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 INTERNATIONAL BUSINESS MACHINES  
 14 CORPORATION

15 UNITED STATES DISTRICT COURT  
 16 EASTERN DISTRICT OF CALIFORNIA  
 17

18 DAVID WARD,  
 19 Plaintiff,  
 20 vs.  
 21 INTERNATIONAL BUSINESS  
 22 MACHINES CORPORATION,  
 23 Defendant.

No. 2:16-cv-00450-KJM-DB  
**JOINT STIPULATION AND  
 PROTECTIVE ORDER**

1           WHEREAS, Plaintiff David Ward (“Plaintiff”) filed various statutory, tort, and wage  
2 claims against Defendant International Business Machines Corporation (“IBM”) arising out of  
3 Plaintiff’s termination;

4           WHEREAS, IBM disputes and denies all of Plaintiff’s claims;

5           WHEREAS, certain of the information to be produced by the parties in discovery may  
6 reveal or reflect confidential, commercially sensitive, private, or proprietary information,  
7 including but not limited to documents and information relating to IBM’s confidential human  
8 resources and internal audit process and communications, confidential internal communications  
9 between IBM employees, confidential information regarding IBM customers, confidential  
10 personnel information, and other confidential and proprietary information concerning IBM, its  
11 business, its employees, and its customers, the disclosure of which could cause harm to, or  
12 invade the privacy of, one or more of the parties herein or non-parties;

13           WHEREAS, the parties are interested in permitting discovery to proceed without the  
14 delay that may be occasioned by possible disputes regarding confidential, commercially  
15 sensitive, private, or proprietary information, and they seek to limit disclosure of such  
16 information to this proceeding; and

17           WHEREAS, the parties agree that the entry of this Joint Stipulation and Protective Order  
18 (“Protective Order”) is warranted to protect against disclosure of such documents and  
19 information pursuant to Civil Local Rule 141.1(b)(1),

20           IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto,  
21 through their respective counsel of record, as follows:

22           1.       Any and all documents, materials, testimony, or other information produced by or  
23 obtained from any of the parties hereto or from non-parties in the course of this litigation,  
24 whether given voluntarily, produced in preparation of mediation, or produced in response to or  
25 during discovery, as well as any pleading, discovery responses, briefs, or other writings which  
26 reveal, reflect, or otherwise refer to any of the documents, materials, testimony, or other  
27 information referred to above, shall be used solely for the purpose of prosecution or defense of  
28 this litigation and not for any other purpose whatsoever.

1           2.       Any party producing documents or information (“Producing Party”) may  
2 designate as “Confidential” any other information which is not generally available to the public,  
3 or which a Producing Party has maintained in confidence, or the disclosure of which a Producing  
4 Party reasonably believes is likely to or would harm the business or invade the privacy of the  
5 Producing Party, IBM employees, IBM customers, or persons or other organizations from which  
6 the information was obtained.

7           3.       The “Confidential” information identified in paragraph 2 shall collectively be  
8 called “Protected Information.” Protected Information shall be treated as confidential unless the  
9 Court orders otherwise or the Producing Party withdraws such designation.

10          4.       Protected Information designated as “Confidential” shall be marked with a  
11 CONFIDENTIAL label stamp or electronic marking. Any such label, stamp, or marking that is  
12 inadvertently omitted may be corrected by written notification to all counsel of record.  
13 Deposition testimony may be designated as “Confidential” by an appropriate statement on the  
14 record at the time such testimony is given, or may be marked as “Confidential” within sixty (60)  
15 days of receipt of the transcript by written notification to all counsel of record.

16          5.       Protected Information shall be held in strictest confidence and shall be kept in a  
17 secure location by all designated counsel in this litigation. Protected Information shall be  
18 disclosed only to those persons identified in Paragraph 6 below.

