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 PERFORMANCE CONTRACTING GROUP, INC. and
 14 PERFORMANCE CONTRACTING, INC.

15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17 **PATTY QUIJANO, an individual,**
 18 **Plaintiff,**

19 **v.**

20 **PERFORMANCE CONTRACTING**
 21 **GROUP, INC., a Delaware**
 Corporation; **PERFORMANCE**
 22 **CONTRACTING, INC., a Kansas**
 Corporation and **DOES 1 through 50,**
 23 **inclusive,**

24 **Defendants.**

Case No. 8:16-cv-00651 CJC (KESx)

**~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER**

Complaint Filed: February 26, 2016
 Trial Date: August 8, 2017
 District Judge: Hon. Cormac J. Carney
 Ctrm. 9-B, Santa Ana
 Magistrate Judge: Hon. Karen E. Scott
 Ctrm. 6-D/6-165,
 Santa Ana

1 **I. RECITALS AND DEFINITIONS**

2 **A. Purposes and Limitations**

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may be
6 warranted. Accordingly, the parties hereby stipulate to and petition the Court to
7 enter the following Stipulated Protective Order.

8 The parties acknowledge that this Order does not confer blanket protections on
9 all disclosures or responses to discovery and that the protection it affords from public
10 disclosure and use extends only to the limited information or items that are entitled
11 to confidential treatment under the applicable legal principles. The parties further
12 acknowledge, as set forth in Section IX, below, that this Stipulated Protective Order
13 does not entitle them to file confidential information under seal; Civil Local Rule 79-
14 5 sets forth the procedures that must be followed and the standards that will be
15 applied when a party seeks permission from the court to file material under seal.

16 **B. Good Cause Statement**

17 This action is likely to involve employee personnel records, documents
18 reflecting Defendants' operational procedures, business plans, bonus compensation
19 plans, past, present, and projected revenues, and labor costs, as well as documents
20 reflecting both Plaintiff's and Defendants' business development practices. Special
21 protection from public disclosure and from use for any purpose other than
22 prosecution of this action is warranted for confidential, private, and/or proprietary
23 information and documents of this nature. Accordingly, to expedite the flow of
24 information, to facilitate the prompt resolution of disputes over confidentiality of
25 discovery materials, to adequately protect information the parties are entitled to keep
26 confidential, to ensure that the parties are permitted reasonable necessary uses of
27 such material in preparation for and in the conduct of trial, to address their handling
28 at the end of the litigation, and serve the ends of justice, a protective order for such

1 information is justified in this matter. It is the intent of the parties that information
2 will not be designated as confidential for tactical reasons and that nothing be so
3 designated without a good faith belief that it has been maintained in a confidential,
4 non-public manner, and there is good cause why it should not be part of the public
5 record of this case.

6 **1. Definitions**

7 A. Action: The pending matter captioned *Patty Quijano, an*
8 *individual, v. Performance Contracting Group, Inc., a Delaware Corporation;*
9 *Performance Contracting, Inc., a Kansas Corporation and Does 1 through 50,*
10 *inclusive*, Case No. 8:16-cv-00651 CJC (KESx).

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

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

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

19 E. Designating Party: a Party or Non-Party that designates
20 information or items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL.”

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

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

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

4 I. Non-Party: any natural person, partnership, corporation,
5 association, or other legal entity not named as a Party to this action.

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

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

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

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

20 N. Protected Material: any Disclosure or Discovery Material
21 that is designated as “CONFIDENTIAL.”

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

24 2. Scope

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
28 compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected Material.

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

4 **3. Duration**

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

13 **II. DESIGNATING PROTECTED MATERIAL**

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

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

27 If it comes to a Designating Party's attention that information or items that it
28 designated for protection do not qualify for protection, that Designating Party must

1 promptly notify all other Parties that it is withdrawing the inapplicable designation.

2 **B. Manner and Timing of Designations.** Except as otherwise provided in
3 this Order (*see, e.g.*, paragraph C below), or as otherwise stipulated or ordered,
4 Disclosure or Discovery Material that qualifies for protection under this Order must
5 be clearly so designated before the material is disclosed or produced.

