

1 At the request of counsel for Petitioner and Respondent (“Parties”), and in accordance
2 with the terms of this Privacy Act Protective Order, under 5 U.S.C. § 552a(b)(11), Respondent is
3 authorized to release to Petitioner, Petitioner’s counsel, and the Court in this case, discovery
4 containing unredacted identifying information of third parties, without obtaining prior written
5 consent of third parties whose names, addresses, birth dates, and other identifying information
6 may be present in such documents. Such disclosure is subject to the following conditions:
7

8 1. The Parties agree that the terms of this Protective Order will govern the entirety of
9 any and all information, documents, alien registration files, any law enforcement reports,
10 probation and pre-sentencing reports, tangible things or electronic media or system produced by
11 the United States in response to any disclosure obligation, discovery request, *Touhy* request, or
12 subpoena, or any other discovery that contains Privacy Act material, as well as any copies or
13 summaries made thereof and any information derived therefrom, including any materials
14 produced in discovery or will be produced through any further discovery taken in this case.
15

16 2. The parties expect that records to be provided by the federal government will
17 contain third-party names, addresses, birth dates, social security numbers, alien numbers, or any
18 other identifying information (i.e., information the use of which would allow the identification of
19 the person to whom the information relates), such identifying information shall be deemed
20 confidential and protected by this Protective Order. All such Privacy Act information is subject
21 to this Protective Order and may be used solely for purposes of this litigation.
22

23 3. Protected information may be disclosed only to the following persons and only to
24 the extent necessary for the prosecution of this action:
25
26
27
28

1 (a) Counsel of record for any Party and counsel of record's employees,
2 including paralegals, clerical, and other para-professionals personnel who
3 are actively engaged in this litigation; and

4 (b) This Court and its personnel, including court reporters, in connection with
5 the Court's administration and adjudication of this action; and
6

7 (c) Individuals whose testimony is contemplated or actually taken in this
8 action and their counsel, but only to the extent necessary to elicit
9 testimony concerning the subject matter of information or records
10 produced subject to this Protective Order; and

11 (d) Expert witnesses or consultants retained by the Parties; and

12 (e) The author of the document or the original source of the information; and

13 (f) In the event of an appeal, any Court of Appeals and its personnel, in
14 connection with the Court's administration and adjudication of this action.
15

16 4. All persons listed in Paragraph 3(a) above to whom identifying information is
17 disclosed are hereby prohibited from disclosing to, or otherwise discussing with, any person
18 other than those listed in 3(b)-(f) above, any confidential information, except as provided in this
19 Protective Order.
20

21 5. All persons listed in Paragraphs 3(c) and (d) above, to whom identifying
22 information is disclosed, shall first be required to read the terms of this Protective Order and sign
23 a copy of the Acknowledgment form, attached as Exhibit A, agreeing to be bound thereby. The
24 signed Acknowledgment forms shall be maintained by Petitioner's counsel or Respondent's
25 counsel.
26
27
28

1 6. To the extent that third-party identifying information, or personal information
2 about a deponent (including information concerning, for instance, medical information,
3 personnel information, or information that, if it had been in a written record, would be covered
4 by the Privacy Act), is discussed in the course of a deposition, such confidential information
5 must be designated as such by indicating on the record at the deposition, and the relevant
6 portions of the deposition transcript shall be placed under seal if filed with the Court, unless a
7 release is obtained from the individual to whom the identifying information pertains, authorizing
8 the disclosure of such information. Additionally, such information shall not be disclosed outside
9 of this litigation except as provided by this order.
10

11 7. No protected documents or information shall be used at any hearing, trial or
12 appellate proceeding in this action, unless provision shall be made for exclusion of the public or
13 unless some other reasonable provision to protect confidentiality has been made. Where
14 protected documents or information is used at a hearing, trial, or appellate proceeding in this
15 action, the appropriate portion of the court transcript shall be placed under seal. Such
16 designation shall be limited to those portions of the transcript the sealing of which is reasonably
17 necessary to preserve the confidentiality of documents, as well as copies or summaries made
18 thereof and any information derived therefrom, which are subject to the terms of this Protective
19 Order.
20
21

22 8. Disputes regarding the treatment of protected information shall be handled as
23 follows: counsel for the Party disputing that a document, tangible thing, or electronic
24 information contains protected information shall notify, in writing, opposing counsel of the
25 nature of the challenge and the Parties shall meet and confer in a good faith effort to resolve the
26
27
28

1 dispute. In the event the Parties are unable to resolve the dispute, the Parties shall submit the
2 dispute to the Court for resolution. Until the Court renders a determination that the document,
3 tangible thing, or electronic information in dispute does not, in fact, contain protected
4 information, the document, tangible thing, or electronic information in dispute shall continue to
5 be treated in a manner consistent with this Order.

