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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

THE DEPARTMENT OF FAIR EMPLOYMENT)
AND HOUSING,)
Plaintiff,)
v.)
LAW SCHOOL ADMISSION COUNCIL, INC.,)
Defendant.)
-----)
THE UNITED STATES OF AMERICA,)
Plaintiff-Intervenor,)
v.)
LAW SCHOOL ADMISSION COUNCIL, INC.,)
Defendant.)
-----)
ANDREW QUAN, NICHOLAS JONES, and)
ELIZABETH HENNESSEY-SEVERSON,)
Plaintiff-Intervenors,)
v.)
LAW SCHOOL ADMISSION COUNCIL, INC.,)
Defendant.)
-----)

Case No. CV 12-1830-EMC

PARTIES' ~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER RESPECTING
CONFIDENTIAL INFORMATION¹

¹ This stipulation and order is submitted jointly by all the parties to this action. Pursuant to Civ. LR 3-4(a), a complete list of the parties is contained on the signature page of this document.

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2 **PURPOSES AND LIMITATIONS**

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4 1. Disclosure and discovery activity in this Action are likely to involve production of
5 confidential or private information for which special protection from public disclosure and from
6 use for any purpose other than prosecuting this litigation is warranted. This Action will include
7 production of personal and potentially sensitive health and educational information.

8 Accordingly, in the interest of protecting the Confidential Information in this Action, and in
9 accordance with Federal Rule of Civil Procedure 26(c), the Parties hereby stipulate to certain
10 terms and petition the Court to enter a Protective Order in accordance with their stipulations
11 (“Protective Order”). The Parties acknowledge that this Protective Order does not confer blanket
12 protections on all disclosures or responses to discovery and that the protection it affords from
13 public disclosure and use extends only to the limited information or items that are entitled to
14 confidential treatment under this Protective Order and Rule 26(c). The Parties further
15 acknowledge, as set forth below, that this Protective Order does not entitle them to file
16 Confidential Information under seal; Civil Local Rule 79-5 and General Order 62 set forth the
17 procedures that must be followed and the standards that will be applied when a Party seeks
18 permission from the Court to file material under seal. The Parties agree that there is good cause
19 to make certain discovery disclosures under a Protective Order pursuant to Rule 26(c) of the
20 Federal Rules of Civil Procedure.

21 **SCOPE OF THIS PROTECTIVE ORDER**

22 2. This Protective Order covers not only Confidential Information (as defined below), but
23 also (1) any information copied or extracted from Confidential Information; (2) all copies,
24 excerpts, summaries, or compilations of Confidential Information; and (3) any testimony,
25 conversations, press releases, or presentations by Parties or their counsel that might reveal
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1 Confidential Information. However, the protections conferred by this Protective Order do not
2 cover any information that is in the public domain at the time of disclosure to a Receiving Party
3 or becomes part of the public domain after its disclosure to a Receiving Party as a result of
4 publication not involving a violation of this Protective Order, including becoming part of the
5 public record through this trial or otherwise.

6 3. The terms of this Protective Order are subject to, and must be read in accordance with,
7 the Parties' agreements and stipulations as set out in the Joint Case Management Statement and
8 Stipulation and Order Regarding Discovery.

9 **DEFINITIONS**

10 4. As used in this Protective Order:

11 (a) "Action" means the above-entitled action styled as *The Department of Fair*
12 *Employment and Housing v. Law School Admission Council, Inc., et al.*, United States District
13 Court for the Northern District of California, Case No. CV-12-1830-EMC, and all Complaints-
14 in-Intervention filed in Case No. CV-12-1830-EMC, including any pretrial, trial, post-trial, or
15 appellate proceedings.

16 (b) "Challenging Party" means a Party that challenges the designation of information
17 or items under this Protective Order.

18 (c) "Confidential Information" means information produced in this Action (regardless
19 of how it is generated, stored, or maintained) that:

20 (i) qualifies for protection under Federal Rule of Civil Procedure 5.2(a);

21 (ii) discloses any Person's individually identifiable grades (including school
22 transcripts), grade point average, test scores (including LSAT scores), or

23 individually identifiable health information, so long as such information otherwise
24 qualifies for protection under Federal Rule of Civil Procedure 26(c). This may
25 include Psychoeducational/Neuropsychological Assessment Reports,
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1 Psychological Reports, or statements or documentation submitted by qualified
2 evaluators or licensed professionals;

3 (iii) discloses sensitive or proprietary business or commercial information that
4 qualifies for protection under Federal Rule of Civil Procedure 26(c); or

5 (iv) is other information the confidentiality of which the Producing Party is
6 under an independent legal duty to protect.

7 (d) “Designating Party” is any Party that designates information or items that it
8 produces as “Confidential Information.”

9 (e) “Disclose” means to show, give, make available, reveal, describe, transmit, or
10 otherwise communicate, in any fashion, in whole or in part.

11 (f) “Disclosure” or “Discovery Material” means all items or information, regardless
12 of the medium or manner in which it is generated, stored, or maintained (including, among other
13 things, Documents, testimony, transcripts, and tangible things), that are produced or generated in
14 disclosures, depositions, or responses to discovery in this Action.

15 (g) “Document” means all original documents or electronically stored information,
16 and all copies thereof, as defined in Rule 1001 of the Federal Rules of Evidence and Rule
17 34(a)(1)(A) of the Federal Rules of Civil Procedure.

18 (h) “Expert” is a Person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
20 witness or as a consultant in this Action.

21 (i) “Non-Party” means any natural person, partnership, corporation, association, or
22 other legal entity not named as a Party to this Action.

