

1 IVO LABAR (203492)
 2 *labar@kerrwagstaff.com*
 3 **KERR & WAGSTAFFE LLP**
 4 100 Spear Street, Suite 1800
 5 San Francisco, CA 94105-1528
 6 Telephone: (415) 371-8500
 7 Fax: (415) 371-0500
 8 Attorneys for Plaintiff

9 JOHN CLUNE (*Pro Hac Vice*)
 10 *john@victimjustice.com*
 11 **VICTIM JUSTICE INITIATIVE, P.C.**
 12 507 Canyon Blvd, Suite 203
 13 Boulder, CO 80302
 14 Telephone (303) 413-8300
 15 Fax: (303) 413-8301
 16 Attorneys for Plaintiff

17 JANINE S. SIMERLY (102361)
 18 *jss@millerlawgroup.com*
 19 LISA BARNETT SWEEN (191155)
 20 *lbs@millerlawgroup.com*
 21 **MILLER LAW GROUP**
 22 A Professional Corporation
 23 111 Sutter Street, Suite 700
 24 San Francisco, CA 94104
 25 Tel. (415) 464-4300
 26 Fax (415) 464-4336
 27 Attorneys for Defendant
 28 UNIVERSITY OF THE PACIFIC

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

JANE DOE,

 Plaintiff,

 vs.

 UNIVERSITY OF THE PACIFIC,

 Defendant.

Case No. 2:09-CV-00764-FCD-KJM
**CONFIDENTIALITY STIPULATION
 AND PROTECTIVE ORDER**

**(As approved by the court with
 annotations in underline/strikeout
 format)**

Complaint filed: March 18, 2009

1 WHEREAS, on March 18, 2009, Plaintiff Jane Doe (“Plaintiff”) commenced an action in
2 the United States District Court, Eastern District of California entitled *Jane Doe v. The*
3 *University of the Pacific (Case No. 2:09-CV-00764-FCD-KJM)* (the “Complaint”);

4 WHEREAS, the discovery, pre-trial and trial phases of this action will involve the
5 disclosure of information that is sensitive, contains confidential information about Defendant
6 University of the Pacific (“Pacific” or “Defendant”), and implicates the privacy rights of
7 individuals other than Plaintiff, including Pacific’s current and/or former employees, and/or
8 current or former students, which may be protected from disclosure pursuant to the Family
9 Education Rights and Privacy Act (“FERPA”).

10 WHEREAS, the parties have exchanged initial disclosures pursuant to Federal Rule of
11 Civil Procedure, 26, which references confidential information, as well as private information
12 regarding Pacific’s current and former students and employees.

13 IT IS THEREFORE STIPULATED that:

14 The following definitions and provisions shall apply to and govern this Stipulation and
15 Protective Order:

16 1. Documents and other discovery information that will be produced by the parties
17 pursuant to this Stipulated Protective Order (“Order” or “Protective Order”) may be claimed by
18 the parties to be of a private or confidential nature. The purpose of this Order is to protect the
19 confidentiality of these documents and information.

20 2. The parties may, in good faith, designate as “Confidential” documents and other
21 information, including but not limited to:

- 22 (a) Documents and/or information reflecting private or confidential data
23 about specific employees, students, former employees or former students
24 of Pacific, including, but not limited to, documents and/or information
25 contained in Pacific’s investigation files, internal judicial review files,
26 Department of Safety files, personal files, personnel files, or in any other
27 files or records;

- 1 (b) Documents and/or information not known to the general public, including,
2 but not limited to, documents and/or information concerning Pacific's
3 policies, practices and/or procedures or other administrative matters;
- 4 (c) Documents and/or information that any of the parties believe to constitute
5 or contain confidential or personal information that warrants confidential
6 treatment.

7 3. By designating a document, thing, material, testimony or other information
8 derived therefrom as "confidential," under the terms of this order, the party making the
9 designation is certifying to the court that there is a good faith basis both in law and in fact for the
10 designation within the meaning of Federal Rule of Civil Procedure 26(g). Confidential
11 documents shall be so designated by stamping copies of the document produced to a party with
12 the legend "CONFIDENTIAL." Stamping the legend "CONFIDENTIAL" on the cover of any
13 multipage document shall designate all pages of the document as confidential, unless otherwise
14 indicated by the producing party.

15 4. Testimony taken at a deposition, conference, hearing or trial may be designated as
16 confidential by making a statement to that effect on the record at the deposition or other
17 proceeding. Arrangements shall be made with the court reporter taking and transcribing such
18 proceeding to separately bind such portions of the transcript containing information designated
19 as confidential, and to label such portions appropriately.

20 5. Material designated as confidential under this Order, the information contained
21 therein, and any summaries, copies, abstracts, or other documents derived in whole or in part
22 from material designated as confidential (hereinafter "Confidential Material") shall be used only
23 for the purpose of the prosecution, defense, or settlement of this action, and for no other purpose.

