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DAVIS WRIGHT TREMAINE LLP

21 UNITED STATES DISTRICT COURT
 22 NORTHERN DISTRICT OF CALIFORNIA
 23 SAN FRANCISCO DIVISION

24 ABDUL ALANI,)	Case No. CV-10-2766 WHA
)	
25 Plaintiff,)	STIPULATED PROTECTIVE ORDER
)	
26 v.)	
)	
27 ALASKA AIRLINES, INC.; CORPORATE)	
28 DOES 1-20; and INDIVIDUAL DOES 21-40,)	
inclusive,)	
)	
29 Defendants.)	
)	
30 _____)	
31 ALASKA AIRLINES, INC.,)	
)	
32 Counter-Claimant,)	
)	
33 v.)	
)	
34 ABDUL ALANI,)	
)	
35 Counter-Defendant.)	
)	
36 _____)	

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation would be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords extends only to the limited
8 information or items that are entitled under the applicable legal principles to treatment as
9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated
10 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule
11 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied
12 when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

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

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

20 2.3 “Confidential” Information or Items: information (regardless of how generated,
21 stored or maintained) or tangible things that a party in good faith believes constitutes or includes
22 proprietary business, financial, or personal information, or information furnished to it in confidence
23 by any third party, which information is not known or freely accessible to the general public. Good
24 faith also exists where the disclosure would violate the legitimate privacy interests of either party or
25 third parties.

26 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely
27 sensitive “Confidential Information or Items” whose disclosure to another Party or non-party would
28 create a substantial risk of serious injury that could not be avoided by less restrictive means.

1 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
2 Producing Party.

3 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
4 Material in this action.

5 2.7 Designating Party: a Party or non-party that designates information or items that it
6 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential —
7 Attorneys’ Eyes Only.”

8 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
9 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

10 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to
11 represent or advise a Party in this action.

12 2.10 House Counsel: attorneys who are employees of a Party.

13 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
14 support staffs).

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

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

24 3. SCOPE

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

1 4. DURATION

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

5 5. DESIGNATING PROTECTED MATERIAL

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

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

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

21 5.1 Manner and Timing of Designations. Except as otherwise provided in this Order
22 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material
23 that qualifies for protection under this Order must be clearly so designated before the material is
24 disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (apart from transcripts of depositions or
27 other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
28 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of each page that contains

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

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

18 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
19 the Party or non-party offering or sponsoring the testimony identify on the record, before the close
20 of the deposition, hearing, or other proceeding, all protected testimony, and further specify any
21 portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to
23 protection, and when it appears that substantial portions of the testimony may qualify for protection,
24 the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before
25 the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific
26 portions of the testimony as to which protection is sought and to specify the level of protection
27 being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
28 ONLY”). Only those portions of the testimony that are appropriately designated for protection

1 within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

2 Transcript pages containing Protected Material must be separately bound by the court
3 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-party offering
5 or sponsoring the witness or presenting the testimony.

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

13 5.2 Inadvertent Failures to Designate. If corrected immediately upon discovery by the
14 designating party of the need to designate information as confidential, an inadvertent failure to
15 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’
16 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under
17 this Order for such material. If material is appropriately designated as “Confidential” or “Highly
18 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,
19 on timely notification of the designation as described above, must make reasonable efforts to assure
20 that the material is treated in accordance with the provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
23 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
24 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
25 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
26 after the original designation is disclosed.

27 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s
28 confidentiality designation must do so in good faith and must begin the process by conferring

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

8 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
9 designation after considering the justification offered by the Designating Party may file and serve a
10 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
11 identifies the challenged material and sets forth in detail the basis for the challenge. Each such
12 motion must be accompanied by a competent declaration that affirms that the movant has complied
13 with the meet and confer requirements imposed in the preceding paragraph and that sets forth with
14 specificity the justification for the confidentiality designation that was given by the Designating
15 Party in the meet and confer dialogue.

