

1 BERNARD B. SMYTH (Cal. Bar No. 217741)
 E-mail: smythb@sec.gov
 2 ANDREW J. HEFTY (Cal. Bar No. 220450)
 E-mail: heftya@sec.gov
 3 JASON H. LEE (Cal. Bar No. 253140)
 E-mail: leejh@sec.gov

5 Attorneys for Plaintiff
 Securities and Exchange Commission
 6 44 Montgomery Street, Suite 2800
 7 San Francisco, California 94104
 Telephone: (415) 705-2500
 8 Facsimile: (415) 705-2501

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION

15 SECURITIES AND EXCHANGE
 16 COMMISSION,
 17 Plaintiff,
 18 v.
 19 RUBEN JAMES ROJAS,
 20 Defendant.

Case No. 5:19-cv-01799-FLA (SHKx)

STIPULATED PROTECTIVE
 ORDER

23 1. A. PURPOSES AND LIMITATIONS

25 Discovery in this Action is likely to involve production of confidential,
 26 proprietary, or private information for which special protection from public
 27 disclosure and from use for any purpose other than prosecuting this Action may be
 28 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter

STIPULATED PROTECTIVE ORDER
 Case No. 5:19-cv-01799-FLA (SHKx)

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

10
11 **B. GOOD CAUSE STATEMENT**

12
13 This Action may involve non-public student-related information, and
14 proprietary financial, commercial, business or legally-privileged information, or
15 information that is otherwise protected by a right of privacy, for which special
16 protection from public disclosure and from use for any purpose other than
17 prosecution of this Action is warranted. Such confidential and proprietary materials
18 and information consist of, among other things, confidential business or financial
19 information, personal identifiable information, information regarding confidential
20 business practices or legal advice, or other non-public personal or commercial
21 information (including information implicating legal privileges or protection, or the
22 privacy rights of third parties), information otherwise generally unavailable to the
23 public, or which may be privileged or otherwise protected from disclosure under state
24 or federal statutes, court rules, case decisions, or common law, or pursuant to non-
25 disclosure agreement or similar contract. Accordingly, to expedite the flow of
26 information, to facilitate the prompt resolution of disputes over confidentiality of
27 discovery materials, to adequately protect information the parties are entitled to keep
28 confidential, to ensure that the parties are permitted reasonable necessary uses of such

1 material in preparation for and in the conduct of trial, to address their handling at the
2 end of the Action, and serve the ends of justice, a protective order for such
3 information is justified in this Action. It is the intent of the parties that information
4 will not be designated as confidential for tactical reasons and that nothing be so
5 designated without a good faith belief that it has been maintained in a confidential,
6 non-public manner, and there is good cause why it should not be part of the public
7 record of this case.

8
9 2. DEFINITIONS

10 2.1 Action: *Securities and Exchange Commission v. Ruben James Rojas*,
11 Case No. 5:19-cv-01799-FLA (SHKx).

12 2.2 Challenging Party: a Party or Non-Party that challenges the designation
13 of information or items under this Order.

14 2.3 “CONFIDENTIAL PER P.O.” Information or Items: information
15 (regardless of how it is generated, stored or maintained) or tangible things that qualify
16 for protection under Federal Rule of Civil Procedure 26(c), and as specified above in
17 the Good Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.5 Designating Party: a Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 “CONFIDENTIAL PER P.O.”

23 2.6 Disclosure or Discovery Material: all items or information, regardless of
24 the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced or
26 generated in disclosures or responses to discovery in this Action.

27 2.7 Expert: a person with specialized knowledge or experience in a matter
28 pertinent to the Action who has been retained by a Party or its counsel to serve as an

1 expert witness or as a consultant in this Action.

2 2.8 House Counsel: attorneys who are employees of a party to this Action.
3 House Counsel does not include Outside Counsel of Record or any other outside
4 counsel.

5 2.9 Non-Party: any natural person, partnership, corporation, association, or
6 other legal entity not named as a Party to this Action.

7 2.10 Outside Counsel of Record: attorneys who are not employees of a party
8 to this Action but are retained to represent or advise a party to this Action and have
9 appeared in this Action on behalf of that party or are affiliated with a law firm which
10 has appeared on behalf of that party, and includes support staff.