24 6. Confidential Material produced pursuant to this Order may be disclosed or made
25 available only to the Court, to counsel for a party (including the paralegal, clerical, and
26 secretarial staff employed by such counsel), and to the "qualified persons" designated below:

- 27 (a) a party, or an officer, director, or employee of a party deemed necessary by
28 counsel to aid in the prosecution, defense, or settlement of this action;

- 1 (b) experts or consultants (together with their clerical staff) retained by such counsel
- 2 to assist in the prosecution, defense, or settlement of this action;
- 3 (c) court reporter(s) employed in this action;
- 4 (d) a witness at any deposition or other proceeding in this action; and
- 5 (e) any other person as to whom the parties in writing agree.

6 Prior to receiving any Confidential Material, each “qualified person” shall be
7 provided with a copy of this Order and shall execute a nondisclosure agreement in the form of
8 Attachment A, a copy of which shall be provided forthwith to counsel for each other party and
9 for the parties.

10 7. Depositions shall be taken only in the presence of qualified persons.

11 8. The parties may further designate certain discovery material or testimony of a
12 highly confidential and/or proprietary nature as “CONFIDENTIAL—ATTORNEY’S EYES
13 ONLY” (hereinafter “Attorney’s Eyes Only Material”), in the manner described in paragraphs 2
14 and 3 above. Attorney’s Eyes Only Material, and the information contained therein, shall be
15 disclosed only to the Court, to counsel for the parties (including the paralegal, clerical, and
16 secretarial staff employed by such counsel), and to the “qualified persons” listed in
17 subparagraphs 5(b) through (e) above, but shall not be disclosed to a party, or to an officer,
18 director or employee of a party, unless otherwise agreed or ordered. If disclosure of Attorney’s
19 Eyes Only Material is made pursuant to this paragraph, all other provisions in this order with
20 respect to confidentiality shall also apply.

21 9. Nothing herein shall impose any restrictions on the use or disclosure by a party of
22 material obtained by such party independent of discovery in this action, whether or not such
23 material is also obtained through discovery in this action, or from disclosing its own Confidential
24 Material as it deems appropriate.

25 10. If Confidential Material, including any portion of a deposition transcript
26 designated as Confidential or Attorney’s Eyes Only, is to be included in any papers to be filed in
27 Court, the party intending to file such papers shall be labeled “Confidential—Subject to Court
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1 ~~Order” and filed~~ seek to file them under seal ~~until further order of this Court~~ as provided by
2 Local Rules 39-140 and 39-141.

3 11. In the event that any Confidential Material is used in any court proceeding in this
4 action, and to the extent allowable by law, it shall not lose its confidential status through such
5 use, and the party using such shall take all reasonable steps to maintain its confidentiality during
6 such use.

7 12. This Order shall be without prejudice to the right of the parties (i) to bring before
8 the Court at any time the question of whether any particular document or information is
9 confidential or whether its use should be restricted or (ii) to present a motion to the Court under
10 FRCP 26(c) for a separate protective order as to any particular document or information,
11 including restrictions differing from those as specified herein. This Order shall not be deemed to
12 prejudice the parties in any way in any future application for modification of this Order.

13 13. This Order is entered solely for the purpose of facilitating the exchange of
14 documents and information between the parties to this action without involving the Court
15 unnecessarily in the process. Nothing in this Order nor the production of any information or
16 document under the terms of this Order nor any proceedings pursuant to this Order shall be
17 deemed to have the effect of an admission or waiver by either party or of altering the
18 confidentiality or nonconfidentiality of any such document or information or altering any
19 existing obligation of any party or the absence thereof.

20 14. This Order shall survive the final termination of this action, to the extent that the
21 information contained in Confidential Material is not or does not become known to the public,
22 and the Court shall retain jurisdiction to resolve any dispute concerning the use of information
23 disclosed hereunder. Upon termination of this case, counsel for the parties shall assemble and
24 return to each other all documents, material and deposition transcripts designated as confidential
25 and all copies of same, or shall certify the destruction thereof.

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SO STIPULATED.

DATED: September __, 2009

**VICTIM JUSTICE INITIATIVE, P.C.
KERR & WAGSTAFFE, LLP**

IVO LABAR
Attorneys for Plaintiff

DATED: September __, 2009

MILLER LAW GROUP

JANINE S. SIMERLY
Attorneys for Defendant

APPROVED AND SO ORDERED:

DATED: OCTOBER 6, 2009.



U.S. MAGISTRATE JUDGE

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EXHIBIT A
ACKNOWLEDGEMENT OF UNDERSTANDING AND AGREEMENT
REGARDING DISCOVERY OF CONFIDENTIAL INFORMATION

The undersigned hereby acknowledges that he/she has read the Protective Order regarding confidentiality entered in this civil action entitled *Jane Doe. V. University of the Pacific* filed in the United States District Court, Eastern District of California on March 18, 2009 that he/she understands the terms thereof, that he/she has been designated by _____ as a “Qualified Person” thereunder, and that he/she individually and on behalf of _____, and on behalf of the party who designated him/her as a “Qualified Person”, agrees to be bound by such Protective Order, and that he/she acknowledges the jurisdiction of the Court and agrees to be bound by the jurisdiction of the Court.

DATED: _____, 200__.

(signature)

(print name)