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17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA  
 19 SAN FRANCISCO DIVISION

20 HILTON I. WESLEY,  
 21 Plaintiff,  
 22 v.  
 23 ROBERT M. GATES, SECRETARY OF  
 24 THE U.S. DEPARTMENT OF DEFENSE,  
 DEFENSE CONTRACT AUDIT AGENCY,  
 25 Defendant.

Docket No. C-08-2719 SI  
 E-FILING CASE  
 STIPULATED PROTECTIVE ORDER

26 **1. PURPOSES AND LIMITATIONS**

27 Disclosure and discovery activity in this action are likely to involve production of  
 28 confidential, proprietary, or private information for which special protection from public

1 disclosure and from use for any purpose other than prosecuting this litigation would be  
2 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
3 following Stipulated Protective Order. The parties acknowledge that this Order does not confer  
4 blanket protections on all disclosures or responses to discovery and that the protection it  
5 affords extends only to the limited information or items that are entitled under the applicable  
6 legal principles to treatment as confidential. The parties further acknowledge, as set forth in  
7 Section 10, below, that this Stipulated Protective Order creates no entitlement to file  
8 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must  
9 be followed and reflects the standards that will be applied when a party seeks permission from  
10 the court to file material under seal.

11  
12 **2. DEFINITIONS**

13 2.1 Party: any party to this action, including all of its officers, directors,  
14 employees, consultants, retained experts, and outside counsel (and their support staff).

15 2.2 Disclosure or Discovery Material: all items or information, regardless of the  
16 medium or manner generated, stored, or maintained (including, among other things, testimony,  
17 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
18 discovery in this matter.

19 2.3 “Confidential” Information or Items: information (regardless of how generated,  
20 stored or maintained) or tangible things that qualify for protection under standards developed  
21 under F.R.Civ.P. 26(c).

22 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely sensitive  
23 “Confidential Information or Items” whose disclosure to another Party or nonparty  
24 would create a substantial risk of serious injury that could not be avoided by less restrictive  
25 means.

26 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
27 Producing Party.

28 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery

1 Material in this action.

2 2.7. Designating Party: a Party or non-party that designates information or items  
3 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly  
4 Confidential — Attorneys’ Eyes Only.”

5 2.8 Protected Material: any Disclosure or Discovery Material that is designated as  
6 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

7 2.9. Outside Counsel: attorneys who are not employees of a Party but who are  
8 retained to represent or advise a Party in this action.

9 2.10 House Counsel: attorneys who are employees of a Party.

10 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as  
11 their support staffs).

12 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
13 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
14 consultant in this action and who is not a past or a current employee of a Party or of a  
15 competitor of a Party’s and who, at the time of retention, is not anticipated to become an  
16 employee of a Party or a competitor of a Party’s. This definition includes a professional jury or  
17 trial consultant retained in connection with this litigation.

18 2.13 Professional Vendors: persons or entities that provide litigation support  
19 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
20 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
21 subcontractors.

22

23 **3. SCOPE**

24 The protections conferred by this Stipulation and Order cover not only Protected  
25 Material (as defined above), but also any information copied or extracted therefrom, as well as  
26 all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or  
27 presentations by parties or counsel to or in court or in other settings that might reveal Protected  
28 Material.

1 **4. DURATION**

2 Even after the termination of this litigation, the confidentiality obligations imposed by  
3 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
4 order otherwise directs.

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6 **5. DESIGNATING PROTECTED MATERIAL**

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
8 or non-party that designates information or items for protection under this Order must take care  
9 to limit any such designation to specific material that qualifies under the appropriate standards.  
10 A Designating Party must take care to designate for protection only those parts of material,  
11 documents, items, or oral or written communications that qualify – so that other portions of the  
12 material, documents, items, or communications for which protection is not warranted are not  
13 swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
15 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to  
16 unnecessarily encumber or retard the case development process, or to impose unnecessary  
17 expenses and burdens on other parties), expose the Designating Party to sanctions.

18 If it comes to a Party's or a non-party's attention that information or items that it  
19 designated for protection do not qualify for protection at all, or do not qualify for the level of  
20 protection initially asserted, that Party or non-party must promptly notify all other parties that it  
21 is withdrawing the mistaken designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
23 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
24 material that qualifies for protection under this Order must be clearly so designated before the  
25 material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (apart from transcripts of depositions  
28 or other pretrial or trial proceedings), that the Producing Party affix the legend

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the  
2 top of each page that contains protected material. If only a portion or portions of the material  
3 on a page qualifies for protection, the Producing Party also must clearly identify the protected  
4 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
5 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

