced in hardcopy or
27 electronic form), that the Producing Party affix the legend "CONFIDENTIAL" to each
28 page that contains Protected Material. If only a portion or portions of the material on a

1 page qualifies for protection, the Producing Party also must clearly identify the
2 protected portion(s) (e.g., by making appropriate markings in the margins) and must
3 specify, for each portion that it is “CONFIDENTIAL.” The placement of such
4 “CONFIDENTIAL” stamp on such page(s) shall not obstruct the substance of the
5 page’s (or pages’) text or content.

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

17 (b) for testimony given in deposition or in other pretrial or trial proceedings,
18 that the Party or non-party offering or sponsoring the testimony identify on the record,
19 before the close of the deposition, hearing, or other proceeding, all protected testimony,
20 and further specify any portions of the testimony that qualify as “CONFIDENTIAL.”
21 When it is impractical to identify separately each portion of testimony that is entitled to
22 protection, and when it appears that substantial portions of the testimony may qualify
23 for protection, the Producing Party may invoke on the record (before the deposition or
24 proceeding is concluded) a right to have up to twenty (20) days to identify the specific
25 portions of the testimony as “CONFIDENTIAL.” Only those portions of the testimony
26 that are appropriately designated as “CONFIDENTIAL” for protection within the 20
27 days shall be covered by the provisions of the parties’ Stipulation and this Protective
28 Order.

1 The court reporter must affix to each such page the legend “CONFIDENTIAL,” as
2 instructed by the Producing Party.

3 (c) for information produced in some form other than documentary, and for
4 any other tangible items (including but not limited to information produced on disc or
5 electronic data storage device), that the Producing Party affix in a prominent place on
6 the exterior of the container or containers in which the information or item is stored the
7 legend “CONFIDENTIAL.” If only portions of the information or item warrant
8 protection, the Producing Party, to the extent practicable, shall identify the protected
9 portions, specifying the material as “CONFIDENTIAL.”

10 3.3. Inadvertent Failures to Designate. If timely corrected (preferably, though
11 not necessarily, within 30 days of production or disclosure of such material), an
12 inadvertent failure to designate qualified information or items as “CONFIDENTIAL”
13 does not, standing alone, waive the Designating Party’s right to secure protection under
14 the parties’ Stipulation and this Order for such material. If material is appropriately
15 designated as “CONFIDENTIAL” *after* the material was initially produced, the
16 Receiving Party, on timely notification of the designation, must make reasonable efforts
17 to assure that the material is treated in accordance with the parties’ Stipulation and this
18 Order.

19 3.4. Alteration of Confidentiality Stamp Prohibited. A Receiving Party shall
20 not alter, edit, or modify any Protected Material so as to conceal, obscure, or remove a
21 “CONFIDENTIAL” stamp or legend thereon; nor shall a Receiving Party take any
22 other action so as to make it appear that Protected Material is not subject to the terms
23 and provisions of the parties’ Stipulation and this Order. However, nothing in this
24 section shall be construed so as to prevent a Receiving Party from challenging a
25 confidentiality designation subject to the provisions of section 4, *infra*.

26 **4. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

27 4.1. Timing of Challenges. Any Party or non-party may challenge a
28 designation of confidentiality at any time that is consistent with the Court's Scheduling

1 Order. Unless a prompt challenge to a Designating Party’s confidentiality designation
2 is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens,
3 or a later significant disruption or delay of the litigation, a Party does not waive its right
4 to challenge a confidentiality designation by electing not to mount a challenge promptly
5 after the original designation is disclosed.

6 4.2. Meet and Confer. Prior to challenging a confidentiality designation, a
7 Party shall initiate a dispute resolution process by providing written notice of each
8 specific designation it is challenging, and describing the basis (and supporting authority
9 or argument) for each challenge. To avoid ambiguity as to whether a challenge has been
10 made, the written notice must recite that the challenge to confidentiality is being made
11 in accordance with this Protective Order. The parties shall attempt to resolve each
12 challenge in good faith and must begin the process by conferring directly (in voice to
13 voice dialogue, either in person, telephonically, or by other comparable means, but *not*
14 by correspondence) within 14 days of the date of service of notice.

15 In conferring, the Party challenging the designation must explain the specific
16 basis for its belief that the confidentiality designation was not proper and must give the
17 Designating Party an opportunity to review the designated material, to reconsider the
18 circumstances, and, if no change in designation is offered, to explain the basis for the
19 chosen designation. A Party may proceed to the next stage of the challenge process
20 only if it has engaged in this meet and confer process first or establishes that the
21 Designating Party is unwilling to participate in the meet and confer process in a timely
22 manner.

