

Note: Changes made by the Court at ¶¶ 5.2.b, 9.c.

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 12 OF THE UNIVERSITY OF
 CALIFORNIA, FARYAR JABBARI,
 13 GREGORY WASHINGTON, DIANE K.
 O'DOWD, and ENRIQUE J. LAVERNIA
 14

15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**
 17

18 HUNG NGUYEN,
 19 Plaintiff,
 20 v.

21 THE REGENTS OF THE
 UNIVERSITY OF CALIFORNIA;
 22 FARYAR JABBARI, in his individual
 capacity; GREGORY WASHINGTON,
 23 in his individual capacity; DIANE K.
 O'DOWD, in her individual capacity;
 24 ENRIQUE J. LAVERNIA, in his
 individual capacity; Does 1 through 10,
 25 Defendants.
 26

Case No. 8:17-cv-00423-JVS-KES

**Discovery Document: Referred to
Magistrate Judge Karen E. Scott**

**STIPULATED CONFIDENTIALITY
AGREEMENT AND ~~[PROPOSED]~~
PROTECTIVE ORDER**

Judge: Hon. James V. Selna
 Magistrate Judge: Hon. Karen E. Scott
 Trial Date: October 23, 2018

1 1. A. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the proposed Protective Order. The
7 parties acknowledge that this Stipulation and proposed Protective Order does not
8 confer blanket protections on all disclosures or responses to discovery and that the
9 protection it affords from public disclosure and use extends only to the limited
10 information or items that are entitled to confidential treatment under the applicable
11 legal principles. The parties further acknowledge, as set forth in Section 12.3,
12 below, that this Stipulation and proposed Protective Order does not entitle them to
13 file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when a party
15 seeks permission from the Court to file material under seal.

16 B. GOOD CAUSE STATEMENT

17 This action is likely to involve personal and academic review information for
18 which special protection from public disclosure and from use for any purpose other
19 than prosecution of this action is warranted. Such information consists of, among
20 other things, confidential research and internal dialogue regarding performance and
21 evaluation information related to University of California, Irvine deliberative
22 processes and tenure evaluations, confidential financial information, employee
23 personnel files, information regarding confidential academic review practices, other
24 information implicating privacy rights of third parties, information otherwise
25 generally unavailable to the public, or which may be privileged or otherwise
26 protected from disclosure under state or federal statutes, court rules, case decisions,
27 or common law. Accordingly, to expedite the flow of information, to facilitate the
28 prompt resolution of disputes over confidentiality of discovery materials, to

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

10 2. DEFINITIONS

11 2.1 Action: This pending federal law suit.

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

14 2.3 “CONFIDENTIAL” Information or Items: Information (regardless of
15 how it is generated, stored or maintained) or tangible things that qualify for
16 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.”

23 2.6 Disclosure or Discovery Material: All items or information, regardless
24 of 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 matter.

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1 2.7 Expert: A person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this Action.

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

7 2.9 Non-Party: Any natural person, partnership, corporation, association,
8 or other legal entity not named as a Party to this action.

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

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

16 2.12 Producing Party: A Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

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

22 2.14 Protected Material: Any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL.”

24 2.15 Receiving Party: A Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Protective Order cover not
28 only Protected Material (as defined above) but also: (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries or
2 compilations of Protected Material; and (3) any testimony, conversations or
3 presentations by Parties or their Counsel that might reveal Protected Material.
4 However, the protections conferred by this Stipulation and Protective Order do not
5 cover the following information: (a) any information that is in the public domain at
6 the time of disclosure to a Receiving Party or becomes part of the public domain
7 after its disclosure to a Receiving Party as a result of publication not involving a
8 violation of this Order, including becoming part of the public record through trial or
9 otherwise; (b) any information known to the Receiving Party prior to the disclosure
10 or obtained by the Receiving Party after the disclosure from a source who obtained
11 the information lawfully and under no obligation of confidentiality to the
12 Designating Party; and (c) any information produced by either party or a non-party
13 prior to February 20, 2018. Any use of Protected Material at trial shall be governed
14 by the orders of the trial judge. This Order does not govern the use of Protected
15 Material at trial.

