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

DANIEL ALLEN, on behalf of himself,
Plaintiff,

v.

PALADIN CONSULTING, INC., a Texas
Corporation; XEROX CORPORATION, a
New York Corporation; GEE GROUP, INC.,
an Illinois Corporation; GENERAL
EMPLOYMENT ENTERPRISE, INC., an
Illinois Corporation; and Does 1-20, inclusive
Defendants.

Case No. 2:18-cv-00706-TLN-CKD
**STIPULATED PROTECTIVE ORDER
AND CONFIDENTIALITY
AGREEMENT**

JURY TRIAL DEMANDED

Complaint filed: February 7, 2018

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order and Confidentiality Agreement. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section

1 12.3, below, that this Stipulated Protective Order and Confidentiality Agreement does not entitle them
2 to file confidential information under seal; Local Rule (“L.R.”) 141 sets forth the procedures that must
3 be followed and the standards that will be applied when a party seeks permission from the court to file
4 material under seal.

5 **2. DEFINITIONS**

6 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
7 items under this Order.

8 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
9 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
10 Civil Procedure 26(c).

11 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
12 as their support staff).

13 2.4 Designating Party: a Party or Non-Party that designates information or items that it
14 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

15 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
16 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
17 transcripts, and tangible things), that are produced or generated in disclosures or responses to
18 discovery in this matter.

19 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
20 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
21 in this action.

22 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel
23 does not include Outside Counsel of Record or any other outside counsel.

24 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
25 entity not named as a Party to this action.

26 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
27 but are retained to represent or advise a party to this action and have appeared in this action on behalf
28 of that party or are affiliated with a law firm which has appeared on behalf of that party.

1 2.10 Party: any party to this action, including all of its officers, directors, employees,
2 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

3 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
4 in this action.

5 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
6 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
7 or retrieving data in any form or medium) and their employees and subcontractors.

8 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
9 “CONFIDENTIAL.”

10 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
11 Producing Party.

12 **3. SCOPE**

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

25 **4. DURATION**

26 Even after final disposition of this litigation, the confidentiality obligations imposed by this
27 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
28 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and

1 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
2 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
3 limits for filing any motions or applications for extension of time pursuant to applicable law.

4 **5. DESIGNATING PROTECTED MATERIAL**

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
6 Non-Party that designates information or items for protection under this Order must take care to limit
7 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 oral
9 or written communications that qualify – so that other portions of the material, documents, items, or
10 communications for which protection is not warranted are not swept unjustifiably within the ambit of
11 this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
13 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
14 encumber or retard the case development process or to impose unnecessary expenses and burdens on
15 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 for protection
17 do not qualify for protection, that Designating Party must promptly notify all other Parties that it is
18 withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
20 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
21 Discovery Material that qualifies for protection under this Order must be clearly so designated before
22 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 legend “CONFIDENTIAL” to each page that contains protected material. If only a portion
27 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
28 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 need not
2 designate them for protection until after the inspecting Party has indicated which material it would
3 like copied and produced. During the inspection and before the designation, all of the material made
4 available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified
5 the documents it wants copied and produced, the Producing Party must determine which documents,
6 or portions thereof, qualify for protection under this Order. Then, before producing the specified
7 documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page that contains
8 Protected Material. If only a portion or portions of the material on a page qualifies for protection, the
9 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
10 markings in the margins).

11 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
12 Designating Party identify on the record, before the close of the deposition, hearing, or other
13 proceeding, all protected testimony.

14 (c) for information produced in some form other than documentary and for any other
15 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
16 containers in which the information or item is stored the legend "CONFIDENTIAL." If only a portion
17 or portions of the information or item warrant protection, the Producing Party, to the extent practicable,
18 shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
20 designate qualified information or items does not, standing alone, waive the Designating Party's right
21 to secure protection under this Order for such material. Upon timely correction of a designation, the
22 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
23 the provisions of this Order.

24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
26 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
27 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
28 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a

1 confidentiality designation by electing not to mount a challenge promptly after the original designation
2 is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
4 by providing written notice of each designation it is challenging and describing the basis for each
5 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
6 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
7 Protective Order and Confidentiality Agreement. The parties shall attempt to resolve each challenge
8 in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms
9 of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the
10 Challenging Party must explain the basis for its belief that the confidentiality designation was not
11 proper and must give the Designating Party an opportunity to review the designated material, to
12 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the
13 chosen designation. A Challenging Party may proceed to the next stage of the challenge process only
14 if it has engaged in this meet and confer process first or establishes that the Designating Party is
15 unwilling to participate in the meet and confer process in a timely manner.