11 2.11 Party: any party to this Action, including all of its officers, directors,
12 employees, consultants, retained experts, and Outside Counsel of Record (and their
13 support staffs).

14 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.

16 2.13 Professional Vendors: persons or entities that provide litigation support
17 services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 2.14 Protected Material: any Disclosure or Discovery Material that is
21 designated as “CONFIDENTIAL PER P.O.”

22 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
23 from a Producing Party.

24
25 3. SCOPE

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

1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material.

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

5
6 4. DURATION

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

15
16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

1 Party to sanctions.

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

5 5.2 Manner and Timing of Designations. Except as otherwise provided in
6 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
7 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
8 under this Order must be clearly so designated before the material is disclosed or
9 produced.

10 Designation in conformity with this Order requires:

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

19 A Party or Non-Party that makes original documents available for inspection
20 need not designate them for protection until after the inspecting Party has indicated
21 which documents it would like copied and produced. During the inspection and
22 before the designation, all of the material made available for inspection shall be
23 deemed "CONFIDENTIAL PER P.O." After the inspecting Party has identified the
24 documents it wants copied and produced, the Producing Party must determine which
25 documents, or portions thereof, qualify for protection under this Order. Then, before
26 producing the specified documents, the Producing Party must affix the
27 "CONFIDENTIAL PER P.O. legend" to each page that contains Protected Material.
28 If only a portion or portions of the material on a page qualifies for protection, the

1 Producing Party also must clearly identify the protected portion(s) (e.g., by making
2 appropriate markings in the margins).

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

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

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

17
18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time that is consistent with the Court’s
21 Scheduling Order.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process under Local Rule 37.1 et seq.

24 6.3 The burden of persuasion in any such challenge proceeding shall be on
25 the Designating Party. Frivolous challenges, and those made for an improper purpose
26 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
27 expose the Challenging Party to sanctions. Unless the Designating Party has waived
28 or withdrawn the confidentiality designation, all parties shall continue to afford the

1 material in question the level of protection to which it is entitled under the Producing
2 Party's designation until the Court rules on the challenge.

3
4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this
7 Action only for prosecuting, defending, or attempting to settle this Action. Such
8 Protected Material may be disclosed only to the categories of persons and under the
9 conditions described in this Order. When the Action has been terminated, a Receiving
10 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

11 Notwithstanding any other provisions contained herein, this Order does not
12 limit or restrict Plaintiff Securities and Exchange Commission ("SEC") from using or
13 disclosing any materials, including Protected Material, to the extent otherwise
14 required by law or permitted pursuant to the terms of SEC Form 1662 (a copy of
15 which is attached hereto as Exhibit B).

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

19 7.2 Disclosure of "CONFIDENTIAL PER P.O." Information or Items.
20 Unless otherwise ordered by the court or permitted in writing by the Designating
21 Party, a Receiving Party may disclose any information or item designated
22 "CONFIDENTIAL PER P.O." only to:

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

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

28 (c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters and their staff;

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

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

10 (h) during their depositions, witnesses, and attorneys for witnesses, in the
11 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
12 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
13 not be permitted to keep any confidential information unless they sign the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
15 agreed by the Designating Party or ordered by the court. Pages of transcribed
16 deposition testimony or exhibits to depositions that reveal Protected Material may be
17 separately bound by the court reporter and may not be disclosed to anyone except as
18 permitted under this Stipulated Protective Order;

19 (i) any mediator or settlement officer, and their supporting personnel,
20 mutually agreed upon by any of the parties engaged in settlement discussions; and

21 (j) where the SEC is the Receiving Party, the SEC may to the extent
22 required by law or permitted pursuant to the terms of SEC Form 1662 disclose any
23 information or item designated “CONFIDENTIAL PER P.O.” that the SEC receives
24 from a Producing Party.

25
26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
27 IN OTHER LITIGATION

28 If a Party is served with a subpoena or a court order issued in other litigation

1 that compels disclosure of any information or items designated in this Action as
2 “CONFIDENTIAL PER P.O.,” that Party must:

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

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

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

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

19
20 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
21 PRODUCED IN THIS ACTION

22 (a) The terms of this Order are applicable to information produced by a
23 Non-Party in this Action and designated as “CONFIDENTIAL PER P.O.” Such
24 information produced by Non-Parties in connection with this Action is protected by
25 the remedies and relief provided by this Order. Nothing in these provisions should be
26 construed as prohibiting a Non-Party from seeking additional protections.

