

1 McGREGOR W. SCOTT  
 United States Attorney  
 2 VICTORIA L. BOESCH  
 Assistant United States Attorney  
 3 501 I Street, Suite 10-100  
 Sacramento, CA 95814  
 4 Telephone: (916) 554-2700  
 Facsimile: (916) 554-2900  
 5 victoria.boesch@usdoj.gov  
 6 Attorneys for the United States

7  
 8 IN THE UNITED STATES DISTRICT COURT  
 9 EASTERN DISTRICT OF CALIFORNIA

10 MONTEZUMA HARBOR, LLC,  
 11 Plaintiff,  
 12 v.  
 13 UNITED STATES OF AMERICA,  
 14 Defendant.  
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CASE NO. 2:19-cv-00831-JAM-KJN

**STIPULATION AND PROTECTIVE ORDER**

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 18 Plaintiff Montezuma Harbor, LLC and Defendant United States of America, by and through their  
 19 respective counsel, hereby stipulate to and request that the Court enter the Proposed Order attached hereto  
 20 as Exhibit A in order to allow production of sensitive and/or confidential information in this Federal Tort  
 21 Claims Act lawsuit because discovery in this case may involve disclosure of records or testimony about  
 22 records from the United States Air Force that contain Controlled Unclassified Information (“CUI”) as  
 23 defined by 32 C.F.R. § 2002.4(h).  
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Respectfully submitted,

McGREGOR W. SCOTT  
United States Attorney

Dated: October 9, 2020

By: /s/ Victoria L. Boesch  
VICTORIA L. BOESCH  
Assistant United States Attorney

Attorneys for the United States

Dated: September 28, 2020

/s/ Matthew R. Schoech (authorized 9/28/20)  
MATTHEW R. SCHOECH  
Schoech Law Group, PC

Attorneys for Plaintiff Montezuma Harbor, LLC

Dated: October 13, 2020

/s/ John A. Mendez  
THE HONORABLE JOHN A. MENDEZ  
UNITED STATES DISTRICT COURT JUDGE

1 McGREGOR W. SCOTT  
United States Attorney  
2 VICTORIA L. BOESCH  
Assistant United States Attorney  
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Sacramento, CA 95814  
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10 MONTEZUMA HARBOR, LLC,  
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14 Defendant.

CASE NO. 2:19-cv-00831-JAM-KJN

**PROTECTIVE ORDER**

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20 It is hereby ordered that the following Protective Order be entered in accordance with Rule  
21 26(c) of the Federal Rules of Civil Procedure and shall hereafter govern the use, handling, and disposition  
22 of information, testimony or documents created, filed, or obtained through discovery in the above  
23 captioned matter (“the Litigation”), that constitutes Controlled Unclassified Information (“CUI”) as  
24 defined by 32 C.F.R. § 2002.4(h).

1           **1.     Scope**

2           1.1 CUI is a specific category of information that requires protection against unauthorized  
3 disclosure pursuant to 32 C.F.R. § 2002.16. CUI is government created or owned information that requires  
4 safeguarding or dissemination controls consistent with applicable laws, regulations, and government wide  
5 polices. Unauthorized disclosure of CUI can create significant risk to national security, directly affecting  
6 lethality of our warfighters.

7           1.2 As a general policy, access to CUI should be provided when it abides by the laws, regulations,  
8 or Government-wide policies that establish the CUI category or subcategory; furthers a lawful government  
9 purpose; is not restricted by an authorized limited dissemination control established the CUI Executive  
10 Agency; and is not otherwise prohibited by law. Because plaintiff’s counsel, the court, and its employees  
11 have an authorized, lawful, government purpose to access CUI relevant to this case, this order permits the  
12 sharing in this civil action of relevant information and materials that are marked as CUI or may contain  
13 CUI. The right of access to materials marked as CUI or containing CUI shall be limited to Authorized  
14 Holders, the court and its employees, and counsel for Plaintiff including paralegal, secretarial and other  
15 legal personnel in their employ. Court reporters retained by the parties for purposes of recording  
16 depositions who have signed a DoD-approved Non-Disclosure Agreement and experts retained by the  
17 parties who have signed a DoD-approved Non-Disclosure Agreement may also have access to CUI.

18           1.3 This CUI Protective Order shall govern any document, information, or other material that  
19 potentially contains Controlled Unclassified Information, as defined herein.

20           1.4 The materials encompassed in this protective order include, without limitation, deposition  
21 testimony, deposition exhibits, interrogatory responses, admissions, affidavits, declarations, and  
22 documents produced in connection with in this matter. Information taken from any of these materials that  
23 reveals its substance shall also be subject to this protective order.

24           **2.     Definitions**

25           2.1 Authorized Holder. The term “Authorized Holder” shall refer to any person who is authorized  
26 to have access to specific Controlled Unclassified Information independently of this Litigation or  
27 Protective Order.

