

1 Michael S. Sorgen [SBN 43107]  
2 Joyce Kawahata [SBN 113159]  
3 LAW OFFICES OF MICHAEL S. SORGREN  
4 240 Stockton Street, 9<sup>th</sup> Floor  
5 San Francisco, CA 94108  
6 Telephone: (415) 956-1360  
7 Facsimile: (415) 956-6342

8 Attorneys for Plaintiff  
9 THERESA M. O'BRIEN

10 THERESA M. O'BRIEN, ) Case No.: C10-1830 EDL  
11 Plaintiff, )  
12 vs. )  
13 JANET NAPOLITANO, SECRETARY, )  
14 DEPARTMENT OF HOMELAND )  
15 SECURITY, )  
Defendant. )  
-----)

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

### STIPULATION

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

### **PROTECTIVE ORDER**

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

26 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.

## IT IS SO STIPULATED.

LAW OFFICES OF MICHAEL S. SORGEN

By: /s/ Joyce Kawahata  
Joyce Kawahata  
Attorneys for Plaintiffs

20 Dated: September 8, 2011 MELINDA L. HAAG  
21 UNITED STATES ATTORNEY

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
Juan D. Walker  
Assistant United States Attorney  
Attorneys for Federal Defendant

## ORDER

20 Good cause appearing therefor, IT IS SO ORDERED.

28 Dated: September 9, 2011

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