6
7 9. Under Federal Rule of Evidence 502, the parties agree, and this Court orders, that
8 inadvertent disclosure of any document or any other information during the pendency of this case
9 shall be without prejudice to any claims that any or all such material is confidential, privileged,
10 or otherwise protected from discovery within the meaning of Federal Rule of Civil Procedure 26,
11 or any relevant case law. No party to this Protective Order shall be held to have waived or
12 forfeited any claim that any document or any other information is confidential, privileged or
13 otherwise protected from discovery by such inadvertent disclosure. Any document, tangible
14 thing, or electronic information so produced and subject to any subsequent claim of privilege,
15 work-product protection or any other protection whatsoever, including protection under this
16 Protective Order, shall be returned immediately to the requesting party, and such document or
17 information shall not be introduced into evidence in this or any other proceeding by any person
18 without either: (i) the consent of the party, or (ii) Order of the Court. Nor will such document or
19 information be subject to production (other than *in camera*) in any proceeding by virtue of the
20 fact that it was inadvertently produced in this proceeding.
21
22
23

24 9. Within thirty (30) days of the final conclusion of this litigation, including any
25 appeals, Petitioner's counsel shall collect all documents produced under this Protective Order
26 that contain third-party identifying information, as well as any copies thereof, or any information
27
28

1 and notes derived therefrom, and shall return – without demand – such documents to
2 Respondent’s counsel. Alternatively, Petitioner’s counsel shall destroy the documents by
3 shredding them and provide Respondent’s counsel with verification of destruction within thirty
4 (30) days of the final conclusion of this litigation, including any appeals.

5 10. Nothing in this Order waives any rights of any Party to assert, and/or object to, a
6 claim of any privilege as to these or similar documents.

7 11. Nothing in this Order shall prevent or in any way limit or impair the right or duty
8 of the United States to disclose any protected information in accordance with law, including its
9 obligations to provide documents or information to the United States Congress pursuant to a
10 congressional request.

11 12. Nothing in this Order shall be deemed to restrict in any manner the use by any
12 party of its own documents or materials.

13 13. Nothing in this Order shall affect the right of any party to seek additional
14 protection against the disclosure of documents or materials.

15 14. Any disclosure of information related to a third-party who has executed a Privacy
16 Act Waiver shall be governed by the terms of the Privacy Act Waiver executed by the third
17 party.

18 15. Any Party may apply to this Court at any time, upon proper notice as required by
19 the rules of this Court, for a modification of this Protective Order with respect to the handling or
20 designation of any document or for any other purpose.

21 16. This Order shall be binding upon any present and future party or counsel in this
22 civil action or any appeal.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

The Court has reviewed the above stipulated protective order and adopts it. The Court also clarifies paragraph 8 to describe the procedure for seeking leave of court to file a motion challenging a confidentiality designation: Counsel must receive permission from the Court following an informal telephone conference. A party wishing to schedule such a conference should contact chambers at (559) 499-5962 to receive available dates. The Court will schedule the conference as soon as possible, taking into consideration the urgency of the issue. Prior to the conference, the Court will require the parties to submit letter briefs of no more than 3 pages in length to chambers for review. Telephonic conferences will not be on the record and the Court will not issue a formal ruling at that time. Nevertheless, the Court will attempt to provide guidance to the parties to narrow or dispose of the dispute. If no resolution is reached, the Court will consider whether the filing of a formal motion is appropriate.

IT IS SO ORDERED.

Dated: February 16, 2017

/s/ Eric P. Groj
UNITED STATES MAGISTRATE JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT

I, _____, [print or type full name], of _____
_____ [print or type full address], declare under penalty
of perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Eastern District of California in the case of
Giha v. Boente, No. 1:16-CV-00893, and I agree to comply with and to be bound by all the terms
of this Stipulated Protective Order and I understand and acknowledge that failure to so comply
could expose me to sanctions in the nature of contempt. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this Stipulated Protective Order
to any person or entity except in strict compliance with the provisions of this Order.

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

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

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____