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THERESA M. O'BRIEN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THERESA M. O'BRIEN,

Plaintiff,

vs.

JANET NAPOLITANO, SECRETARY,
DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Case No.: C10-1830 EDL

**STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER AS TO
PLAINTIFF'S PSYCHOLOGICAL
AND MENTAL HEALTH RECORDS
AND INFORMATION**

STIPULATION

Plaintiff Theresa O'Brien and Defendant Janet Napolitano (hereinafter, collectively, "the parties") agree that in exchange for plaintiff's agreement not to seek emotional distress damages in this case, defendant will not seek discovery of psychological records or information related to her psychological history and/or treatment, past or present. The parties, by and through their respective counsel of record, and subject to Court approval, stipulate to the following Protective Order, which will apply to all documents, testimony, and information produced during discovery in accordance with the terms of this Protective Order.

PROTECTIVE ORDER

1. This Protective Order (the "Order") governs all documents produced, testimony given, written discovery or information exchanged in the course of this litigation, including documents or testimony obtained by any party to this litigation (hereinafter, "Discovery").

2. Such Discovery related to the psychological, psychiatric or mental health

1 treatment, history, medication, or reports of plaintiff shall not be used in this litigation for any
 2 purpose, including trial. This prohibition shall apply to *inter alia* documents produced by Dr.
 3 Elaine Date, pursuant to defendant's document subpoena dated 8/19/11, including bates numbers
 4 EDS-160 - 179. However, the parties' experts may acknowledge that Plaintiff's treatment
 5 involved mental health therapy and drugs to the extent that such treatment or drugs affected her
 6 ability to perform the essential functions of the job.

7 3. As the parties do not anticipate discovery of any mental health records, Plaintiff
 8 may not exploit the fact that her expert has reviewed some of plaintiff's mental health records
 9 and is aware of plaintiff's mental health condition through her treatment of Plaintiff. Nor will
 10 Plaintiff question the defense expert's lack of knowledge of Plaintiff's mental health history or
 11 make argument regarding same.

12 4. This Order shall become binding on the parties to this Order immediately
 13 upon execution by the parties, and shall remain in effect following the termination of this
 14 litigation absent an order of this Court to the contrary.

15 **IT IS SO STIPULATED.**

16 Dated: September 8, 2011

LAW OFFICES OF MICHAEL S. SORGEN

17
 18 By: /s/ Joyce Kawahata
 19 Joyce Kawahata
 Attorneys for Plaintiffs

20 Dated: September 8, 2011

MELINDA L. HAAG
 UNITED STATES ATTORNEY

21
 22 By: /s/
 23 Juan D. Walker
 24 Assistant United States Attorney
 Attorneys for Federal Defendant

25 **ORDER**

26 Good cause appearing therefor, IT IS SO ORDERED.

27
 28 Dated: September 9, 2011

Elizabeth D. Laporte
 Hon. Elizabeth D. Laporte
 United State District Court Magistrate Judge