23 Frivolous challenges, and those challenges made for an improper purpose (*e.g.*,
24 to harass or impose unnecessary expenses and burdens on other parties), may expose
25 the Party making to challenge to sanctions.

26 4.3. Judicial Intervention. If the Parties cannot resolve a confidentiality
27 challenge without court intervention, the Party challenging the designation shall file
28 and serve a motion to remove confidentiality (under the applicable rules for filing and

1 service of discovery motions) within 14 days of the parties agreeing that the meet and
2 confer process will not resolve their dispute, or by the first day of trial of this matter,
3 whichever date is earlier – unless the parties agree in writing to a longer time.

4 The parties must comply with Central District Local Rules 37-1 and 37-2
5 (including the joint stipulation re discovery dispute requirement) in any motion
6 associated with this Protective Order.

7 The Party wishing to challenge a designation may file a motion challenging a
8 confidentiality designation at any time that is consistent with the Court’s Scheduling
9 Order, if there is good cause for doing so, including a challenge to the designation of a
10 deposition transcript or any portions thereof. Any motion brought pursuant to this
11 provision must be accompanied by a competent declaration affirming that the movant
12 has complied with the meet and confer requirements imposed by the preceding
13 paragraph.

14 The burden of persuasion in any such challenge proceeding shall be on the
15 Designating Party, regardless of whether the Designating Party is the moving party or
16 whether such Party sought or opposes judicial intervention. Frivolous challenges, and
17 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses
18 and burdens on other parties) may expose the Challenging Party to sanctions. Unless
19 the Designating Party has waived the confidentiality designation by failing to oppose a
20 motion to remove confidentiality as described above, all parties shall continue to afford
21 the material in question the level of protection to which it is entitled under the
22 Producing Party’s designation until the court rules on the challenge.

23 4.4. Withdrawal of “CONFIDENTIAL” Designation. At its discretion, a
24 Designating Party may remove Protected Material/Confidential Documents from some
25 or all of the protections and provisions of the parties’ Stipulation and this Order at any
26 time by any of the following methods:

27 (a) Express Written Withdrawal. A Designating Party may withdraw a
28 “CONFIDENTIAL” designation made to any specified Protected Material/Confidential

1 Documents from some or all of the protections of the parties’ Stipulation and this Order
2 by an express withdrawal in a writing signed by such Party (or such Party’s Counsel,
3 but not including staff of such Counsel) that specifies and itemizes the Disclosure or
4 Discovery Material previously designated as Protected Material/Confidential
5 Documents that shall no longer be subject to all or some of the provisions of the
6 parties’ Stipulation and Order. Such express withdrawal shall be effective when
7 transmitted or served upon the Receiving Party. If a Designating Party is withdrawing
8 Protected Material from only some of the provisions/protections of the parties’
9 Stipulation and this Order, such Party must state which specific provisions are no
10 longer to be enforced as to the specified material for which confidentiality protection
11 hereunder is withdrawn. Otherwise, such withdrawal shall be construed as a
12 withdrawal of such material from all of the protections/provisions of the parties’
13 Stipulation and this Order;

14 (b) Express Withdrawal on the Record. A Designating Party may withdraw a
15 “CONFIDENTIAL” designation made to any specified Protected Material/ Confidential
16 Documents from all of the provisions/protections of the parties’ Stipulation and this
17 Order by verbally consenting in court proceedings on the record to such withdrawal –
18 provided that such withdrawal specifies the Disclosure or Discovery Material
19 previously designated as Protected Material/Confidential Documents that shall no
20 longer be subject to any of the provisions of the parties’ Stipulation and this Order. A
21 Designating Party is not permitted to withdraw Protected Material from only some of
22 the protections/ provisions of the parties’ Stipulation and this Order by this method;

23 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge. A
24 Designating Party shall be construed to have withdrawn a “CONFIDENTIAL”
25 designation made to any specified Protected Material/Confidential Documents from all
26 of the provisions/protections of the parties’ Stipulation and this Order by either
27 (1) making such Protected Material/Confidential Records part of the public record –
28 including but not limited to attaching such as exhibits to any filing with the Court

1 without moving, prior to such filing, for the Court to seal such records; or (2) failing to
2 timely oppose a Challenging Party’s motion to remove a “CONFIDENTIAL”
3 designation to specified Protected Material/Confidential Documents.