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations
18 imposed by this Order shall remain in effect until a Designating Party agrees
19 otherwise in writing or a court order otherwise directs. Final disposition shall be
20 deemed to be the later of: (1) dismissal of all claims and defenses in this action,
21 with or without prejudice; and (2) final judgment herein after the completion and
22 exhaustion of all appeals, re-hearings, remands, trials or reviews of this Action,
23 including the time limits for filing any motions or applications for extension of time
24 pursuant to applicable law.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.

27 Each Party or Non-Party that designates information or items for protection under
28 this Order must take care to limit any such designation to specific material that

1 qualifies under the appropriate standards. The Designating Party must designate for
2 protection only those parts of material, documents, items or oral or written
3 communications that qualify – so that other portions of the material, documents,
4 items or communications for which protection is not warranted are not swept
5 unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper
8 purpose (*e.g.*, to unnecessarily encumber or retard the case development process or
9 to impose unnecessary expenses and burdens on other parties) expose the
10 Designating Party to sanctions.

11 If it comes to a Designating Party’s attention that information or items that it
12 designated for protection do not qualify for protection, that Designating Party must
13 promptly notify all other Parties that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in
15 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
17 under this Order must be clearly so designated before the material is disclosed or
18 produced.

19 Designation in conformity with this Order requires:

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

26 A Party or Non-Party that makes original documents or materials available for
27 inspection need not designate them for protection until after the inspecting Party has
28 indicated which material it would like copied and produced. During the inspection

1 and before the designation, all of the material made available for inspection shall be
2 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
3 documents it wants copied and produced, the Producing Party must determine which
4 documents, or portions thereof, qualify for protection under this Order. Then,
5 before producing the specified documents, the Producing Party must affix the
6 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
7 portion or portions of the material on a page qualifies for protection, the Producing
8 Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
9 markings in the margins).

10 b. for testimony given in deposition or in other pretrial ~~or trial~~
11 proceedings, that the Designating Party identify on the record, before the close of
12 the deposition, hearing or other proceeding, all protected testimony.

13 c. for information produced in some form other than documentary
14 and for any other tangible items, that the Producing Party affix in a prominent place
15 on the exterior of the container or containers in which the information or item is
16 stored the legend “CONFIDENTIAL.” If only a portion or portions of the
17 information or item warrant protection, the Producing Party, to the extent
18 practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive
21 the Designating Party’s right to secure protection under this Order for such material.
22 Upon timely correction of a designation, the Receiving Party must make reasonable
23 efforts to assure that the material is treated in accordance with the provisions of this
24 Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
27 designation of confidentiality at any time that is consistent with the Court’s
28 Scheduling Order.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1, *et seq.*

3 6.3 The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Frivolous challenges, and those made for an improper
5 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other
6 parties), may expose the Challenging Party to sanctions. Unless the Designating
7 Party has waived or withdrawn the confidentiality designation, all parties shall
8 continue to afford the material in question the level of protection to which it is
9 entitled under the Producing Party’s designation until the Court rules on the
10 challenge.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this
14 case only for prosecuting, defending or attempting to settle this litigation. Such
15 Protected Material may be disclosed only to the categories of persons and under the
16 conditions described in this Order. When the litigation has been terminated, a
17 Receiving Party must comply with the provisions of section 13 below (FINAL
18 DISPOSITION).

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

22 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
23 otherwise ordered by the Court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated
25 “CONFIDENTIAL” only to:

26 a. the Receiving Party’s Outside Counsel of Record in this action,
27 as well as employees of said Outside Counsel of Record to whom it is reasonably
28 necessary to disclose the information for this litigation;

1 b. the officers, directors and employees (including House Counsel)
2 of the Receiving Party to whom disclosure is reasonably necessary for this litigation;

3 c. Experts (as defined in this Order) of the Receiving Party to
4 whom disclosure is reasonably necessary for this litigation and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 d. the Court and its personnel;

7 e. court reporters and their staff;

8 f. professional jury or trial consultants, mock jurors, and
9 Professional Vendors to whom disclosure is reasonably necessary for this litigation
10 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
11 A);

12 g. the author or recipient of a document containing the information
13 or a custodian or other person who otherwise possessed or knew the information;

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

23 i. any mediator or settlement officer, and their supporting
24 personnel, mutually agreed upon by any of the parties engaged in settlement
25 discussions.