16 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
17 intervention, the Designating Party shall file and serve a motion to retain confidentiality under L.R.
18 230 (and in compliance with L.R. 141, if applicable) within 21 days of the initial notice of challenge
19 or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,
20 whichever is earlier. Each such motion must be accompanied by a competent declaration affirming
21 that the movant has complied with the meet and confer requirements imposed in the preceding
22 paragraph. Failure by the Designating Party to make such a motion including the required declaration
23 within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for
24 each challenged designation. In addition, the Challenging Party may file a motion challenging a
25 confidentiality designation at any time if there is good cause for doing so, including a challenge to the
26 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this
27 provision must be accompanied by a competent declaration affirming that the movant has complied
28 with the meet and confer requirements imposed by the preceding paragraph.

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

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

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
10 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
11 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
12 categories of persons and under the conditions described in this Order. When the litigation has been
13 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
14 DISPOSITION).

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

17 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
18 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
19 information or item designated “CONFIDENTIAL” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
21 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
22 this litigation and who have been informed of the requirements of this Agreement;

23 (b) the officers, directors, and employees (including House Counsel) of the Receiving
24 Party to whom disclosure is reasonably necessary for this litigation and who have been informed of
25 the requirements of this Agreement;

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

- 1 (d) the court and its personnel;
- 2 (e) court reporters and their staff;
- 3 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom
4 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A);
- 6 (g) during their depositions, witnesses in the action to whom disclosure is reasonably
7 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
8 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
9 deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound
10 by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated
11 Protective Order and Confidentiality Agreement.
- 12 (h) the author or recipient of a document containing the information or a custodian or other
13 person who otherwise possessed or knew the information.

14 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
15 **LITIGATION**

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

- 19 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
20 of the subpoena or court order;
- 21 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
22 other litigation that some or all of the material covered by the subpoena or order is subject to this
23 Protective Order and Confidentiality Agreement. Such notification shall include a copy of this
24 Stipulated Protective Order and Confidentiality Agreement; and
- 25 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
26 Designating Party whose Protected Material may be affected.

27 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
28 court order shall not produce any information designated in this action as “CONFIDENTIAL” before

1 a determination by the court from which the subpoena or order issued, unless the Party has obtained
2 the Designating Party's permission. The Designating Party shall bear the burden and expense of
3 seeking protection in that court of its confidential material – and nothing in these provisions should be
4 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
5 from another court.

6 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
7 **LITIGATION**

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

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

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

18 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order and
19 Confidentiality Agreement in this litigation, the relevant discovery request(s), and a reasonably
20 specific description of the information requested; and

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

22 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days
23 of receiving the notice and accompanying information, the Receiving Party may produce the Non-
24 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
25 protective order, the Receiving Party shall not produce any information in its possession or control
26 that is subject to the confidentiality agreement with the Non-Party before a determination by the court.
27 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking
28 protection in this court of its Protected Material.

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

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

9 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
10 **MATERIAL**

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

19 **12. MISCELLANEOUS**

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
21 its modification by the court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
23 and Confidentiality Agreement no Party waives any right it otherwise would have to object to
24 disclosing or producing any information or item on any ground not addressed in this Stipulated
25 Protective Order and Confidentiality Agreement. Similarly, no Party waives any right to object on any
26 ground to use in evidence of any of the material covered by this Protective Order and Confidentiality
27 Agreement.

28 12.3 Filing Protected Material. Without written permission from the Designating Party or a

1 court order secured after appropriate notice to all interested persons, a Party may not file in the public
2 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
3 must comply with L.R. 141. Protected Material may only be filed under seal pursuant to a court order
4 authorizing the sealing of the specific Protected Material at issue. Pursuant to L.R. 141, a sealing order
5 will issue only upon a request establishing that the Protected Material at issue is privileged, protectable
6 as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file
7 Protected Material under seal pursuant to L.R. 141 is denied by the court, then the Receiving Party
8 may file the information in the public record unless otherwise instructed by the court.

9 **13. FINAL DISPOSITION**

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

25 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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DATED: August 27, 2018

/s/ *Jeremy Pasternak*
Attorneys for Plaintiff

DATED: August 27, 2018


/s/ *Heather Hearne*
Attorneys for Defendants, Xerox Corporation

DATED: August 27, 2018

/s/ *Sarah Robertson*
Attorneys for Defendants, Gee Group, Inc., General
Employment Enterprises, Inc., and Paladin
Consulting, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: August 28, 2018


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print
4 or type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order and Confidentiality Agreement that was issued by the United States
6 District Court for the Eastern District of California on [date] in the case of _____ *Allen v.*
7 *Paladin Consulting, Inc., et al.*, Case No. 2:18-cv-00706-TLN-CKD. I agree to comply with and to be
8 bound by all the terms of this Stipulated Protective Order and Confidentiality Agreement and I
9 understand and acknowledge that failure to so comply could expose me to sanctions and punishment
10 in the nature of contempt. I solemnly promise that I will not disclose in any manner any information
11 or item that is subject to this Stipulated Protective Order and Confidentiality Agreement to any person
12 or entity except in strict compliance with the provisions of this Order.

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

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

22
23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____