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11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

14 HARRIET STRICKLEN,
15 Plaintiff,
16
17 v.
18 KELLY SERVICES, INC., ET AL.
19 Defendant.

Case No. 2:16-cv-00804 GGH

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER**

Magistrate: Hon. Gregory G. Hollows
Courtroom: 9, 13th Floor

20 Plaintiff Harriet Stricklen and Defendant Kelly Services, Inc. agree that disclosure and
21 discovery activity in this action are likely to involve production of confidential, proprietary, or
22 private information—including information about business structure and strategy; business
23 protocols and procedures, including, but not limited to, non-public information about Kelly’s
24 product offerings; complaints and investigations, including information related to third-parties;
25 employee performance evaluations; customer lists; and salary information—for which special
26 protection from public disclosure and from use for any purpose other than prosecuting this
27 litigation would be warranted. The parties further agree that an enforceable Order by the Court is
28 necessary to facilitate discovery and ensure the parties that confidential information produced in

1 discovery will be afforded appropriate protections.

2 Accordingly, the parties hereby stipulate to, and request entry of, the following Stipulated
3 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
4 all disclosures or responses to discovery, and that the protection it affords extends only to the
5 limited information or items that are entitled under the applicable legal principles to treatment as
6 confidential. The parties further acknowledge that this Stipulated Protective Order creates no
7 entitlement to file confidential information in a court under seal; the Eastern District’s Local Rule
8 No. 141 and F.R.C.P 5.2, 26 set forth the procedures that must be followed and reflect the
9 standards that will be applied when a party seeks permission from a court to file material under
10 seal. The provisions of this Stipulated Protective Order shall govern the exchange, disclosure, and
11 use by the undersigned parties of all documents, testimony, and other information produced or
12 given by any person or company in the course of discovery and disclosure, both formal and
13 informal, in this action.

14 IT IS HEREBY STIPULATED by and between Plaintiff Harriet Stricklen and Defendant
15 Kelly Services, Inc. (together, the “parties”), through their undersigned counsel of record, that this
16 protective order (the “Protective Order”) shall govern disclosure and use by the parties of all
17 documents, testimony, and other information designated “Confidential” which is produced by
18 either party in the course of discovery procedures in this action as follows:

19 1. All Confidential Discovery Materials (as defined below) produced through
20 discovery procedures in this action shall be used solely for the prosecution and/or defense of this
21 action. Any person in possession of Confidential Discovery Materials shall maintain them in a
22 reasonably secure manner so as to avoid disclosure of their contents.

23 2. Any document or portions thereof, testimony, or other information produced in this
24 action through discovery procedures by a party (collectively, “Discovery Materials”) may be
25 designated as “Confidential” by the producing party if the party has maintained them in a
26 confidential manner and believes in good faith that: (1) the Discovery Materials contain sensitive
27 information, the disclosure of which would violate or potentially violate personal, privacy, or
28 other interests protected by law; (2) the Discovery Materials contain a trade secret or other

1 confidential research, development, or commercial information; or (3) there is other cause for
2 confidential treatment of the Discovery Materials pursuant to applicable law.

3 3. This Protective Order shall also encompass any documents designated by the Court
4 as “Confidential” or subject to a protective order.

5 4. Discovery Materials designated “Confidential” shall be referred to herein as
6 “Confidential Discovery Materials.”

7 5. The “Confidential” designation may be made at or prior to the time of production
8 of documents by stamping the word “Confidential” on the matter disclosed, or, in the case of
9 depositions, as provided in paragraph 6 below. Stamping the word “Confidential” on the cover of
10 any multi-page document shall designate all pages of the document as Confidential Discovery
11 Materials, unless otherwise indicated by the producing party. Inadvertent failure to designate
12 materials as “Confidential” at the time of production may be remedied thereafter by written notice
13 of supplemental production of the Discovery Materials with the “Confidential” designation. Upon
14 the service of such notice and supplemental production, the Discovery Materials shall be subject to
15 this Protective Order as if the materials had been initially designated as “Confidential.”

16 6. A party may also, in good faith under applicable law, designate as “Confidential,”
17 as that term is defined in paragraph 2 above, that portion of any deposition testimony deemed to
18 contain Confidential Discovery Materials by advising the court reporter and counsel of record at
19 the beginning and ending of the testimony containing the confidential information, orally at the
20 deposition or in writing no later than 30 days after the delivery of the deposition transcript. Until
21 the above-specified period expires, counsel for the parties shall treat the entire transcript as
22 Confidential Discovery Materials. The reporter shall mark the face of the transcript to designate
23 the beginning and ending of the Confidential portions and, at the request of the designating party,
24 shall prepare a separate original transcript containing the Confidential material. Copies of the
25 transcript for counsels’ use may contain both the Confidential testimony and other testimony in a
26 single volume.