1           2.2 Restricted Use Document. The term “Restricted Use Document” shall refer to any document  
2 that contains Controlled Unclassified Information. “Document” includes anything discoverable as a  
3 document under the Federal Rules of Civil Procedure and means any material capable of conveying  
4 information that is written, printed, recorded, photographically reproduced, electronically produced or  
5 stored, or reproduced by any process, including by hand, and whether or not claimed to be privileged,  
6 confidential, or personal.

7           2.3 Controlled Unclassified Information. The term “Controlled Unclassified Information” shall  
8 have the meaning assigned by 32 C.F.R. § 2002.4(h).

9           **3. Access to Controlled Unclassified Information.**

10           3.1 Access to the Controlled Unclassified Information under the terms and conditions of this  
11 Protective Order shall be restricted to (a) plaintiff’s counsel, including paralegal, secretarial and other  
12 legal personnel in plaintiff’s counsel’s employ; (b) court personnel with a need to know specific  
13 Controlled Unclassified Information in the performance of their official duties; (c) court reporters and  
14 retained experts who have signed a DoD-approved Non-Disclosure Agreement; and (d) Authorized  
15 Holders.

16           3.2 Nothing in this Order shall preclude any disclosure of documents subject to this Order to any  
17 judge or employee of the court for purposes of this action.

18           **4. Non-Disclosure of Controlled Unclassified Information**

19           4.1 Documents that contain CUI may not be further disseminated without written permission from  
20 DoD. CUI must not be disclosed to any person or entity other than those enumerated in Section 3.

21           4.2 Documents that are Restricted Use, marked as CUI, or documents that, though not marked,  
22 contain CUI, shall be treated as confidential and shall not be published or made available to the general  
23 public in any form (whether in paper or electronic form).

24           **5. Production of Documents and Treatment of CUI**

25           5.1 Prior to production, Restricted Use Documents will be marked “CONFIDENTIAL- SUBJECT  
26 TO PROTECTIVE ORDER – DO NOT DISSEMINATE.”

1           5.2 Other materials created during the litigation, for example deposition transcripts, that contain  
2 CUI shall similarly be designated and marked “CONFIDENTIAL- SUBJECT TO PROTECTIVE  
3 ORDER – DO NOT DISSEMINATE.” Counsel for the United States will make such designations.

4           **6. Use of Controlled Unclassified Information in Depositions and Examinations**

5           6.1 Controlled Unclassified Information produced under this CUI Protective Order may be used  
6 or elicited during the examination of a witness, provided such witness is an Authorized Holder or retained  
7 expert who has signed a DoD-approved Non-Disclosure Agreement, subject to the following restrictions:

8           6.1.1 Only the individuals identified in Section 3 of this CUI Protective Order may be present  
9 when such Controlled Unclassified Information is used or elicited.

10           6.1.2 To the extent that Plaintiff’s counsel wishes to use a Restricted Use Document as an exhibit  
11 at a deposition, Plaintiff’s counsel may print a limited number of hard copies of such Restricted Use  
12 Document for use solely as exhibits at the deposition, provided that at the conclusion of the deposition,  
13 the original marked deposition exhibit and all hard copies are collected and maintained by a court reporter  
14 who has signed a DoD-approved Non-Disclosure Agreement. The court reporter shall secure the  
15 Restricted Use Documents in a secured container such as a locked desk or file cabinet. If Plaintiff’s  
16 counsel uses an electronic copy of a Restricted Use Document as an exhibit at a deposition, that document  
17 must be transmitted to a court reporter who has signed a DoD-approved Non-Disclosure Agreement via  
18 encrypted email or other secure means.

19           **7. Use of Controlled Unclassified Information in Motions and Court Proceedings**

20           7.1 A party who wishes to use a Restricted Use Document or the Controlled Unclassified  
21 Information contained therein in connection with a motion or other submission to this court must file the  
22 Restricted Use Document and any pleadings, motions, or other papers containing Controlled Unclassified  
23 Information under seal in accordance with the court’s rules (see EDCA Local Rule 141). Where possible,  
24 only the portions of the filings that contain Controlled Unclassified Information shall be filed under seal.

25           7.2 A party seeking to disclose Controlled Unclassified Information in court proceedings shall ask  
26 the court to close to the public any portion of court proceedings including CUI. No CUI shall be disclosed  
27 in court proceedings unless that portion of the proceeding has been closed to the public.

1           7.3 If this action proceeds to trial, the parties shall meet and confer after the close of discovery to  
2 formulate an agreement regarding the use and handling of CUI at trial. Any such agreement shall be  
3 presented to the court for approval. If the parties are unable to reach agreement, the disputed issues shall  
4 be presented to the court for resolution.

5 **IT IS SO ORDERED.**

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8 Dated: October 13, 2020

/s/ John A. Mendez

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9 THE HONORABLE JOHN A. MENDEZ  
10 UNITED STATES DISTRICT COURT JUDGE  
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