

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA
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4 SHAKEEL AHMED,
5 Plaintiff,

6 v.

7 MICHAEL BIGGS, *et al.*,
8 Defendants.

) 2:12-CV-2131-JAM-KJN
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PROTECTIVE ORDER

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10 Upon consideration of the Joint Motion for a Privacy Act Protective Order, and
11 pursuant to 5 U.S.C. § 552a(b)(11), IT IS HEREBY ORDERED that Defendants are
12 authorized to release to the Plaintiff, his counsel, and to the Court in this case,
13 government records containing Privacy Act protected information, without
14 obtaining prior written consent of the individuals to whom the records pertain. Such
15 disclosure is subject to the following conditions:
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19 1. For purposes of this Order, the term “record” shall have the same meaning as
20 set forth in the Privacy Act, 5 U.S.C. § 552a(a)(4). This Order applies to
21 government documents or information contained in records that are subject to the
22 Privacy Act only and does not create greater or lesser rights or obligations than
23 those contained in the Privacy Act. Government document summaries, statistical
24 compilations, or other summary records that do not contain information by which to
25 identify specific individuals (whether by name, social security number, symbol or
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1 other form of personal identification), and which are not subject to the Privacy Act,
2 are not covered by this Order.
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4 2. Government records that identify specific individuals shall be marked
5 “PRODUCED SUBJECT TO PROTECTIVE ORDER” or “SUBJECT TO
6 PROTECTIVE ORDER” or contain a similar marking, and may be used only for
7 purposes of this litigation. For any government records, such as computer data,
8 whose medium makes such stamping impracticable, the diskette case and/or
9 accompanying cover letter shall be marked “PRODUCED SUBJECT TO
10 PROTECTIVE ORDER” or “SUBJECT TO PROTECTIVE ORDER” or contain a
11 similar marking. Answers to interrogatories, if any, that contain protected
12 information derived from records subject to the Privacy Act also shall be marked
13 “PRODUCED SUBJECT TO PROTECTIVE ORDER” or “SUBJECT TO
14 PROTECTIVE ORDER” or contain a similar marking, and may be used only for
15 purposes of this litigation. Except as provided herein, no person having access to
16 the records designated as subject to this Order or the information therein shall make
17 public disclosure of those records or that information without further Order of the
18 Court.
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25 3. Any government documents or information produced by Defendants that are
26 designated as subject to this Order shall be used by the Plaintiff or his
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1 representative(s) only for purposes of litigating the instant case, including any
2 subsequent appeals, and shall not be disclosed by Plaintiff or his representative(s) to
3 the public or any other person or entity for any reason other than for purposes of
4 litigating the instant case, including any subsequent appeals.
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7 4. Except as otherwise ordered by this Court, any government documents or
8 information subject to the Protective Order may be disclosed only to the following
9 persons: (a) parties and counsel for the parties in this action; (b) partners,
10 associates, secretaries, paralegal assistants, and other agents or employees of such
11 counsel to the extent reasonably necessary to render professional services in this
12 case; (c) persons retained by the parties or their counsel to assist in discovery,
13 preparation for any hearing, or to serve as expert witnesses, provided that such
14 disclosure is reasonably and in good faith calculated to aid in litigating this case; (d)
15 persons with factual knowledge relating to this case who may be called as witnesses
16 at any hearing, provided that such disclosure is reasonably and in good faith
17 calculated to aid in litigating these consolidated cases; and (e) any deponent in this
18 case during his or her deposition.
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24 5. All individuals to whom documents or information subject to this order are
25 disclosed shall be informed of and shall agree with the terms of this Order and shall
26 not otherwise disclose the documents or information subject to this Order to the
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1 public or to any person or entity, and shall acknowledge their agreement to comply
2 with the provisions of this Order by signing a copy of the attached acknowledgment
3 form. Plaintiff's counsel will retain copies of the acknowledgment forms until such
4 time as this litigation, including all appeals, is concluded. Should Plaintiff or his
5 counsel wish to disclose records or information subject to this Order to any persons
6 other than those indicated in this paragraph and paragraph 4, above, Plaintiff's
7 counsel must obtain Defendants' consent. If Defendants do not consent to
8 disclosure, then Plaintiff or his counsel may, on motion, seek modification of this
9 Order from the Court.
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14 6. Plaintiff or other third party to this Order may challenge the government's
15 Privacy Act designation of a document or information by moving the Court to have
16 the document or information made public. In addition, each party reserves the
17 right to move to modify the terms of this Protective Order at any time, and each
18 party reserves the right to oppose any motion to modify the terms of the Protective
19 Order.
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22 7. Unless the Court has previously ruled that a document or information is not
23 subject to the Privacy Act, government documents or information subject to this
24 Protective Order may be presented to the Court only under seal. Nothing in this
25 protective order affects, in any way, the admissibility of any documents, testimony
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1 or other evidence at trial, or restricts the use of information at trial. Should Plaintiff
2 seek to use Privacy Act protected documents or information in open Court or at trial,
3 orally or through documents, including as trial exhibits, or seek to file such
4 information as part of a public filing (*e.g.*, a pleading, motion, exhibit or expert
5 report), he shall give Defendants notice of the intention to use such material so that
6 Defendants have a reasonable opportunity to request that such material be filed
7 under seal in accordance with any applicable court rules and procedures.
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11 8. The protected documents and discovery responses, and all copies thereof,
12 produced in connection with this case must be destroyed by the Plaintiff or other
13 receiving party upon the conclusion of this case, including any subsequent appeals,
14 except that Plaintiff's counsel may keep for archival purposes a complete set of
15 discovery requests, correspondence, expert reports, deposition and trial transcripts,
16 and exhibits that contain confidential information. Within thirty days of the
17 conclusion of this case and any subsequent appeals, Plaintiff or Plaintiff's counsel
18 or other person receiving protected documents and discovery responses must certify
19 in writing that all other protected documents and discovery responses, and
20 additional copies thereof, have been destroyed. Within forty-five days of the
21 termination of this case, including any subsequent appeals, Plaintiff or Plaintiff's
22 counsel or other person receiving protected documents and discovery responses
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1 must also certify in writing that any documents they or their attorneys or agents have
2 created which contain Privacy Act protected information derived solely from the
3 protected documents and discovery responses have been destroyed or redacted;
4 provided, however, that no party is required to destroy or redact any document that
5 has been filed with this Court or with a court of appeals of competent jurisdiction in
6 connection with these consolidated cases.
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9 9. Neither the United States Department of Justice, nor any of its officers,
10 employees, or attorneys, shall bear any responsibility or liability for any
11 unauthorized disclosure of any documents obtained by Plaintiff's counsel under this
12 Order, or of any information contained in such documents.
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15 10. This Order does not constitute any ruling on the question of whether any
16 particular document or category of information is properly discoverable and does
17 not constitute any ruling on any potential objection to the discoverability, relevance,
18 or admissibility of any record, other than objections based on the Privacy Act.
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21 11. This Order does not apply to any information or documents other than
22 information or documents that are subject to the Privacy Act, and the terms and
23 conditions set forth herein shall not apply to the disclosure of any classified national
24 security information or any information subject to a claim of privilege or other basis
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1 of exclusion, and this Order shall not be precedent for adopting any procedure with
2 respect to the disclosure of any such other information.
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4 12. Information, material and documents that are inadvertently disclosed may be
5 retrieved by the producing party at any time and the confidential nature of the
6 information, material or documents shall be preserved upon notice of retrieval
7 pursuant to the terms of this Order, and may only be used for purposes related to this
8 action and for no other purpose.
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11 IT IS SO ORDERED this 21st day of December, 2012
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13 /s/ John A. Mendez

