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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SEANLIM YITH and SEAK LEANG YITH,)	
)	Case No.: 1:14-cv-01875-LJO-SKO
Plaintiffs,)	
)	
v.)	
)	PROTECTIVE ORDER
KEVIN K. MCALEENAN, in his Capacity)	
as Acting Secretary of Homeland Security,)	
<i>et al.</i> ,)	
)	
Defendants.)	
)	

Pursuant to the provisions of Federal Rule of Civil Procedure 26(c), the Court enters this Protective Order upon motion of Defendants, for the purpose of protecting Confidential Material disclosed by the Parties.

IT IS ORDERED, ADJUDGED, AND DECREED that the following procedures will govern the production and/or use of Confidential Material in this action:

1. This Protective Order governs the treatment and handling of all Confidential Material produced in accordance with the Federal Rules of Civil Procedure or any order of the Court, by any Party to any other Party in this matter.

1 2. Confidential Materials subject to protection under the Privacy Act which are otherwise
2 discoverable are authorized to be produced. 5 U.S.C. § 552a(b)(11).

3 3. Any Party furnishing Confidential Material, defined as documents, things, information or
4 other materials, in whatever form, which, in the opinion of that Party contains information
5 protected by the Privacy Act, 5 U.S.C. § 552a, the Freedom of Information Act, 5 U.S.C. § 552,
6 and/or the law enforcement, investigatory files, informant privilege, or any other privilege under
7 federal or state law, may designate such material as subject to this Protective Order by marking
8 each page of the document as “Subject to Protective Order,” whether it be a document,
9 information contained in a document, information revealed during an interrogatory answer, or
10 otherwise.

11 Any Party receiving Confidential Material which in the opinion of the designating party
12 contains information protected by the Privacy Act, 5 U.S.C. § 552a, the Freedom of Information
13 Act, 5 U.S.C. § 552, and/or the law enforcement, or investigatory files privilege(s), and/or any
14 other privilege under federal or state law, may designate such material as subject to this
15 Protective Order by marking each page of the document as either “Subject to Protective Order,”
16 provided that the Party provides notice of such designation within 14 days of receipt to counsel
17 for all other Parties.

18 4. Confidential Material designated “Subject to Protective Order” pursuant to this Order
19 shall be used by a Party only for purposes related to this action and for no other purpose, under
20 other restrictions as explained elsewhere in this Order, and under no circumstances, other than
21 those specifically provided for in this or a subsequent Order of this Court, shall any Party
22 disclose it to persons or entities other than the following:

- 23 a. The Court and Court personnel;
- 24 b. A Party and Counsel of record for a Party;
- 25 c. Secretarial, clerical, paralegal or paraprofessional staff, or other members of the
26 legal team, provided such counsel deems the disclosure reasonably necessary for the
27 conduct of this litigation;

1 d. Experts or consultants who have been retained by a Party for the purpose of
2 assisting in the conduct of this action;

3 e. Fact witnesses during their deposition, or in preparation for their deposition,
4 provided that counsel of record for a Party deems the disclosure reasonably necessary for
5 the conduct of this litigation and that no disclosure is made to persons outside the
6 authorization of this Order; and

7 f. Other persons upon order of this Court or upon stipulation of the Party who
8 designated the Confidential Material in question as "Subject to Protective Order"

9 Before any Confidential Material subject to this Protective Order is disclosed to a Party,
10 all counsel of record for that Party shall sign and serve the "Acknowledgment of Protective
11 Order," attached as Exhibit "A" to this Protective Order, on all counsel of record for all Parties.
12 Unless otherwise specified by a counsel of record for a Party, service of the signed
13 "Acknowledgement of Protective Order" may be completed by e-mail.

14 Prior to disclosing Confidential Material subject to the Protective Order to any other
15 individuals designated in subsections (b)-(f), counsel for a Party must have these individuals sign
16 the "Acknowledgment of Protective Order," attached to this Protective Order. The original
17 signed "Acknowledgment of Protective Order" completed by any individual designated in
18 subsections (b)-(f) shall be retained by counsel seeking to disclose materials to such individual
19 until the conclusion of this litigation (as that point in time is defined in paragraph 9 below).
20 These signed "Acknowledgment of Protective Order" forms may only be disclosed pursuant to
21 Court order.

22 5. Each person to whom Confidential Material designated as "Subject to Protective Order"
23 is disclosed is hereby advised that such Confidential Material is being disclosed pursuant and
24 subject to the terms of this Order, may not be disclosed other than pursuant to the terms hereof,
25 and may be used only for purposes related to this action and for no other purposes. Confidential
26 Material designated "Subject to Protective Order" may be disclosed to a person identified in
27 subparagraphs 4(b)-(f) only after such person has executed a copy of the "Acknowledgment of
28 Protective Order," attached hereto.