4 Nothing in the parties’ Stipulation and this Order shall be construed so as to
5 require any Party to file Protected Material/Confidential Documents under seal, unless
6 expressly specified herein.

7 **5. ACCESS TO AND USE OF PROTECTED MATERIAL.**

8 5.1. Basic Principles. A Receiving Party may use Protected Material that is
9 disclosed or produced by another Party or by a non-party in connection with this case
10 only for preparing, prosecuting, defending, or attempting to settle this litigation – up to
11 and including final disposition of the above-entitled action – and not for any other
12 purpose, including any other litigation or dispute outside the scope of this action. Such
13 Protected Material may be disclosed only to the categories of persons and under the
14 conditions described in the parties’ Stipulation and this Order. When the above entitled
15 litigation has been terminated, a Receiving Party must comply with the provisions of
16 section 9, below (FINAL DISPOSITION).

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

20 5.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
21 ordered by the Court or permitted in writing by the Designating Party, a Receiving
22 Party may disclose any information or item designated "CONFIDENTIAL" only to:

23 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
24 employees of such Counsel to whom it is reasonably necessary to disclose the
25 information for this litigation;

26 (b) the officers, directors, and employees (including House Counsel) of the
27 Receiving Party to whom disclosure is reasonably necessary for this litigation – each of
28 whom, by accepting receipt of such Protected Material, thereby agree to be bound by

1 the parties' Stipulation and this Order;

2 (c) Experts (as defined in the parties' Stipulation) of the Receiving Party to
3 whom disclosure is reasonably necessary for this litigation – each of whom, by
4 accepting receipt of such Protected Material, thereby agree to be bound by the parties'
5 Stipulation and this Order;

6 (d) court reporters, their staffs, and Professional Vendors to whom disclosure
7 is reasonably necessary for this litigation – each of whom, by accepting receipt of such
8 Protected Material, thereby agree to be bound by the parties' Stipulation and this Order;

9 (e) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary – each of whom, by accepting receipt of such Protected Material,
11 thereby agree to be bound by the parties' Stipulation and this Order. Pages of
12 transcribed deposition testimony or exhibits to depositions that reveal Protected
13 Material may not be disclosed to anyone except as permitted under the parties'
14 Stipulation and this Protective Order;

15 (f) the author or custodian of a document containing the information that
16 constitutes Protected Material, or other person who otherwise possessed or knew the
17 information.

18 5.3. Notice of Confidentiality. Prior to producing or disclosing Protected
19 Material/Confidential Documents to persons to whom the parties' Stipulation and this
20 Order permits disclosure or production (see section 5.2, *supra*), a Receiving Party shall
21 provide a copy of this Order to such persons so as to put such persons on notice as to
22 the restrictions imposed upon them herein: except that, for court reporters, Professional
23 Vendors, and for witnesses being provided with Protected Material during a deposition,
24 it shall be sufficient notice for Counsel to give the witness a verbal admonition (on the
25 record, for witnesses) regarding the provisions of the parties' Stipulation and this Order
26 and such provisions' applicability to specified Protected Material at issue.

27 5.4. Reservation of Rights. Nothing in the parties' Stipulation and this Order
28 shall be construed so as to require any Producing Party to designate any records or

1 materials as “CONFIDENTIAL.” Nothing in the parties’ Stipulation or this Order shall
2 be construed so as to prevent the admission of Protected Material into evidence at the
3 trial of this action, or in any appellate proceedings for this action, solely on the basis
4 that such Disclosure or Discovery Material has been designated as Protected
5 Material/Confidential Documents. Notwithstanding the foregoing, nothing in the
6 parties’ Stipulation or this Order shall be construed as a waiver of any privileges or of
7 any rights to object to the use or admission into evidence of any Protected Material in
8 any proceeding; nor shall anything herein be construed as a concession that any
9 privileges asserted or objections made are valid or applicable.

10 Nothing in the parties’ Stipulation or this Order shall be construed so as to
11 prevent the Designating Party (or its Counsel or custodian of records) from having
12 access to and using Protected Material designated by that Party in the manner in which
13 such persons or entities would typically use such materials in the normal course of their
14 duties or profession – except that the waiver of confidentiality provisions shall apply
15 (see section 4.4(c), *supra*).

16 5.5. Requirement to File Confidential Documents Under Seal. Confidential
17 Documents or Protected Material must be submitted in all law and motion proceedings
18 before the Court if done so under seal pursuant to Federal Rules of Civil Procedure 5.2
19 and 26 and/or United States District Court, Central District of California Local Rules
20 79-5 and pursuant to the provisions of the parties’ Stipulation and this Order. If any
21 Receiving Party attaches any Protected Material to any pleading, motion, or other paper
22 to be filed, lodged, or otherwise submitted to the Court, such Protected Material may
23 only be filed/lodged under seal pursuant to a separate court order authorizing the
24 sealing of the specific Protected Material at issue. If a Party's request to file Protected
25 Material under seal is denied by the court, then the Receiving Party may file the
26 information in the public record unless otherwise instructed by the Court.

27 This paragraph (§ 5.5) shall not be construed so as to prevent a Designating Party
28 or counsel from submitting, filing, lodging, or publishing any document it has

1 previously designated as a Confidential Document without compliance with this
2 paragraph's requirement to do so under seal (i.e., a producing-disclosing party or
3 counsel may submit or publish its own Confidential Documents without being in
4 violation of the terms of the parties' Stipulation and this Protective Order).

5 Furthermore, a Receiving Party shall be exempted from the requirements of this
6 paragraph as to any specifically identified Confidential Document(s) where – prior to
7 the submission or publication of the Confidential Document(s) at issue – the
8 Designating Party of such specifically identified Confidential Document(s) has
9 waived/withdrawn the protections of the parties' Stipulation and this Order (pursuant to
10 paragraph 4.4, *supra*).

11 A Receiving Party shall also be exempt from the sealing requirements of this
12 paragraph (§ 5.5) where the Confidential Documents/Protected Material at issue is/are
13 **not** documents, records, or information regarding:

14 (1) private, personal information contained in peace officer personnel files
15 (such as social security numbers, driver's license numbers or comparable personal
16 government identification numbers, residential addresses, compensation or pension or
17 personal property information, credit card numbers or credit information, dates of birth,
18 tax records and information, information related to the identity of an officer's family
19 members or co-residents, and comparable personal information about the officer or his
20 family);

21 (2) any internal affairs or comparable investigation by any law enforcement
22 agency into alleged officer misconduct; and/or

23 (3) the medical records or records of psychiatric or psychological treatment of
24 any peace officer or party to this action.

25 Nothing in this Protective Order shall be construed to bind the Court or court
26 personnel, who are subject only to the Court's internal procedures regarding the
27 handling of material filed or lodged, including material filed or lodged under seal.

28 Nothing in the parties' Stipulation or in this Order shall be construed as any

1 entitlement for the parties to file any documents or materials under seal; nor shall the
2 parties' Stipulation or this Order be construed as any exemption from any of the
3 requirements of Central District Local Rule 79-5. The parties are required to comply
4 with the applicable Local Rules in their entirety. If the Court denies a party's request
5 for filing material under seal, that material may be filed in the public record unless
6 otherwise instructed by the Court.

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

9 If a Party is served with a subpoena or a court order issued in other litigation that
10 compels disclosure of any information or items in the Party's possession or control
11 which had been designated in this action as "CONFIDENTIAL," that Party must:

12 (a) promptly notify in writing the Designating Party, preferably (though not
13 necessarily) by facsimile or electronic mail. Such notification shall include a copy of
14 the subpoena or court order at issue, if possible;

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 the parties' Stipulation and this Protective Order. Such notification
18 shall include a specific reference to the parties' Stipulation and this Protective Order;
19 and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by
21 all sides in any such situation, while adhering to the terms of the parties' Stipulation
22 and this Order.

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 The purpose of this section is to ensure that the affected Party has a meaningful
4 opportunity to preserve its confidentiality interests in the court from which the
5 subpoena or court order issued.

6 **7. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

7 7.1. Unauthorized Disclosure of Protected Material.

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
9 Protected Material to any person or in any circumstance not authorized under the
10 parties' Stipulation and this Order, the Receiving Party must:

- 11 (a) notify in writing the Designating Party of the unauthorized disclosures;
- 12 (b) use its best efforts to retrieve all copies of the Protected Material;
- 13 (c) inform the person or persons to whom unauthorized disclosures were made of
14 all the terms of this Order; and
- 15 (d) request that such person or persons consent to be bound by the Stipulation
16 and this Order.

