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17 JANE ROE #1, et al.

18 **UNITED STATES DISTRICT COURT**
19 **EASTERN DISTRICT OF CALIFORNIA**

20 JANE ROE #1; JANE ROE #2; JOHN)
21 DOE #1; JOHN DOE #2; JOHN DOE) Case No.: 1:19-CV-00270-DAD-
22 #3; JOHN DOE #4; JOHN DOE #5;) BAM
23 JOHN DOE #6; SECOND)
24 AMENDMENT FOUNDATION, INC.,) STIPULATED PROTECTIVE
25) ORDER

26 Plaintiffs,)

27 vs.)

28 UNITED STATES OF AMERICA;)
UNITED STATES DEPARTMENT OF)
JUSTICE; FEDERAL BUREAU OF)
INVESTIGATION; BUREAU OF)
ALCOHOL, TOBACCO, FIREARMS)

1 AND EXPLOSIVES; WILLIAM P.)
2 BARR (U.S. Attorney General),)
3 CHRISTOPHER A. WRAY (Director,)
4 Federal Bureau of Investigation);)
5 REGINA LOMBARDO (Acting Deputy)
6 Director, Bureau of Alcohol, Tobacco,)
7 Firearms and Explosives); XAVIER)
8 BECERRA (California Attorney)
9 General),)
10)
11 Defendants.)
12)

13 **STIPULATION AND ORDER¹**

14 **1. Purposes And Limitations**

15 Disclosure and discovery activity in this action are likely to involve
16 production of confidential or private information for which special protection from
17 public disclosure and from use for any purpose other than prosecuting this litigation
18 may be warranted. Accordingly, the parties hereby stipulate to and petition the court
19 to enter the following Stipulated Protective Order. The parties acknowledge that this
20 Order does not confer blanket protections on all disclosures or responses to
21 discovery and that the protection it affords from public disclosure and use extends
22 only to the limited information or items that are entitled to confidential treatment
23 under the applicable legal principles. The parties further acknowledge, as set forth in
24 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
25 file confidential information under seal; this Court’s Civil Local Rules 140, 141, and

26 ¹ A separate unopposed motion requesting an order from the court that the Plaintiffs
27 be permitted to proceed by way of pseudonyms in this action has been filed
28 concurrently with this stipulation and request for orders.

1 141.1 set forth the procedures that must be followed and the standards that will be
2 applied when a party seeks permission from the court to file material under seal.

3 **2. Definitions**

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it
7 is generated, stored or maintained) or tangible things that qualify for protection
8 under Federal Rule of Civil Procedure 26(c).

9 2.3 Counsel (without qualifier): Counsel of Record, including members of their
10 offices (as well as their support staff).

11 2.4 Designating Party: a Party or Non-Party that designates information or items
12 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

13 2.5 Disclosure or Discovery Material: all items or information, regardless of the
14 medium or manner in which it is generated, stored, or maintained (including, among
15 other things, testimony, transcripts, and tangible things), that are produced or
16 generated in disclosures or responses to discovery in this matter.

17 2.6 Expert: a person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as
19 an expert witness or as a consultant in this action.

20 2.7 Non-Party: any natural person, partnership, corporation, association, or other
21 legal entity not named as a Party to this action.

22 2.8 Party: any party to this action, including all of its officers, directors,
23 employees, consultants, retained experts, and Counsel of Record (and their support
24 staffs).

25 2.9 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
26 Material in this action.

27 2.10 Professional Vendors: persons or entities that provide litigation support
28 services (e.g., photocopying, videotaping, translating, preparing exhibits or

1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.11 Protected Material: any Disclosure or Discovery Material that is designated
4 as “CONFIDENTIAL.”

5 2.12 Receiving Party: a Party that receives Disclosure or Discovery Material from
6 a Producing Party.