7 A Party or non-party that makes original documents or materials available for  
8 inspection need not designate them for protection until after the inspecting Party has indicated  
9 which material it would like copied and produced. During the inspection and before the  
10 designation, all of the material made available for inspection shall be deemed “HIGHLY  
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified  
12 the documents it wants copied and produced, the Producing Party must determine which  
13 documents, or portions thereof, qualify for protection under this Order, then, before producing  
14 the specified documents, the Producing Party must affix the appropriate legend  
15 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the  
16 top of each page that contains Protected Material. If only a portion or portions of the material  
17 on a page qualifies for protection, the Producing Party also must clearly identify the protected  
18 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
19 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY  
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

21 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
22 that the Party or non-party offering or sponsoring the testimony identify on the record, before  
23 the close of the deposition, hearing, or other proceeding, all protected testimony, and further  
24 specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –  
25 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of  
26 testimony that is entitled to protection, and when it appears that substantial portions of the  
27 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the  
28 testimony may invoke on the record (before the deposition or proceeding is concluded) a right

1 to have up to 20 days to identify the specific portions of the testimony as to which protection is  
2 sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that  
4 are appropriately designated for protection within the 20 days shall be covered by the  
5 provisions of this Stipulated Protective Order.

6 Transcript pages containing Protected Material must be separately bound by  
7 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL”  
8 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or  
9 nonparty offering or sponsoring the witness or presenting the testimony.

10 (c) for information produced in some form other than documentary, and for any other  
11 tangible items, that the Producing Party affix in a prominent place on the exterior of the  
12 container or containers in which the information or item is stored the legend  
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only  
14 portions of the information or item warrant protection, the Producing Party, to the extent  
15 practicable, shall identify the protected portions, specifying whether they qualify as  
16 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
18 designate qualified information or items as “Confidential” or “Highly Confidential –  
19 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure  
20 protection under this Order for such material. If material is appropriately designated as  
21 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially  
22 produced, the Receiving Party, on timely notification of the designation, must make reasonable  
23 efforts to assure that the material is treated in accordance with the provisions of this Order.

## 24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
26 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
27 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
28 waive its right to challenge a confidentiality designation by electing not to mount a challenge

1 promptly after the original designation is disclosed.

2 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating  
3 Party's confidentiality designation must do so in good faith and must begin the process by  
4 conferring directly (in voice to voice dialogue; other forms of communication are not  
5 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must  
6 explain the basis for its belief that the confidentiality designation was not proper and must give  
7 the Designating Party an opportunity to review the designated material, to reconsider the  
8 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
9 designation. A challenging Party may proceed to the next stage of the challenge process only if  
10 it has engaged in this meet and confer process first.

11 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
12 designation after considering the justification offered by the Designating Party may file and  
13 serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
14 applicable) that identifies the challenged material and sets forth in detail the basis for the  
15 challenge. Each such motion must be accompanied by a competent declaration that affirms that  
16 the movant has complied with the meet and confer requirements imposed in the preceding  
17 paragraph and that sets forth with specificity the justification for the confidentiality designation  
18 that was given by the Designating Party in the meet and confer dialogue.

19 The burden of persuasion in any such challenge proceeding shall be on the Designating  
20 Party. Until the court rules on the challenge, all parties shall continue to afford the material in  
21 question the level of protection to which it is entitled under the Producing Party's designation.  
22 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)  
23 that identifies the challenged material and sets forth in detail the basis for the challenge. Each  
24 such motion must be accompanied by a competent declaration that affirms that the movant has  
25 complied with the meet and confer requirements imposed in the preceding paragraph and that  
26 sets forth with specificity the justification for the confidentiality designation that was given by  
27 the Designating Party in the meet and confer dialogue.

28 The burden of persuasion in any such challenge proceeding shall be on the Designating

1 Party. Until the court rules on the challenge, all parties shall continue to afford the material in  
2 question the level of protection to which it is entitled under the Producing Party's designation.

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

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
5 or produced by another Party or by a non-party in connection with this case only for  
6 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
7 disclosed only to the categories of persons and under the conditions described in this Order.  
8 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
9 section 11, below (FINAL DISPOSITION).

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

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
14 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
15 disclose any information or item designated CONFIDENTIAL only to:

16 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
17 employees of said Counsel to whom it is reasonably necessary to disclose the information for  
18 this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is  
19 attached hereto as Exhibit A;

20 (b) the officers, directors, and employees (including House Counsel) of the  
21 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
22 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

23 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is  
24 reasonably necessary for this litigation and who have signed the "Agreement to Be  
25 Bound by Protective Order" (Exhibit A);

26 (d) the Court and its personnel;

27 (e) court reporters, their staffs, and professional vendors to whom disclosure is  
28 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by

1 Protective Order” (Exhibit A);

2 (f) during their depositions, witnesses in the action to whom disclosure is  
3 reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order”  
4 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal  
5 Protected Material must be separately bound by the court reporter and may not be disclosed to  
6 anyone except as permitted under this Stipulated Protective Order.