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that Party must:

6 a. promptly notify in writing the Designating Party. Such
7 notification shall include a copy of the subpoena or court order;

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

12 c. cooperate with respect to all reasonable procedures sought to be
13 pursued by the Designating Party whose Protected Material may be affected.

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

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
23 PRODUCED IN THIS LITIGATION

24 a. The terms of this Order are applicable to information produced
25 by a Non-Party in this action and designated as “CONFIDENTIAL.” Such
26 information produced by Non-Parties in connection with this litigation is protected
27 by the remedies and relief provided by this Order. Nothing in these provisions
28 should be construed as prohibiting a Non-Party from seeking additional protections.

1 b. In the event that a Party is required, by a valid discovery request,
2 to produce a Non-Party's confidential information in its possession, and the Party is
3 subject to an agreement with the Non-Party not to produce the Non-Party's
4 confidential information, then the Party shall:

5 i. promptly notify in writing the Requesting Party and the
6 Non-Party that some or all of the information requested is subject to a
7 confidentiality agreement with a Non-Party;

8 ii. promptly provide the Non-Party with a copy of the
9 Stipulated Protective Order in this action, the relevant discovery request(s), and a
10 reasonably specific description of the information requested; and

11 iii. make the information requested available for inspection by
12 the Non-Party, if requested.

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

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this
24 Stipulated Protective Order, the Receiving Party must immediately: (a) notify in
25 writing the Designating Party of the unauthorized disclosures; (b) use its best efforts
26 to retrieve all unauthorized copies of the Protected Material; (c) inform the person or
27 persons to whom unauthorized disclosures were made of all the terms of this Order;

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1 and (d) request such person or persons to execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

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

15 12. MISCELLANEOUS

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

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

24 12.3 Filing Protected Material. A Party that seeks to file under seal any
25 Protected Material must comply with Civil Local Rule 79-5. Protected Material
26 may only be filed under seal pursuant to a court order authorizing the sealing of the
27 specific Protected Material at issue. If a Party's request to file Protected Material

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1 under seal is denied by the court, then the Receiving Party may file the information
2 in the public record unless otherwise instructed by the court.

3 13. FINAL DISPOSITION

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

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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.

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5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 Dated: March 5, 2018

PAUL, PLEVIN, SULLIVAN &
CONNAUGHTON LLP

8
9 By: /s/ Kevin M. Brown

10 SANDRA L. McDONOUGH
11 KEVIN M. BROWN
12 Attorneys for Defendants THE REGENTS
13 OF THE UNIVERSITY OF CALIFORNIA,
14 FARYAR JABBARI, GREGORY
WASHINGTON, DIANE K. O'DOWD,
and ENRIQUE J. LAVERNIA

15 Dated: March 5, 2018

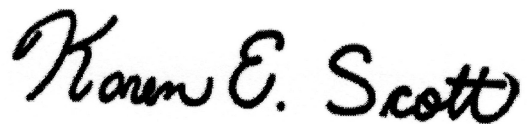
LAW OFFICES OF JUAN HONG, ALC

16
17 By: /s/ Juan Hong

18 JUAN HONG
19 Attorneys for Plaintiff HUNG NGUYEN

20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

21
22 Dated: March 8, 2018

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24 KAREN E. SCOTT
25 United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of

4
5 _____
6 [print or type full address], declare under penalty of perjury that I have read in its
7 entirety and understand the Stipulated Protective Order that was issued by the
8 United States District Court for the Central District of California on [date] in the
9 case of *Nguyen v. The Regents of the University of California, et al.*, No. 8:17-cv-
10 00423-JVS-KES. I agree to comply with and to be bound by all the terms of this
11 Stipulated Protective Order, and I understand and acknowledge that failure to so
12 comply could expose me to sanctions and punishment in the nature of contempt. I
13 solemnly promise that I will not disclose in any manner any information or item that
14 is subject to this Stipulated Protective Order to any person or entity except in strict
15 compliance with the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court
17 for the Central District of California for the purpose of enforcing the terms of this
18 Stipulated Protective Order, even if such enforcement proceedings occur after
19 termination of this action.

20 I hereby appoint _____ [print or type full name] of
21 _____ [print or type full address and
22 telephone number] as my California agent for service of process in connection with
23 this action or any proceedings related to enforcement of this Stipulated Protective
24 Order.

25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____