16 The burden of persuasion in any such challenge proceeding shall be on the Designating
17 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
18 question the level of protection to which it is entitled under the Producing Party's designation.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
21 produced by another Party or by a non-party in connection with this case only for prosecuting,
22 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
23 the categories of persons and under the conditions described in this Order. When the litigation has
24 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
25 DISPOSITION).

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

28 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered

1 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
2 information or item designated CONFIDENTIAL only to:

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

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

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

13 (d) the Court and its personnel;

14 (e) court reporters, their staffs, and professional vendors to whom disclosure is
15 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
16 Protective Order" (Exhibit A);

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

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

23 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

24 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
25 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
26 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

27 (a) the Receiving Party's Outside Counsel of record in this action and House
28 Counsel, as well as employees of Outside Counsel to whom it is reasonably necessary to disclose

1 the information for this litigation and who have signed the “Agreement to Be Bound by Protective
2 Order” that is attached hereto as Exhibit A;

3 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
4 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order”
5 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been
6 followed];

7 (c) the Court and its personnel;

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

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

12 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

14 (a) Unless otherwise ordered by the court or agreed in writing by the Designating
15 Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any information or item
16 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” first must
17 make a written request to the Designating Party that (1) identifies the specific HIGHLY
18 CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the Expert,
19 (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
20 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
21 identifies each person or entity from whom the Expert has received compensation for work in his or
22 her areas of expertise or to whom the expert has provided professional services at any time during
23 the preceding five years, and (6) identifies (by name and number of the case, filing date, and
24 location of court) any litigation in connection with which the Expert has provided any professional
25 services during the preceding five years.

26 (b) A Party that makes a request and provides the information specified in the
27 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
28 within seven court days of delivering the request, the Party receives a written objection from the

1 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

2 (c) A Party that receives a timely written objection must meet and confer with the
3 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement.
4 If no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion
5 as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
6 seeking permission from the court to do so. Any such motion must describe the circumstances with
7 specificity, set forth in detail the reasons for which the disclosure to the Expert is reasonably
8 necessary, assess the risk of harm that the disclosure would entail and suggest any additional means
9 that might be used to reduce that risk. In addition, any such motion must be accompanied by a
10 competent declaration in which the movant describes the parties' efforts to resolve the matter by
11 agreement (i.e., the extent and the content of the meet and confer discussions) and sets forth the
12 reasons advanced by the Designating Party for its refusal to approve the disclosure.

13 In any such proceeding the Party opposing disclosure to the Expert shall bear the burden of
14 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
15 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
17 LITIGATION.

18 If a Receiving Party is served with a subpoena or an order issued in other litigation that
19 would compel disclosure of any information or items designated in this action as
20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
21 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
22 and in no event more than three court days after receiving the subpoena or order. Such notification
23 must include a copy of the subpoena or court order.

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

1 The purpose of imposing these duties is to alert the interested parties to the existence of this
2 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
3 confidentiality interests in the court from which the subpoena or order issued. The Designating
4 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
5 material – and nothing in these provisions should be construed as authorizing or encouraging a
6 Receiving Party in this action to disobey a lawful directive from another court.

7 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

19
20 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the Producing
21 Party, within sixty days after the final termination of this action, each Receiving Party must return
22 all Protected Material to the Producing Party. As used in this subdivision, “all Protected Material”
23 includes all copies, abstracts, compilations, summaries or any other form of reproducing or
24 capturing any of the Protected Material. With permission in writing from the Designating Party, the
25 Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether
26 the Protected Material is returned or destroyed, the Receiving Party must submit a written
27 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
28 by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material

DAVIS WRIGHT TREMAINE LLP

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DATED: December 13, 2010.



William H. Alsup
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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DAVIS WRIGHT TREMAINE LLP

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 Abdul Alani v. Alaska Airlines, Inc., Case No. CV-10-2766 WHA. 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: _____
[printed name]

Signature: _____
[signature]