6 Designation in conformity with this Order requires:

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

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

26 2. For testimony given in depositions that the Designating Party
27 identify the Disclosure or Discovery Material on the record, before the close of the
28 deposition all protected testimony.

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

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

13 **III. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

17 B. **Meet and Confer.** The Challenging Party shall initiate the dispute
18 resolution process under Local Rule 37.1 *et seq.*

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

27 **IV. ACCESS TO AND USE OF PROTECTED MATERIAL**

28 A. **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
2 Action only for prosecuting, defending, or attempting to settle this Action. Such
3 Protected Material may be disclosed only to the categories of persons and under the
4 conditions described in this Order. When the Action has been terminated, a
5 Receiving Party must comply with the provisions of Section X below (FINAL
6 DISPOSITION).

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

10 B. **Disclosure of “CONFIDENTIAL” Information or Items.** Unless
11 otherwise ordered by the court or permitted in writing by the Designating Party, a
12 Receiving Party may disclose any information or item designated
13 “CONFIDENTIAL” only to:

- 14 1. The Receiving Party’s Outside Counsel of Record in this Action,
15 as well as employees of said Outside Counsel of Record to whom it is reasonably
16 necessary to disclose the information for this Action;
- 17 2. The officers, directors, and employees (including House Counsel)
18 of the Receiving Party to whom disclosure is reasonably necessary for this Action;
- 19 3. Experts (as defined in this Order) of the Receiving Party to whom
20 disclosure is reasonably necessary for this Action and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 22 4. The court and its personnel;
- 23 5. Court reporters and their staff;
- 24 6. Professional jury or trial consultants, mock jurors, and
25 Professional Vendors to whom disclosure is reasonably necessary for this Action and
26 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 27 7. The author or recipient of a document containing the information
28 or a custodian or other person who otherwise possessed or knew the information;

1 8. During their depositions, witnesses ,and attorneys for witnesses,
2 in the Action to whom disclosure is reasonably necessary provided: (a) the deposing
3 party requests that the witness sign the form attached as Exhibit 1 hereto; and (b)
4 they will not be permitted to keep any confidential information unless they sign the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
6 agreed by the Designating Party or ordered by the court. Pages of transcribed
7 deposition testimony or exhibits to depositions that reveal Protected Material may be
8 separately bound by the court reporter and may not be disclosed to anyone except as
9 permitted under this Stipulated Protective Order; and

10 9. Any mediator or settlement officer, and their supporting
11 personnel, mutually agreed upon by any of the parties engaged in settlement
12 discussions.

13 **V. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
14 **PRODUCED IN OTHER LITIGATION**

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

18 A. Promptly notify in writing the Designating Party. Such notification
19 shall include a copy of the subpoena or court order;

20 B. Promptly notify in writing the party who caused the subpoena or order
21 to issue in the other litigation that some or all of the material covered by the
22 subpoena or order is subject to this Protective Order. Such notification shall include
23 a copy of this Stipulated Protective Order; and

24 C. Cooperate with respect to all reasonable procedures sought to be
25 pursued by the Designating Party whose Protected Material may be affected.

26 D. If the Designating Party timely seeks a protective order, the Party served
27 with the subpoena or court order shall not produce any information designated in this
28 action as “CONFIDENTIAL” before a determination by the court from which the

1 subpoena or order issued, unless the Party has obtained the Designating Party's
2 permission. The Designating Party shall bear the burden and expense of seeking
3 protection in that court of its confidential material and nothing in these provisions
4 should be construed as authorizing or encouraging a Receiving Party in this Action
5 to disobey a lawful directive from another court.