14 HONORABLE JOHN A. MENDEZ
15 UNITED STATES DISTRICT COURT JUDGE
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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA
3

4 SHAKEEL AHMED,) 2:12-CV-2131-JAM-KJN
5)

6 Plaintiff,)

7 v.)

**ACKNOWLEDGMENT
OF PRIVACY ACT
PROTECTIVE ORDER**

8)
9 MICHAEL BIGGS, *et al.*,)

10 Defendants.)
11)

12 I, _____, hereby acknowledge that I have read and
13 understand the Privacy Act Protective Order entered in this action. I hereby agree to
14 be bound by the terms of the Order. Specifically:
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16 1. I agree that I will use records and information protected by the Order only for
17 purposes of this litigation, including any appeals, and not for any other purpose of
18 any kind, including that I will not disclose any such records or information to the
19 public.
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22 2. I agree that I will return all records subject to this order produced by
23 Defendants to counsel for Defendants at the termination of this litigation or, when I
24 am no longer a party to or assigned or retained to work on this case, to the Plaintiff's
25 counsel who at the termination of this litigation will return such records to
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1 Defendants. I also agree to destroy or redact, or to return to Plaintiff's counsel for
2 destruction or redaction, any records created that contain information subject to this
3 Order, within thirty days after the termination of this litigation.
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5 3. I (or counsel on my behalf) will certify to Defendants that any documents
6 created that contain information subject to this Order have been destroyed within
7 forty-five days after the termination of this litigation.
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9 4. I agree that I will disclose records and information protected by the Order
10 solely to the Court (under seal), the parties to this action and their attorneys of
11 record, persons regularly in the employ of such attorneys, and any experts or
12 consultants hired for this case by the parties or their attorneys and who (except the
13 Court, Defendants' employees and Defendant's counsel) have signed an
14 acknowledgment like this one and have a need for such information to perform
15 duties specifically related to the conduct of this litigation.
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18 5. Should I wish to disclose the records which are subject to the Order to any
19 additional persons except those indicated in the Order and herein, I will first seek
20 Defendants' consent. If Defendants do not consent to the disclosure, then I may, on
21 motion, seek modification of the Order from the Court.
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25 6. I agree that any documents or information subject to the Order may not be
26 disclosed in open Court, including as or through trial exhibits or through a public
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1 filing (e.g., a pleading, motion, exhibit or expert report) without first obtaining
2 consent of the Court. I further agree that those portions of any filings that contain
3 Privacy Act information subject to this Order shall be filed under seal and may not
4 be filed publicly without leave of the Court.
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7 7. I hereby confirm that my duties under this Acknowledgment shall survive the
8 termination of this case and are binding upon me for all time.

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10 8. I hereby consent to the personal jurisdiction of the United States District
11 Court for the Eastern District of California in the above-captioned case for the
12 purpose of enforcing the aforementioned Order.
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16 _____
[signature]

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[print name]

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20 DATED: _____
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