1 6. In the event that counsel for any Party determines to file with or submit to this Court – by
2 way of pleadings, motions, briefs, or other papers or submissions – any Confidential Material
3 designated “Subject to Protective Order” such counsel must make a motion in accordance with
4 Eastern District of California Local Civil Rules for permission from the Court to file or submit
5 such Confidential Material under seal.

6 7. If any Party objects to the designation of any information, material, or document as
7 Confidential Material “Subject to Protective Order,” the objecting Party may notify the
8 designating Party in writing at any time, but no later than twenty-one (21) days before the date of
9 trial, and the objecting Party must also notify all other Parties of the objection. Within ten (10)
10 days after service of any such notice, and after consultation and a good-faith effort to resolve the
11 disagreement with the other Parties, either the designating or the objecting Party may apply to
12 the Court for a ruling that the Confidential Material objected to shall (as applicable) be treated or
13 not treated as “Subject to Protective Order” and notice of such application shall be provided to
14 all other Parties. Until this Court enters an order determining the status of the Confidential
15 Material being objected to, such Confidential Material shall be treated in accordance with its
16 provisional designation as “Subject to Protective Order” as provided in this Order, unless the
17 Parties otherwise agree by written stipulation.

18 8. Any Party that produces documents does not waive any privilege or protection, including
19 but not limited to the attorney-client privilege and work-product protection, as well as the law
20 enforcement, investigatory files, or state secrets privilege and/or any other privilege under
21 federal or state law, over that information in this matter or any other proceeding. Fed. R. Evid.
22 502(d), (e), (g). The Parties shall follow Federal Rule of Civil Procedure 26(b)(5)(B) in dealing
23 with any privileged materials produced in discovery.

24 9. Within three (3) months of the conclusion of this litigation (commencing from the date on
25 which the time for filing an appeal from entry of judgment with no party taking an appeal, or in
26 the event an appeal is taken, from the date of exhaustion of any and all appeals), all Confidential
27 Material which continues to be designated as “Subject to Protective Order” and all copies
28 thereof, shall either be returned to the disclosing Party or destroyed unless otherwise statutorily

1 required to be retained or preserved. A Party who elects to destroy the copies shall submit a
2 certification to the disclosing Party, attesting that all copies were destroyed, within fourteen (14)
3 days of the destruction of the copies. Copies which contain markings constituting attorney work
4 product need not be returned or destroyed, provided they remain subject to the provisions of this
5 Protective Order. All Confidential Material shall be kept in the possession of the Party to whom
6 it (the document) was produced, except in the limited circumstances described above.

7 10. Confidential Material of any sort that a Party wishes to designate as “Subject to
8 Protective Order” pursuant to the terms of this Order, but which is inadvertently disclosed
9 without such designation, may be retrieved by the disclosing Party at any time. Upon notice that
10 a Party seeks retrieval, such Confidential Material must be treated as if designated “Subject to
11 Protective Order” depending on the designation requested by the inadvertently disclosing Party,
12 and may only be used for the purposes and in the manner permitted by this Order.

13 11. The agreement of any Party to be bound by the terms and conditions of this Order does
14 not constitute a waiver of any privilege available to that Party, and shall not be construed as
15 such.

16 12. This Order shall not: (a) prejudice in any way the right of a Party to object to the
17 production of information or materials it considers not subject to discovery; or (b) prejudice in
18 any way the right of a Party to seek a Court determination (i) whether discovery information or
19 material should be produced, or (ii) if produced whether such information or material should be
20 subject to the terms of this Order; or (c) prejudice in any way the right of a Party to apply to the
21 Court for a further protective order relating to any Confidential Material.

22 13. This Order may be modified if the Parties to this Order agree to such modification and
23 such modification is granted by the Court or if such modification is ordered by the Court.

24 14. Any person may at any time move, on notice to all parties, for modification of, or other
25 relief from, this Order.

26 15. In accordance with Local Rule 141(c)(3), the need for protection of Confidential
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1 information is addressed by a court order, as opposed to a private agreement between or among
2 the parties, because the parties have been unable to come to a private agreement.

3
4 IT IS SO ORDERED.

5 Dated: June 21, 2019

/s/ Sheila K. Oberto
6 UNITED STATES MAGISTRATE JUDGE

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3 SEANLIM YITH and SEAK LEANG YITH,)
4 Plaintiffs,) Case No.: 1:14-cv-01875-LJO-SKO
5 v.)
6 KEVIN K. MCALEENAN, in his Capacity) **ACKNOWLEDGMENT OF**
7 as Acting Secretary of Homeland Security,) **PROTECTIVE ORDER**
8 *et al.*,)
9 Defendants.)

10
11 I, _____, hereby acknowledge, under penalty of
12 perjury, that I have read the Protective Order governing disclosure of Confidential Material
13 entered by this Court on _____, 2019. I am familiar with the specific terms of the
14 Order and agree to be bound by its terms. I further understand that I am subject to the contempt
15 powers of this Court for violation of the Order.

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18 DATE: _____ Signature _____

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27 EXHIBIT "A"
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