6 **VI. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
7 **PRODUCED IN THIS LITIGATION**

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

13 B. In the event that a Party is required, by a valid discovery request, to
14 produce a Non-Party's confidential information in its possession, and the Party is
15 subject to an agreement with the Non-Party not to produce the Non-Party's
16 confidential information, then the Party shall:

17 1. Promptly notify in writing the Requesting Party and the Non-
18 Party that some or all of the information requested is subject to a confidentiality
19 agreement with a Non-Party;

20 2. Promptly provide the Non-Party with a copy of the Stipulated
21 Protective Order in this Action, the relevant discovery request(s), and a reasonably
22 specific description of the information requested; and

23 3. Make the information requested available for inspection by the
24 Non-Party, if requested.

25 C. If the Non-Party fails to seek a protective order from this court within
26 14 days of receiving the notice and accompanying information, the Receiving Party
27 may produce the Non-Party's confidential information responsive to the discovery
28 request. If the Non-Party timely seeks a protective order, the Receiving Party shall

1 not produce any information in its possession or control that is subject to the
2 confidentiality agreement with the Non-Party before a determination by the court.
3 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
4 of seeking protection in this court of its Protected Material.

5 **VII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

14 **VIII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
15 **PROTECTED MATERIAL**

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

26 **IX. MISCELLANEOUS**

27 A. **Right to Further Relief.** Nothing in this Order abridges the right of
28 any person to seek its modification by the Court in the future.

1 B. **Right to Assert Other Objections.** By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

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

12 **X. FINAL DISPOSITION**

13 After the final disposition of this Action, as defined in Section I(B)(3), within
14 60 days of a written request by the Designating Party, each Receiving Party must
15 return all Protected Material to the Producing Party or destroy such material. As
16 used in this subdivision, “all Protected Material” includes all copies, abstracts,
17 compilations, summaries, and any other format reproducing or capturing any of the
18 Protected Material. Whether the Protected Material is returned or destroyed, the
19 Receiving Party must submit a written certification to the Producing Party (and, if
20 not the same person or entity, to the Designating Party) by the 60 day deadline that
21 (1) identifies (by category, where appropriate) all the Protected Material that was
22 returned or destroyed and (2) affirms that the Receiving Party has not retained any
23 copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
25 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
26 and hearing transcripts, legal memoranda, correspondence, deposition and trial
27 exhibits, expert reports, attorney work product, and consultant and expert work
28 product, even if such materials contain Protected Material. Any such archival copies

1 that contain or constitute Protected Material remain subject to this Protective Order
2 as set forth in Section I(B)(3) (DURATION).

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

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 DATED: September 13, 2016 KESLUK, SILVERSTEIN & JACOB, P.C.

8
9 By: /s/ Lauren J. Morrison
Lauren J. Morrison

10 Attorneys for Plaintiff
11 PATTY QUIJANO

12 DATED: September 14, 2016 OGLETREE, DEAKINS, NASH, SMOAK &
13 STEWART, P.C.

14 By: /s/ Hardy Ray Murphy
15 Hardy Ray Murphy
Kathleen J. Choi

16 Attorneys for Defendants
17 PERFORMANCE CONTRACTING GROUP,
18 INC. and PERFORMANCE CONTRACTING,
19 INC.

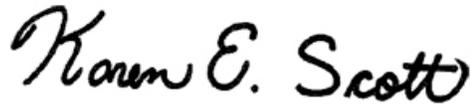
18 **Signature Attestation**

19 Pursuant to Local Rule 5-4.3.4, I hereby attest that all signatures listed, on
20 whose behalf the filing is submitted, concur in the filing's content and have
21 authorized the filing.

22 By: /s/ Kathleen J. Choi
23 Kathleen J. Choi

24 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

25 DATED: September 20, 2016

26 
27 _____
28 Hon. Karen E. Scott
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
6 that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Central District of California
8 on [date] in the case of *Quijano v. Performance Contracting Group, Inc., et al.*, Case
9 No. 8:16-cv-00651 CJC (KESx). I agree to comply with and to be bound by all the
10 terms of this Stipulated Protective Order and I understand and acknowledge that
11 failure to so 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 information
13 or item that is subject to this Stipulated Protective Order to any person or entity
14 except in strict compliance with the provisions of this Order.

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

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____

28