7 3. **Scope**

8 The protections conferred by this Stipulation and Order cover not only
9 Protected Material (as defined above), but also (1) any information copied or
10 extracted from Protected Material; (2) all copies, excerpts, summaries, or
11 compilations of Protected Material; and (3) any testimony, conversations, or
12 presentations by Parties or their Counsel that might reveal Protected Material.

13 However, the protections conferred by this Stipulation and Order do not cover
14 the following information:

15 (a) any information that is in the public domain at the time of disclosure to a
16 Receiving Party or becomes part of the public domain after its disclosure to a
17 Receiving Party as a result of publication not involving a violation of this
18 Order, including becoming part of the public record through trial or
19 otherwise; and

20 (b) any information known to the Receiving Party prior to the disclosure or
21 obtained by the Receiving Party after the disclosure from a source who
22 obtained the information lawfully and under no obligation of confidentiality
23 to the Designating Party. Any use of Protected Material at trial shall be
24 governed by a separate agreement or order.

25 4. **Duration**

26 Even after final disposition of this litigation, the confidentiality obligations
27 imposed by this Order shall remain in effect until a Designating Party agrees
28 otherwise in writing or a court order otherwise directs. Final disposition shall be

1 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
2 or without prejudice; and (2) final judgment herein after the completion and
3 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
4 including the time limits for filing any motions or applications for extension of time
5 pursuant to applicable law.

6 **5. Designating Protected Material**

7 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
8 Party or Non-Party that designates information or items for protection under this
9 Order must take care to limit any such designation to specific material that qualifies
10 under the appropriate standards. The Designating Party must designate for
11 protection only those parts of material, documents, items, or oral or written
12 communications that qualify – so that other portions of the material, documents,
13 items, or communications for which protection is not warranted are not swept
14 unjustifiably within the ambit of this Order.

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

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

23 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
24 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
25 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
26 under this Order must be clearly so designated before the material is disclosed or
27 produced.

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1 Designation in conformity with this Order requires:

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

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

22 (b) for testimony given in deposition or in other pretrial or trial proceedings,
23 that the Designating Party identify on the record, before the close of the
24 deposition, hearing, or other proceeding, all protected testimony.

25 (c) for information produced in some form other than documentary and for
26 any other tangible items, that the Producing Party affix in a prominent place
27 on the exterior of the container or containers in which the information or item
28 is stored the legend “CONFIDENTIAL.” If only a portion or portions of the

1 information or item warrant protection, the Producing Party, to the extent
2 practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
4 to designate qualified information or items does not, standing alone, waive the
5 Designating Party's right to secure protection under this Order for such material.
6 Upon timely correction of a designation, the Receiving Party must make reasonable
7 efforts to assure that the material is treated in accordance with the provisions of this
8 Order.

9 **6. Challenging Confidentiality Designations**

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
11 of confidentiality at any time. Unless a prompt challenge to a Designating Party's
12 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
13 unnecessary economic burdens, or a significant disruption or delay of the litigation,
14 a Party does not waive its right to challenge a confidentiality designation by electing
15 not to mount a challenge promptly after the original designation is disclosed.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
17 process by providing written notice of each designation it is challenging and
18 describing the basis for each challenge. To avoid ambiguity as to whether a
19 challenge has been made, the written notice must recite that the challenge to
20 confidentiality is being made in accordance with this specific paragraph of the
21 Protective Order. The parties shall attempt to resolve each challenge in good faith
22 and must begin the process by conferring directly (in voice to voice dialogue; other
23 forms of communication are not sufficient) within 14 days of the date of service of
24 notice. In conferring, the Challenging Party must explain the basis for its belief that
25 the confidentiality designation was not proper and must give the Designating Party
26 an opportunity to review the designated material, to reconsider the circumstances,
27 and, if no change in designation is offered, to explain the basis for the chosen
28 designation. A Challenging Party may proceed to the next stage of the challenge

1 process only if it has engaged in this meet and confer process first or establishes that
2 the Designating Party is unwilling to participate in the meet and confer process in a
3 timely manner.