19          6.       Access to Protected Information or any information derived therefrom shall be  
20 limited to the following:

- 21           a.       The Court, its employees, court reporters, and the jury;
- 22           b.       Counsel for the respective parties and employees or other clerical  
23                assistants of said counsel who are assisting in the prosecution or defense  
24                of this litigation;
- 25           c.       Named parties, officers, directors, and employees of any of the parties  
26                who are assisting counsel in the prosecution or defense of this litigation;
- 27           d.       Any neutral person who may be selected by the parties to preside over any  
28                private mediation, settlement conference, or early neutral evaluation;

- 1 e. Third-party contractors involved in one or more aspects of copying,  
2 organizing, filing, coding, converting, storing, or retrieving data or  
3 designing programs for handling data connected with this litigation,  
4 including the performance of such duties in relation to a computerized  
5 litigation support system; and to the employees of third-party contractors  
6 performing one or more of these functions;
- 7 f. Experts and consultants (including independent experts and consultants,  
8 and employees or clerical assistants of said experts) who are employed,  
9 retained, or otherwise consulted by counsel for the purpose of analyzing  
10 data, conducting studies, or providing opinions to assist in this litigation;
- 11 g. Any person designated by the Court in the interest of justice, upon such  
12 terms as the Court may deem proper;
- 13 h. Any other individual or entity as to whom counsel for the Producing Party  
14 and counsel for the party seeking to disclose the Protected Information  
15 agree in writing;
- 16 i. Non-party witnesses assisting counsel in the prosecution or defense of this  
17 case; and
- 18 j. Any party and non-party witnesses when presented with Confidential  
19 and/or Protected Information during deposition questioning;

20 7. Prior to disclosure of Protected Information to any person identified in Paragraphs  
21 6(f), (h), and (i), such person shall agree in advance to be bound by this Protective Order by  
22 signing a copy of the Certification attached as Exhibit A. Counsel for the relevant party shall  
23 keep the original of each executed Certification.

24 8. This Protective Order shall be without prejudice to the right of a Producing Party  
25 to seek additional protection for any Protected Information.

26 9. The designation of Protected Information as “Confidential” pursuant to the  
27 Protective Order shall not be construed as a concession by the Producing Party that such  
28 information is relevant, material, or admissible as to any issue. Nothing in the Protective Order

1 shall be construed as waiving any objection to the production of evidence or to discovery  
2 requests, nor shall the Protective Order be construed to require the production of any particular  
3 testimony, documents, evidence, or other information.

4 10. In the event that a party objects to the designation or non-designation of  
5 information and/or documents as “Confidential,” that party will so notify the Producing Party in  
6 writing. The parties shall attempt to resolve such disputes on an informal basis. If agreement  
7 cannot be reached between counsel, the Producing Party shall indicate in writing the reason for  
8 the designation or non-designation. The party or parties opposing the designation or  
9 non-designation may present such dispute to the Court, by motion or otherwise. Before  
10 presenting the dispute to the Court, the parties shall take reasonable steps to exhaust their efforts  
11 to resolve the dispute(s) on an informal basis by engaging in meet-and-confer discussions with  
12 exchange of written points and authorities, and giving the Producing Party the opportunity to  
13 modify or otherwise cure the designation or non-designation. In any judicial resolution of such  
14 matter, the burden of establishing confidentiality shall be on the party who made the claim of  
15 confidentiality. The prevailing party shall be entitled to attorneys’ fees and costs.

16 11. Inadvertent production of any document or other information that a party to this  
17 action or non-party witness believes should be designated as “Confidential” during discovery, or  
18 otherwise, may be retroactively designated by written notice designating each document by  
19 Bates number or other identifying information and shall be treated as so indicated from the date  
20 written notice of the designation is received.

21 12. If a Producing Party inadvertently provides any information subject to a claim of  
22 attorney-client privilege, attorney work product doctrine, or other privilege, the Producing Party  
23 may, promptly after discovering such inadvertent disclosure, inform the receiving party or parties  
24 of the privileged nature of the disclosed information, and the receiving party or parties shall treat  
25 the disclosed information as “Confidential” under the Protective Order. The receiving party or  
26 parties shall destroy the original and all copies of the assertedly privileged documents (and  
27 destroy all summaries of same), within five (5) business days of receipt of the written notice  
28 from the Producing Party, and provide the Producing Party with a written certification of the

1 destruction within the following two (2) business days. To the extent the receiving party or  
2 parties have already disclosed this information, such parties shall promptly notify the Producing  
3 Party as to the specific recipients of such information and shall take all reasonable steps to  
4 remove such information from said recipients. If a party or counsel for a party receives a  
5 document or other information that appears on its face to be inadvertently produced and subject  
6 to a claim of privilege, counsel for the receiving party will inform counsel for the Producing  
7 Party promptly after becoming aware of the disclosure. Inadvertent production of privileged  
8 information shall not constitute waiver by the producing party.

9           13. At the time of filing a motion to seal involving Protected Information, the  
10 submitting party shall follow the procedure provided in Civil Local Rule 141. Should the Court  
11 deny the motion or application to seal, the party attempting to file the Protected Information will  
12 be deemed to have complied with the Protective Order.

13           14. The Protective Order shall remain in full force and effect until modified,  
14 superseded, or terminated by further order of this Court, and shall survive the termination of this  
15 litigation; provided, however, that the Protective Order may be amended by stipulation between  
16 the parties to this litigation or upon regularly-noticed motions to the Court.

17           15. Except as otherwise agreed in writing by the Producing Party, at the conclusion of  
18 this litigation and any appeals herein, whether this litigation be settled or otherwise resolved in  
19 full prior to trial, or tried on the merits, all Protected Information and all copies thereof produced  
20 by any party in this litigation or otherwise obtained from any party or non-party shall upon  
21 written request be promptly returned to the Producing Party or destroyed with the consent of the  
22 Producing Party.

23           16. The foregoing is without prejudice to the right of any party to apply to the Court  
24 for (a) a further protective order relating to any writing, whether or not it is identified above; (b)  
25 an order amending or modifying the Protective Order; (c) an order protecting against other  
26 discovery, or other use of the documents identified above; or (d) an order permitting the further  
27 production, discovery, disclosure, or use of any documents, including those identified above.  
28



1 **ORDER**

2 Pursuant to the parties' request, IT IS SO ORDERED.

3 IT IS FURTHER ORDERED THAT:

4 1. Requests to seal documents shall be made by motion before the same judge who will  
5 decide the matter related to that request to seal.

6 2. The designation of documents (including transcripts of testimony) as confidential  
7 pursuant to this order does not automatically entitle the parties to file such a document with the  
8 court under seal. Parties are advised that any request to seal documents in this district is governed  
9 by Local Rule 141. In brief, Local Rule 141 provides that documents may only be sealed by a  
10 written order of the court after a specific request to seal has been made. L.R. 141(a). However, a  
11 mere request to seal is not enough under the local rules. In particular, Local Rule 141(b) requires  
12 that "[t]he 'Request to Seal Documents' shall set forth *the statutory or other authority for sealing,*  
13 *the requested duration, the identity, by name or category, of persons to be permitted access to the*  
14 *document, and all relevant information.*" L.R. 141(b) (emphasis added).

15 3. A request to seal material must normally meet the high threshold of showing that  
16 "compelling reasons" support secrecy; however, where the material is, at most, "tangentially  
17 related" to the merits of a case, the request to seal may be granted on a showing of "good cause."  
18 Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir. 2016), petition  
19 for cert. filed, \_\_\_ U.S.L.W. \_\_\_ (U.S. March 24, 2016) (No. 15-1211); Kamakana v. City and  
20 County of Honolulu, 447 F.3d 1172, 1178-80 (9th Cir. 2006).

21 4. Nothing in this order shall limit the testimony of parties or non-parties, or the use of  
22 certain documents, at any court hearing or trial – such determinations will only be made by the  
23 court at the hearing or trial, or upon an appropriate motion.

24 5. With respect to motions regarding any disputes concerning this protective order which  
25 the parties cannot informally resolve, the parties shall follow the procedures outlined in Local  
26 Rule 251. Absent a showing of good cause, the court will not hear discovery disputes on an *ex*  
27 *parte* basis or on shortened time.

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6. The parties may not modify the terms of this Protective Order without the court's approval. If the parties agree to a potential modification, they shall submit a stipulation and proposed order for the court's consideration.

7. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement of the terms of this Protective Order after the action is terminated.

8. Any provision in the parties' stipulation that is in conflict with anything in this order is hereby DISAPPROVED.

Dated: August 18, 2016

  
DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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**EXHIBIT A**  
**CERTIFICATION**

I hereby certify my understanding that Protected Information is being provided to me pursuant to the terms and restrictions of the Joint Stipulation and Protective Order (“Protective Order”) in the case of *David Ward v. International Business Machines Corporation*, United States District Court, Eastern District of California, No. 22:16-CV-00450-KJM-DB. I have read the Protective Order, and I agree to be bound by it. I will not reveal the Protected Information, except as allowed by this Protective Order. I will maintain all such Protected Information – including copies, notes, or other transcriptions made therefrom – in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this litigation, I will return the Protected Information – including copies, notes, or other transcriptions made therefrom – to counsel who provided me with the Protected Information. I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Protective Order.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_