27 The disclosing party shall have the right to exclude from attendance at said deposition,
28 during such time as information designated “Confidential” is to be disclosed, any person other

1 than the deponent, counsel, the court reporter, and a person permitted access pursuant to paragraph
2 7 below, provided that the requirements of paragraph 8 have been met.

3 7. No Discovery Materials designated as “Confidential” shall be disclosed directly or
4 indirectly, to any person other than:

5 (a) the Court, necessary court personnel, and jurors;

6 (b) the partners, associates, and employees of the attorneys’ law firms who are working
7 on this litigation;

8 (c) in-house attorneys for any named party to this action and regular employees of the
9 in-house legal department of any named party in this action;

10 (d) a party or employee of a party deemed necessary by counsel to aid in the
11 prosecution, defense, or settlement of this action;

12 (e) court reporters transcribing depositions or testimony in this action;

13 (f) any person who lawfully saw documents or information either before or after their
14 designation as “Confidential”;

15 (g) any expert retained or consulted by any party in connection with this action;

16 (h) non-party deponents at their depositions, and/or persons designated as trial
17 witnesses, but only to the extent reasonably necessary to give their testimony; and

18 (i) any person as to whom the parties agree in writing.

19 8. All persons to whom Confidential Discovery Materials are disclosed pursuant to
20 subparagraphs 7(b)-(i) above shall be advised of the existence of this Protective Order. All
21 persons to whom Confidential Discovery Materials are disclosed pursuant to subparagraph 7(g)-(i)
22 above shall be provided with a copy of this Protective Order, shall execute a certificate of
23 compliance substantially similar to Exhibit “A,” and shall not produce the Confidential Discovery
24 Materials except upon order of the Court for good cause shown, by written agreement with the
25 designating party, or as set forth in paragraph 10 below.

26 9. If either party submits to the Court any Confidential Discovery Materials (or
27 information derived therefrom or any papers containing or making reference to such information),
28 such Confidential Discovery Materials, information, or papers shall be labeled “Confidential –

1 Subject to Court Order” and conditionally filed under seal until further order of this Court,
2 pursuant to the procedures set forth in E.D. Cal. Local Rule 141. All materials kept under seal
3 shall be available to the Court and to counsel for the parties for viewing and/or copying.¹

4 10. If at any time any Confidential Discovery Materials governed by this Protective
5 Order are subpoenaed by any court, administrative or legislative body, or by any other persons or
6 entity purporting to have authority to require the production of such information, the person to
7 whom the subpoena is directed shall notify any person who has designated such information as
8 “Confidential,” in writing immediately and in no event more than three court days after receiving
9 the subpoena or order. Such notification must include a copy of the subpoena or court order.
10 After receipt of the notice specified under this paragraph, the person seeking to maintain the
11 “Confidential” designation shall have the sole responsibility for obtaining any order it believes
12 necessary to prevent disclosure of Confidential Discovery Materials. Upon the filing of any such
13 motion to maintain the confidentiality of the materials sought (notice of which shall be given to
14 the person to whom the subpoena is directed), the person to whom the subpoena is directed shall
15 respond timely to the subpoena, but will not allow access to Confidential Discovery Materials
16 until such time as the Court has ruled on the motion filed by the person or entity seeking to
17 preserve the confidentiality of the Discovery Materials, unless otherwise required by law to make
18 an earlier production notwithstanding such motion.

19 11. Nothing herein shall impose any restriction on the issue of disclosure by a party of
20 documents or information obtained by such party independently of discovery proceedings herein.

21 12. Nothing herein shall prevent a party from objecting to discovery that it believes to
22 be improper. Nothing herein shall be deemed a waiver of any party’s right not to disclose any
23 confidential, non-discoverable information or documents notwithstanding the terms and conditions
24 stated herein.

25 13. Nothing herein shall be construed to limit in any way the parties’ use or disclosure
26 of their own documents, materials, or information designated as “Confidential.”

27 _____
28 ¹ See addendum to this Order.

1 14. If confidential information is disclosed to anyone other than those authorized by
2 this Protective Order, the person or party responsible for the improper disclosure shall
3 immediately: (1) issue written notice of the unauthorized disclosure to the person producing the
4 confidential information; (2) use best efforts to retrieve all copies of the Confidential Discovery
5 Materials subject to the unauthorized disclosure; (3) inform all persons to whom unauthorized
6 disclosure was made of the terms of this Protective Order; and (4) use best efforts to secure an
7 acknowledgement of this Protective Order, by execution of the agreement in Exhibit A attached
8 hereto, from all persons to whom unauthorized disclosure was made.