4 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge without court
5 intervention, the Designating Party shall file and serve a motion to retain
6 confidentiality within 21 days of the initial notice of challenge or within 14 days of
7 the parties agreeing that the meet and confer process will not resolve their dispute,
8 whichever is earlier. Each such motion must be accompanied by a competent
9 declaration affirming that the movant has complied with the meet and confer
10 requirements imposed in the preceding paragraph. Failure by the Designating Party
11 to make such a motion including the required declaration within 21 days (or 14
12 days, if applicable) shall automatically waive the confidentiality designation for
13 each challenged designation.

14 In addition, the Challenging Party may file a motion challenging a
15 confidentiality designation at any time if there is good cause for doing so, including
16 a challenge to the designation of a deposition transcript or any portions thereof. Any
17 motion brought pursuant to this provision must be accompanied by a competent
18 declaration affirming that the movant has complied with the meet and confer
19 requirements imposed by the preceding paragraph.

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

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1 **7. Access To And Use Of Protected Material**

2 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 case only for prosecuting, defending, or attempting to settle this litigation. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the litigation has been terminated, a
7 Receiving Party must comply with the provisions of section 13 below (FINAL
8 DISPOSITION).

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

12 7.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise
13 ordered by the court or permitted in writing by the Designating Party, a Receiving
14 Party may disclose any information or item designated “CONFIDENTIAL” only to:

- 15 (a) the Receiving Party’s Counsel of Record in this action, as well as
16 employees of said Counsel of Record to whom it is reasonably necessary to
17 disclose the information for this litigation;
- 18 (b) Experts (as defined in this Order) of the Receiving Party to whom
19 disclosure is reasonably necessary for this litigation and who have signed the
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 21 (c) the court and its personnel;
- 22 (d) court reporters and their staff, professional jury or trial consultants, mock
23 jurors, and Professional Vendors to whom disclosure is reasonably necessary
24 for this litigation and who have signed the “Acknowledgment and Agreement
25 to Be Bound” (Exhibit A);
- 26 (e) during their depositions, witnesses in the action to whom disclosure is
27 reasonably necessary and who have signed the “Acknowledgment and
28 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the

1 Designating Party or ordered by the court. Pages of transcribed deposition
2 testimony or exhibits to depositions that reveal Protected Material must be
3 separately bound by the court reporter and may not be disclosed to anyone
4 except as permitted under this Stipulated Protective Order.

5 (f) the author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information.

7 **8. Protected Material Subpoenaed Or Ordered Produced In Other**
8 **Litigation**

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

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

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

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

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

1 9. **A Non-Party’s Protected Material Sought To Be Produced In This**
2 **Litigation**

3 (a) The terms of this Order are applicable to information produced by a Non-
4 Party in this action and designated as “CONFIDENTIAL.” Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions
7 should be construed as prohibiting a Non-Party from seeking additional
8 protections.

9 (b) In the event that a Party is required, by a valid discovery request, to
10 produce a Non-Party’s confidential information in its possession, and the
11 Party is subject to an agreement with the Non-Party not to produce the Non-
12 Party’s confidential information, then the Party shall:

- 13 (1) promptly notify in writing the Requesting Party and the Non-Party
14 that some or all of the information requested is subject to a
15 confidentiality agreement with a Non-Party;
16 (2) promptly provide the Non-Party with a copy of the Stipulated
17 Protective Order in this litigation, the relevant discovery request(s), and
18 a reasonably specific description of the information requested; and
19 (3) make the information requested available for inspection by the
20 Non-Party.

21 (c) If the Non-Party fails to object or seek a protective order from this court
22 within 14 days of receiving the notice and accompanying information, the
23 Receiving Party may produce the Non-Party’s confidential information
24 responsive to the discovery request. If the Non-Party timely seeks a protective
25 order, the Receiving Party shall not produce any information in its possession
26 or control that is subject to the confidentiality agreement with the Non-Party
27 before a determination by the court. Absent a court order to the contrary, the
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1 Non-Party shall bear the burden and expense of seeking protection in this
2 court of its Protected Material.