27 (b) In the event that a Party is required, by a valid discovery request, to
28 produce a Non-Party’s confidential information in its possession, and the Party is

1 subject to an agreement with the Non-Party not to produce the Non-Party's
2 confidential information, then the Party shall:

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

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

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

11 (c) If the Non-Party fails to seek a protective order from this court within
12 14 days of receiving the notice and accompanying information, the Receiving Party
13 may produce the Non-Party's confidential information responsive to the discovery
14 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
15 not produce any information in its possession or control that is subject to the
16 confidentiality agreement with the Non-Party before a determination by the court.
17 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
18 of seeking protection in this court of its Protected Material.

19
20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

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

13
14 12. MISCELLANEOUS

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
16 person to seek its modification by the Court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this
18 Protective Order no Party waives any right it otherwise would have to object to
19 disclosing or producing any information or item on any ground not addressed in this
20 Stipulated Protective Order. Similarly, no Party waives any right to object on any
21 ground to the use in evidence of any of the material covered by this Protective Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
24 only be filed under seal pursuant to a court order authorizing the sealing of the
25 specific Protected Material at issue. If a Party's request to file Protected Material
26 under seal is denied by the court, then the Receiving Party may file the information in
27 the public record unless otherwise instructed by the court.

1 13. FINAL DISPOSITION

2 After the final disposition of this Action, as defined in paragraph 4, within 60
3 days of a written request by the Designating Party, each Receiving Party must return
4 all Protected Material to the Producing Party or destroy such material, except as noted
5 herein with respect to the SEC’s records retention requirements. As used in this
6 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
7 summaries, and any other format reproducing or capturing any of the Protected
8 Material. Whether the Protected Material is returned or destroyed, the Receiving
9 Party must submit a written certification to the Producing Party (and, if not the same
10 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
11 (by category, where appropriate) all the Protected Material that was returned or
12 destroyed and (2) affirms that the Receiving Party has not retained any copies,
13 abstracts, compilations, summaries or any other format reproducing or capturing any
14 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
15 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
16 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
17 reports, attorney work product, and consultant and expert work product, even if such
18 materials contain Protected Material. Any such archival copies that contain or
19 constitute Protected Material remain subject to this Protective Order as set forth in
20 Section 4 (DURATION). Notwithstanding this provision, nothing in this Stipulated
21 Protective Order should be read as altering the SEC’s policies or procedures
22 regarding record retention as approved by the National Archives and Records
23 Administration; to the extent the obligations under this Order may conflict with those
24 policies or procedures, the SEC will adhere to its record retention policies and
25 procedures and in doing so will not be deemed to be acting contrary to this Order.

26 \\
27 \\
28 \\
29

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

4
5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6
7 DATED: July 13, 2021

8
9 /s/ Andrew J. Hefty
10 Attorney for Plaintiff

11
12 DATED: July 13, 2021

13
14 /s/ Andrew B. Holmes
15 Attorney for Defendant

16
17 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

18
19 DATED: July 16, 2021

20
21 
22 _____
23 Honorable Shashi H. Kewalramani
24 United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of _____
5 [print or type full address], declare under penalty of perjury that I have read in its
6 entirety and understand the Stipulated Protective Order that was issued by the
7 United States District Court for the Central District of California on _____,
8 2021 in the case of *Securities and Exchange Commission v. Ruben James Rojas*,
9 Case No. 5:19-cv-01799-FLA (SHKx). I agree to comply with and to be bound by
10 all the terms of this Stipulated Protective Order and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and punishment
12 in the nature of contempt. I solemnly promise that I will not disclose in any manner
13 any information or item that is subject to this Stipulated Protective Order to any
14 person or entity except in strict compliance with the provisions of this Order. I further
15 agree to submit to the jurisdiction of the United States District Court for the Central
16 District of California for the purpose of enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of
18 this Action. I hereby appoint _____ [print or type
19 full name] of _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this Action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23 Date: _____

24 City and State where sworn and signed: _____

26 Printed name: _____

28 Signature: _____