9 15. If privileged information is produced, through inadvertence, the person or party
10 responsible for the improper disclosure may inform the receiving party of the privileged nature of
11 the disclosed information (attorney-client, work-product, etc.) and all persons to whom
12 unauthorized disclosure was made shall refrain from using the information for any purpose, return
13 all originals of the asserted-privileged documents, and destroy all copies and summaries of same,
14 within five business days. This provision is without prejudice to a party's ability to seek relief
15 from the Court to challenge the assertion of privilege.

16 16. Stipulation to, and/or entry of, this Protective Order shall be without prejudice to
17 any motion for relief from the Court from any restriction hereof or for any other or further
18 restriction on the production, exchange, or use of any document, testimony, or other information
19 produced, given or exchanged in the course of pre-trial discovery in this action. If a party
20 disagrees with another party's "Confidential" designation, the challenging party must nevertheless
21 abide by the same until the matter is resolved by agreement or by the Court. If a dispute with
22 regard to particular Discovery Materials arises, the parties shall meet and confer to resolve that
23 issue within 10 court days of a written request to do so by the party challenging such designation.
24 If the parties cannot reach an agreement, the party challenging the designation must move within
25 30 days of the conclusion of the meet and confer for a ruling from the Court to stop the
26 confidential treatment of such Discovery Materials. The burden shall be on the party challenging
27 the designation to establish the non-confidential nature of the Discovery Materials. The parties
28 may agree, in writing, to different times to perform the items in this paragraph or such time may

1 be modified on application to the Court upon a showing of cause.

2 17. Upon final determination of this litigation, any party that has received Confidential
3 Discovery Materials shall promptly destroy them (including all copies) and notify the producing
4 person thereof.

5 18. Any third-party witness who testifies or produces documents in connection with
6 this litigation may obtain the protections of this Protective Order by placing the “Confidential”
7 designation on any documents or other information provided to any of the parties as to which
8 confidential treatment is sought.

9 19. This Protective Order may be modified, amended, or vacated by further order of the
10 Court upon the noticed motion of any party or by the written agreement of counsel.

11 20. Unless modified, amended, or vacated, this Protective Order shall survive the final
12 determination of this action and shall remain in full force and effect after conclusion of all
13 proceedings herein to provide the Court with ancillary jurisdiction to enforce its terms.

14 21. In the event that additional persons become parties to this action, they shall not
15 have access to Confidential Discovery Materials until the newly joined party or their counsel
16 confirms in writing to the parties that they have read this Protective Order and agree to be bound
17 by its terms.

18

19 Dated: January 6, 2017

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP

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By: /s/E. Joseph Connaughton
E. JOSEPH CONNAUGHTON
DANI NGUYEN FRANKE
Attorneys for Defendant KELLY SERVICES, INC.

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25 Dated: January ____, 2017

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By: _____
HARRIET STRICKLEN
Plaintiff in Pro Per

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ORDER

The Court, having reviewed the parties’ stipulated Protective Order Regarding Confidential Information and good cause appearing therefore, hereby orders that:

The Protective Order Regarding Confidential Information is approved and shall govern the use and treatment of Confidential Discovery Materials in this action until further order of this Court.

IT IS SO ORDERED.

Dated: January 31, 2017

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE

Addendum to Order

The parties may not file documents under seal simply because they so desire. The substantive prerequisites as set forth in Kamakana v. City and County of Honolulu, 447 F.3d 1172 (9th Cir 2006), must be satisfied. Any request to seal documents shall set forth either good cause for sealing non-dispositive filings or compelling reasons for dispositive filings.

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EXHIBIT A
CERTIFICATE OF COMPLIANCE

I certify my understanding that Discovery Materials are being or may be provided to me pursuant to the terms and restrictions of the Stipulated Protective Order Regarding Discovery Materials dated _____, in *Stricklen v. Kelly Services, Inc.*, United States District Court – Eastern District of California, Court Case No. 2:16-cv-00804 GGH, and that I have been given a copy of, and have read, the stipulation and order, and agree to be bound by it. I understand that all such Confidential Discovery Materials and copies thereof, including, but not limited to, any notes or other transcriptions made therefrom, which have not been previously destroyed, shall be returned no later than 30 days after the termination of this action to the counsel who provided such materials to me.

DATED: _____ Printed Name: _____

Signature: _____