3 **10. Unauthorized Disclosure Of Protected Material**

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

12 **11. Inadvertent Production Of Privileged Or Otherwise Protected Material**

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

23 **12. Miscellaneous**

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
25 to seek its modification by the court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
27 Order no Party waives any right it otherwise would have to object to disclosing or
28 producing any information or item on any ground not addressed in this Stipulated

1 Protective Order. Similarly, no Party waives any right to object on any ground to use
2 in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. Without written permission from the Designating
4 Party or a court order secured after appropriate notice to all interested persons, a
5 Party may not file in the public record in this action any Protected Material. A Party
6 that seeks to file under seal any Protected Material must comply with Civil Local
7 Rules 140, 141 and 141.1. Protected Material may only be filed under seal pursuant
8 to a court order authorizing the sealing of the specific Protected Material at issue.
9 Pursuant to Civil Local Rule 140, 141 and 141.1, a sealing order will issue only
10 upon a request establishing that the Protected Material at issue is privileged,
11 protectable as a trade secret, or otherwise entitled to protection under the law. If a
12 Receiving Party's request to file Protected Material under seal pursuant to Civil
13 Local Rules is denied by the court, then the Receiving Party may file the
14 information in the public record pursuant to Local Rules unless otherwise instructed
15 by the court.

16 **13. Final Disposition**

17 Within 60 days after the final disposition of this action, as defined in
18 paragraph 4, each Receiving Party must return all Protected Material to the
19 Producing Party or destroy such material. As used in this subdivision, "all Protected
20 Material" includes all copies, abstracts, compilations, summaries, and any other
21 format reproducing or capturing any of the Protected Material. Whether the
22 Protected Material is returned or destroyed, the Receiving Party must submit a
23 written certification to the Producing Party (and, if not the same person or entity, to
24 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
25 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
26 that the Receiving Party has not retained any copies, abstracts, compilations,
27 summaries or any other format reproducing or capturing any of the Protected
28 Material.

1 Notwithstanding this provision, Counsel are entitled to retain an archival copy
2 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
3 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
4 work product, and consultant and expert work product, even if such materials
5 contain Protected Material. Any such archival copies that contain or constitute
6 Protected Material remain subject to this Protective Order as set forth in Section 4
7 (DURATION).

8 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

9 Date: September 30, 2019

10 /s/ Donald Kilmer
11 Attorney for Plaintiffs

/s/ Nelson Richards
Attorney for Defendant Becerra
(Approved Sept. 30, 2019 | LR 131(e))

12
13 /s/ James Bickford
14 Attorney for Defendant United States, et al.
15 (Approved Sept. 30, 2019 | LR 131(e))
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court for the
6 Eastern District of California on [date] in the case of *Jane Roe, et al., v. United States, et al.*, Case
7 No.: 1:19-CV-00270-DAD-BAM in the United States District Court for the Eastern District of
8 California.

9 I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
10 and I understand and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt.

12 I solemnly promise that I will not disclose in any manner any information or item that is
13 subject to this Stipulated Protective Order to any person or entity except in strict compliance with
14 the provisions of this Order.

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

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

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____

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ORDER

The Court adopts the stipulated protective order submitted by the parties. The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents subject to this protective order to be filed under seal must be accompanied by a written request which complies with Local Rule 141 prior to sealing. The party making a request to file documents under seal shall be required to show good cause for documents attached to a non-dispositive motion or compelling reasons for documents attached to a dispositive motion. *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-78 (9th Cir. 2009). Within five (5) days of any approved document filed under seal, the party shall file a redacted copy of the sealed document. The redactions shall be narrowly tailored to protect only the information that is confidential or was deemed confidential. Additionally, the parties shall consider resolving any dispute arising under this protective order according to the Court's informal discovery dispute procedures.

IT IS SO ORDERED.

Dated: October 4, 2019

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE