

1 ELIOT D. WILLIAMS (SBN 290780)
 eliot.williams@bakerbotts.com
 2 JASON R. GERMAN (SBN 280837)
 jason.german@bakerbotts.com
 3 SEAN K. APPLE (SBN 305692)
 sean.apple@bakerbotts.com
 4 BAKER BOTTS L.L.P.
 1001 Page Mill Road, Suite 200
 5 Palo Alto, California 94304
 Telephone: +1-650-739-7500
 6 Facsimile: +1-650-739-7699

7 *Attorneys for Thomas John Heilman*

8 **UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA**
 10 **SACRAMENTO DIVISION**

11 THOMAS JOHN HEILMAN,
 12 Plaintiff,
 13 v.
 14 C. CHERNISS, et al.,
 15 Defendants.

Case No. 2:11-cv-00042-JAM-EFB
**STIPULATED [~~PROPOSED~~]
 PROTECTIVE ORDER**

18 1. **PURPOSES AND LIMITATIONS**

19 Disclosure and discovery activity in this action are likely to involve production of
 20 information that the producing entity or individual considers confidential, proprietary, or private
 21 and for which protection from public disclosure and from use for any purpose other than
 22 prosecuting this litigation may be warranted. There is a need to protect this type of information,
 23 because if it were made public, it could be abused if its use were not limited to this lawsuit. In
 24 some cases, the information subject to this Order is also subject to state or local laws that limit the
 25 disclosure of such information. The parties therefore seek this Order in order to streamline and
 26 harmonize the production and treatment of confidential information produced by both parties and
 27 by non-parties in this case.

28 Accordingly, the parties hereby stipulate to and petition the court to enter the following

1 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
2 protections on all disclosures or responses to discovery and that the protection it affords from
3 public disclosure and use extends only to the limited information or items that are entitled to
4 confidential treatment under the applicable legal principles. The parties further acknowledge, as
5 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file
6 confidential information under seal; Local Rule 141 sets forth the procedures that must be
7 followed and the standards that will be applied when a party seeks permission from the court to
8 file material under seal.

9 **2. DEFINITIONS**

10 **2.1. Challenging Party:** a Party or Non-Party that challenges the designation of
11 information or items under this Order.

12 **2.2. “CONFIDENTIAL” Information or Items:** information (regardless of how it is
13 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
14 of Civil Procedure 26(c).

15 **2.3. Counsel:** attorneys of a party to this action (as well as their support staff).

16 **2.4. Designating Party:** a Party or Non-Party that designates information or items that it
17 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

18 **2.5. Disclosure or Discovery Material:** all items or information, regardless of the
19 medium or manner in which it is generated, stored, or maintained (including, among other things,
20 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
21 responses to discovery in this matter.

22 **2.6. Expert:** a person with specialized knowledge or experience in a matter pertinent to
23 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
24 consultant in this action.

25 **2.7. Non-Party:** any natural person, partnership, corporation, association, or other legal
26 entity not named as a Party to this action.

27 **2.8. Party:** any party to this action, including all of its officers, directors, employees,
28 consultants, retained experts, and counsel (and their counsel’s support staffs).

1 **2.9. Producing Party**: a Party or Non-Party that produces Disclosure or Discovery
2 Material in this action.

3 **2.10. Professional Vendors**: persons or entities that provide litigation support services
4 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
5 organizing, storing, or retrieving data in any form or medium) and their employees and
6 subcontractors.

7 **2.11. Protected Material**: any Disclosure or Discovery Material that is designated as
8 “CONFIDENTIAL.”

9 **2.12. Receiving Party**: a Party or Non-Party that receives Disclosure or Discovery
10 Material from a Producing Party.

11 **3. SCOPE**

12 The protections conferred by this Stipulation and Order cover not only Protected Material
13 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
14 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
15 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
16 However, the protections conferred by this Stipulation and Order do not cover the following
17 information: (a) any information that is in the public domain at the time of disclosure to a
18 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
19 result of publication not involving a violation of this Order, including becoming part of the public
20 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
21 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
22 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
23 use of Protected Material at trial shall be governed by a separate agreement or order.

24 **4. DURATION**

25 Even after final disposition of this litigation, the confidentiality obligations imposed by this
26 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
27 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
28 and defenses in this action, with or without prejudice; and (2) final judgment herein after the

1 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
2 including the time limits for filing any motions or applications for extension of time pursuant to
3 applicable law.

4 5. **DESIGNATING PROTECTED MATERIAL**

5 **5.1. Exercise of Restraint and Care in Designating Material for Protection.** Each Party
6 or Non-Party that designates information or items for protection under this Order must take care to
7 limit any such designation to specific material that qualifies under the appropriate standards. The
8 Designating Party must designate for protection only those parts of material, documents, items, or
9 oral or written communications that qualify—so that other portions of the material, documents,
10 items, or communications for which protection is not warranted are not swept unjustifiably within
11 the ambit of this Order.

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

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

19 **5.2. Manner and Timing of Designations.** Except as otherwise provided in this Order
20 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
21 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
22 designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

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

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

11 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
12 the Designating Party identify on the record, before the close of the deposition, hearing, or other
13 proceeding, all protected testimony and specify the level of protection being asserted. When it is
14 impractical to identify separately each portion of testimony that is entitled to protection and it
15 appears that substantial portions of the testimony may qualify for protection, the Designating Party
16 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
17 to have up to 21 days to identify the specific portions of the testimony as to which protection is
18 sought and to specify the level of protection being asserted. Only those portions of the testimony
19 that are appropriately designated for protection within the 21 days shall be covered by the
20 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
21 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
22 transcript shall be treated as “CONFIDENTIAL.”

23 (c) for information produced in some form other than documentary and for any
24 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
25 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”
26 If only a portion or portions of the information or item warrant protection, the Producing Party, to
27 the extent practicable, shall identify the protected portion(s) and specify the level of protection
28 being asserted.

1 **5.3. Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the Designating Party's
3 right to secure protection under this Order for such material. Upon timely correction of a
4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
5 in accordance with the provisions of this Order.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 **6.1. Timing of Challenges.** Any Party or Non-Party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 **6.2. Meet and Confer.** The Challenging Party shall initiate the dispute resolution
14 process by providing written notice of each designation it is challenging and describing the basis
15 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
16 notice must recite that the challenge to confidentiality is being made in accordance with this
17 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
18 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
19 forms of communication are not sufficient) within 14 days of the date of service of notice. In
20 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
21 designation was not proper and must give the Designating Party an opportunity to review the
22 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
23 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of
24 the challenge process only if it has engaged in this meet and confer process first or establishes that
25 the Designating Party is unwilling to participate in the meet and confer process in a timely
26 manner.

27 **6.3. Judicial Intervention.** If the Parties cannot resolve a challenge without court
28 intervention, the Designating Party shall file and serve a motion to retain confidentiality under

1 Local Rule 230 (and in compliance with Local Rule 141, if applicable) within 21 days of the
2 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
3 process will not resolve their dispute, whichever is earlier. Each such motion must be
4 accompanied by a competent declaration affirming that the movant has complied with the meet
5 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
6 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
7 shall automatically waive the confidentiality designation for each challenged designation. In
8 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
9 time if there is good cause for doing so, including a challenge to the designation of a deposition
10 transcript or any portions thereof. Any motion brought pursuant to this provision must be
11 accompanied by a competent declaration affirming that the movant has complied with the meet
12 and confer requirements imposed by the preceding paragraph.

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

20 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

21 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or
22 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
23 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
24 the categories of persons and under the conditions described in this Order. When the litigation has
25 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
26 DISPOSITION).

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

1 **7.2.** Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
2 by the court, permitted in writing by the Designating Party, or permitted by one of the exemptions
3 in (a)-(e) of this section, a Receiving Party may not review or receive information or items
4 designated “CONFIDENTIAL.” Information or items designated “CONFIDENTIAL” may only
5 be received by, reviewed by, or disclosed to:

6 (a) the Receiving Party’s counsel;

7 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
8 reasonably necessary for this litigation and who have signed the “Acknowledgment and
9 Agreement to Be Bound” (Exhibit A);

10 (c) the court and its personnel;

11 (d) court reporters and their staff, professional jury or trial consultants, mock
12 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
13 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

14 (e) the author or recipient of a document containing the information or a custodian
15 or other person who otherwise possessed or knew the information.