17 7.2. Inadvertent Production of Privileged or Otherwise Protected Material.

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

28 ///

1 **8. PUBLICATION OF PROTECTED MATERIAL PROHIBITED.**

2 8.1. Filing of Protected Material.

3 Without advance written permission from the Designating Party, or a court order
4 secured after appropriate notice to all interested persons, a Receiving Party may not file
5 in the public record in this action any Protected Material. A Party that seeks to file
6 under seal any Protected Material must comply with the applicable Federal and Local
7 Rules.

8 Nothing in the parties' Stipulation or in this Order shall be construed as any
9 entitlement for the parties to file any documents or materials under seal; nor shall the
10 parties' Stipulation or this Order be construed as any exemption from any of the
11 requirements of Central District Local Rule 79-5. The parties are required to comply
12 with the applicable Local Rules in their entirety. If the Court denies a party's request
13 for filing material under seal, that material may be filed in the public record unless
14 otherwise instructed by the Court.

15 8.2. Public Dissemination of Protected Material.

16 A Receiving Party shall not publish, release, post, or disseminate Protected
17 Material to any persons except those specifically delineated and authorized by the
18 parties' Stipulation and this Order (see section 5, *supra*); nor shall a Receiving Party
19 publish, release, leak, post, or disseminate Protected Material/Confidential Documents
20 to any news media, member of the press, website, or public forum (except as permitted
21 under this Order regarding filings with the Court in this action and under seal).

22 **9. FINAL DISPOSITION.**

23 Unless otherwise ordered or agreed in writing by the Producing Party, within
24 thirty (30) days after the final termination of this action (defined as the dismissal or
25 entry of judgment by the above named Court, or if an appeal is filed, the disposition of
26 the appeal), upon written request by the Producing Party, each Receiving Party must
27 return all Protected Material to the Producing Party – whether retained by the Receiving
28 Party or its Counsel, Experts, Professional Vendors, agents, or any non-party to whom

1 the Receiving Party produced or shared such records or information. As used in this
2 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
3 summaries or any other form of reproducing or capturing any of the Protected Material,
4 regardless of the medium (hardcopy, electronic, or otherwise) in which such Protected
5 Material is stored or retained.

6 In the alternative, at the discretion of the Receiving Party, the Receiving Party
7 may destroy some or all of the Protected Material instead of returning it – unless such
8 Protected Material is an original, in which case, the Receiving Party must obtain the
9 Producing Party’s written consent before destroying such original Protected Material.

10 Whether the Protected Material is returned or destroyed, the Receiving Party
11 must submit a written certification to the Producing Party (and, if not the same person
12 or entity, to the Designating Party) within thirty (30) days of the aforementioned
13 written request by the Designating Party that specifically identifies (by category, where
14 appropriate) all the Protected Material that was returned or destroyed and that affirms
15 that the Receiving Party has not retained any copies, abstracts, compilations, summaries
16 or other forms of reproducing or capturing any of the Protected material (in any
17 medium, including but not limited to any hardcopy, electronic or digital copy, or
18 otherwise).

19 Notwithstanding this provision, Counsel are entitled to retain an archival copy of
20 all pleadings, motion papers, transcripts, legal memoranda or other documents filed
21 with the Court in this action, as well as any correspondence or attorney work product
22 prepared by Counsel for the Receiving Party, even if such materials contain Protected
23 Material; however, any such archival copies that contain or constitute Protected
24 Material remain subject to this Protective Order as set forth in Section 2, above. This
25 Court shall retain jurisdiction in the event that a Designating Party elects to seek
26 enforcement of this Order, including sanctions for violation of the parties’ Stipulation
27 and this Order.

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1 **10. MISCELLANEOUS.**

2 10.1. Right to Further Relief. Nothing in the parties' Stipulation or this Order
3 abridges the right of any person to seek its modification by the Court in the future.

4 10.2. Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order pursuant to the parties' Stipulation, no Party waives any right it
6 otherwise would have to object to disclosing or producing any information or item on
7 any ground not addressed in the parties' Stipulation or this Order. Similarly, no Party
8 waives any right to object on any ground to use in evidence any of the material covered
9 by the parties' Stipulation and this Protective Order.

10 The provisions of the parties' Stipulation and this Protective Order shall be in
11 effect until further Order of the Court.

12 **IT IS SO ORDERED.**

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14 Dated: June 18, 2018



15 HON. KENLY KIYA KATO
16 U. S. MAGISTRATE JUDGE
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