7 (g) the author of the document or the original source of the information.

8 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

9 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
10 Designating Party, a Receiving Party may disclose any information or item designated  
11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

12 (a) the Receiving Party’s Outside Counsel of record in this action, as well as  
13 employees of said Counsel to whom it is reasonably necessary to disclose the information for  
14 this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is  
15 attached hereto as Exhibit A;

16 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably  
17 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective  
18 Order” (Exhibit A),

19 (c) the Court and its personnel;

20 (d) court reporters, their staffs, and professional vendors to whom disclosure is  
21 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by  
22 Protective Order” (Exhibit A); and

23 (e) the author of the document or the original source of the information.

24 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
25 **OTHER LITIGATION.**

26 If a Receiving Party is served with a subpoena or an order issued in other litigation  
27 that would compel disclosure of any information or items designated in this action as  
28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the

1 Receiving Party must so notify the Designating Party, in writing (by fax, if possible)  
2 immediately and in no event more than three court days after receiving the subpoena or order.  
3 Such notification must include a copy of the subpoena or court order.

4 The Receiving Party also must immediately inform in writing the Party who caused the  
5 subpoena or order to issue in the other litigation that some or all the material covered by the  
6 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
7 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
8 caused the subpoena or order to issue.

9 The purpose of imposing these duties is to alert the interested parties to the existence  
10 of this Protective Order and to afford the Designating Party in this case an opportunity to try to  
11 protect its confidentiality interests in the court from which the subpoena or order issued. The  
12 Designating Party shall bear the burdens and the expenses of seeking protection in that court of  
13 its confidential material – and nothing in these provisions should be construed as authorizing or  
14 encouraging a Receiving Party in this action to disobey a lawful directive from another court.  
15 protect its confidentiality interests in the court from which the subpoena or order issued. The  
16 Designating Party shall bear the burdens and the expenses of seeking protection in that court of  
17 its confidential material – and nothing in these provisions should be construed as authorizing or  
18 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

19  
20 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

1 **10. FILING PROTECTED MATERIAL.**

2 Without written permission from the Designating Party or a court order secured after  
3 appropriate notice to all interested persons, a Party may not file in the public record in this  
4 action any Protected Material. A Party that seeks to file under seal any Protected Material must  
5 comply with Civil Local Rule 79-5.

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7 **11. FINAL DISPOSITION.**

8 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
9 after the final termination of this action, each Receiving Party must return all Protected  
10 Material to the Producing Party. As used in this subdivision, "all Protected Material" includes  
11 all copies, abstracts, compilations, summaries or any other form of reproducing or capturing  
12 any of the Protected Material. With permission in writing from the Designating Party, the  
13 Receiving Party may destroy some or all of the Protected Material instead of returning it.  
14 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a  
15 written certification to the Producing Party (and, if not the same person or entity, to the  
16 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all  
17 the Protected Material that was returned or destroyed and that affirms that the Receiving Party  
18 has not retained any copies, abstracts, compilations, summaries or other forms of reproducing  
19 or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled  
20 to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,  
21 correspondence or attorney work product, even if such materials contain Protected Material.  
22 Any such archival copies that contain or constitute Protected Material remain subject to this  
23 Protective Order as set forth in Section 4 (DURATION), above.

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25 **12. MISCELLANEOUS**

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person  
27 to seek its modification by the Court in the future.

28 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective

1 Order no Party waives any right it otherwise would have to object to disclosing or producing  
2 any information or item on any ground not addressed in this Stipulated Protective Order.  
3 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
4 material covered by this Protective Order.

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 Respectfully submitted,

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DATED: January 20, 2009

By: \_\_\_\_\_  
MARY DRYOVAGE  
Law Offices of Mary Dryovage

DATED: January 20, 2009

By: \_\_\_\_\_  
WENDY MUSELL  
Stewart & Musell  
  
Attorneys for Plaintiff

JOSEPH P. RUSSONIELLO  
United States Attorney

DATED:

By: \_\_\_\_\_  
VICTORIA CARRADERO  
Assistant U.S. Attorney  
  
Attorneys for Defendant

**IT IS SO ORDERED**

DATED:

  
\_\_\_\_\_  
SUSAN ILLSTON  
U.S. DISTRICT COURT JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *HILTON I. WESLEY v. ROBERT M. GATES, SECRETARY OF THE U.S. DEPARTMENT OF DEFENSE, DEFENSE CONTRACT AUDIT AGENCY*, NDCA Docket No. C-08-2719-SI. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

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

City and State where sworn and signed: \_\_\_\_\_

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

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

(signature)