16 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
17 **OTHER LITIGATION**

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

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

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

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

1 If the Designating Party timely seeks a protective order, the Party served with the subpoena
2 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
3 before a determination by the court from which the subpoena or order issued, unless the Party has
4 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
5 expense of seeking protection in that court of its confidential material—and nothing in these
6 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
7 disobey a lawful directive from another court.

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

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

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

18 (1) promptly notify in writing the Requesting Party and the Non-Party that
19 some or all of the information requested is subject to a confidentiality agreement with a
20 Non-Party;

21 (2) promptly provide the Non-Party with a copy of the Stipulated
22 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
23 specific description of the information requested; and

24 (3) make the information requested available for inspection by the Non-
25 Party.

26 (c) If the Non-Party fails to object or seek a protective order from this court within
27 7 days of receiving the notice and accompanying information, the Receiving Party may produce
28 the Non-Party’s confidential information responsive to the discovery request. If the Non-Party

1 timely seeks a protective order, the Receiving Party shall not produce any information in its
2 possession or control that is subject to the confidentiality agreement with the Non-Party before a
3 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
4 burden and expense of seeking protection in this court of its Protected Material.

5 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

13 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
14 **PROTECTED MATERIAL**

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

24 12. **MISCELLANEOUS**

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

27 **12.2. Right to Assert Other Objections.** By stipulating to the entry of this Protective
28 Order no Party waives any right it otherwise would have to object to disclosing or producing any

1 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
2 Party waives any right to object on any ground to use in evidence of any of the material covered
3 by this Protective Order.

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

14 **13. FINAL DISPOSITION**

15 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
16 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
17 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
18 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
19 the Protected Material is returned or destroyed, the Receiving Party must submit a written
20 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
21 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected
22 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained
23 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any
24 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
25 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
26 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
27 consultant and expert work product, even if such materials contain Protected Material. Any such
28 archival copies that contain or constitute Protected Material remain subject to this Protective Order

1 as set forth in Section 4 (DURATION).

2

3

4

5

6

7

8 DATED: 24 April 2018

Respectfully submitted,

9

/s/ Jason R. German

10

ELIOT D. WILLIAMS (SBN 290780)
eliot.williams@bakerbotts.com
JASON R. GERMAN (SBN 280837)
jason.german@bakerbotts.com
SEAN K. APPLE (SBN 305692)
sean.apple@bakerbotts.com

11

12

13

BAKER BOTTS L.L.P.
1001 Page Mill Road, Suite 200
Palo Alto, California 94304
Telephone: 1-650-739-7500
Facsimile: 1-650-739-7699
Attorneys for Plaintiff
THOMAS JOHN HEILMAN

14

15

16

17

/s/ Tyler H. Onitsuka

18

TYLER H. ONITSUKA (SBN 267307)
Tyler.Onitsuka@doj.ca.gov
Office of the Attorney General
1300 I Street
Sacramento, CA 95814
Telephone: 1-916-210-7557
Facsimile: 1-916-324-5205
Attorneys for Defendants
CHRISTOPHER CHERNISS
LARRY LESANE

19

20

21

22

23

24

25

26

27

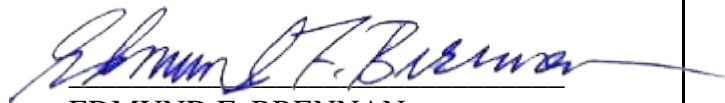
28

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

[PROPOSED] ORDER

PURSUANT TO THE STIPULATION ABOVE, IT IS SO ORDERED.

DATED: April 30, 2018.



EDMUND F. BRENNAN
United States Magistrate Judge

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
6 the Eastern District of California on _____ [date] in the case of *Heilman v. Cherniss et al.*,
7 case no. 2:11-cv-00042-JAM-EFB. I agree to comply with and to be bound by all the terms of this
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
10 not disclose in any manner any information or item that is subject to this Stipulated Protective
11 Order to any person or entity except in strict compliance with the provisions of this Order.

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

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

19
20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____

24
25 Signature: _____
26
27
28