23 (j) “Party,” for purposes of this Protective Order, means the Department of Fair
24 Employment and Housing (“DFEH”); the United States of America (“United States”); Andrew
25 Quan, Nicholas Jones, and Elizabeth Hennessy-Severson; and/or the Law School Admission
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1 Council, Inc. (“LSAC”), including all their officers, directors, employees, consultants, retained
2 experts, and outside counsel of record (and their support staffs).

3 (k) “Person” means any natural person, corporation, partnership, proprietorship,
4 group, association, organization, business entity, governmental body, agency, and any agent for
5 the foregoing.

6 (l) “Producing Party” is a Party that produces Disclosure or Discovery Material in
7 this Action.

8 (m) “Receiving Party” is any Party who properly receives Disclosure or Discovery
9 Material from a Producing Party.

10 **DESIGNATION OF CONFIDENTIALITY**

11 5. Except as otherwise provided in this Protective Order, or as otherwise stipulated or
12 ordered, any Confidential Information must be clearly marked as “CONFIDENTIAL
13 INFORMATION” or “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” before it is
14 disclosed or produced, and only the Persons designated in paragraph 17 shall have access to any
15 information or material so marked. The designation of information or material as “Confidential
16 Information” shall not be construed as a concession by the Designating Party that such
17 information or material is relevant or material to any issue or is otherwise discoverable, or by the
18 non-Designating Parties that such information or material does, in fact, constitute or contain
19 Confidential Information.

20 6. For Documents, the Producing Party must affix the legend “CONFIDENTIAL
21 INFORMATION” or “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” to each
22 page that contains Confidential Information. If a multi-page document is deemed to be
23 confidential in its entirety, a Party may so indicate by marking “CONFIDENTIAL – ENTIRE
24 DOCUMENT” in large letters on the first page of the document. A Party that makes original
25 Documents or materials available for inspection need not designate them for protection until
26 after the inspecting Party has indicated which material it would like copied and produced.

1 During the inspection and before the designation, all of the material made available for
2 inspection shall be deemed “Confidential Information.” After the inspecting Party has identified
3 the Documents it wants copied and produced, the Producing Party must determine which
4 Documents, or portions thereof, qualify for protection under this Protective Order. Then, before
5 producing the specified Documents, the Producing Party must affix the “CONFIDENTIAL
6 INFORMATION” or “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” legend to
7 each page that contains Confidential Information.

8 7. Deposition testimony shall be treated as Confidential Information for a period of 30
9 calendar days after certification of mailing of the deposition transcript by the court reporter to
10 permit any Party to review the transcript and designate additional information therein as
11 Confidential Information. Parties may, in good faith, designate that portion of deposition
12 testimony and/or exhibits to such deposition containing Confidential Information: (i) by orally
13 advising the court reporter and counsel of record at the deposition of the beginning and ending of
14 the testimony containing Confidential Information; or (ii) by sending to the attorneys for all other
15 Parties, within 30 calendar days of receipt of the deposition transcript, a written list of the
16 particular pages of the transcript and/or deposition exhibit numbers that contain such
17 Confidential Information and requesting that the list be affixed to the face of the transcript and
18 each copy thereof. If a Party designates deposition testimony and/or deposition exhibits as
19 Confidential Information during the deposition, the reporter shall mark the face of the transcript
20 to designate the beginning and ending of the Confidential Information portions thereof. If
21 appropriate, the court reporter shall also clearly mark “CONFIDENTIAL- SUBJECT TO
22 PROTECTIVE ORDER” on each page of a separate original transcript containing the
23 Confidential Information portions thereof.

24 8. Each Party that designates information or items for protection under this Protective Order
25 must take care to limit any such designation to specific material that qualifies under the
26 appropriate standards. When reasonably possible, the Designating Party must designate for

1 protection only those parts of Documents, transcripts, or other materials that qualify—so that
2 other portions of the Documents, transcripts, or other materials for which protection is not
3 warranted are not swept unjustifiably within the ambit of this Protective Order. Mass,
4 indiscriminate, or routinized designations are prohibited. Designations that are shown to be
5 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
6 encumber or retard the case development process or to impose unnecessary expenses and
7 burdens on other Parties) expose the Designating Party to sanctions. If a Designating Party
8 subsequently determines that information or items that it designated for protection do not qualify
9 for protection, that Designating Party must promptly notify all other Parties that it is withdrawing
10 the mistaken designation.

11 9. Any Party may challenge a designation of confidentiality at any time subject to the
12 objection procedures described in paragraphs 10, 11, and 29. Unless a prompt challenge to a
13 confidentiality designation is necessary to avoid foreseeable and substantial unfairness,
14 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does
15 not waive its right to challenge a confidentiality designation by electing not to mount a challenge
16 promptly after the original production of Disclosure or Discovery Material or designation of
17 confidentiality.

18 10. Whenever a Party objects to the designation of Disclosure or Discovery Material as
19 Confidential Information prior to entry of a sealing order, such Party shall serve its written
20 objections, including notice of each designation it is challenging and the basis for each challenge,
21 to the Designating Party. To avoid ambiguity, the Challenging Party must state that the
22 challenge to confidentiality is being made in accordance with this specific paragraph of the
23 Protective Order. The Designating Party shall respond within five business days of the date of
24 service of notice. The Parties shall attempt to resolve each challenge in good faith and must
25 begin the process by conferring directly (in voice to voice dialogue) within 14 days of the date of
26 service of notice. In conferring, the Challenging Party must explain the basis for its belief that

1 the confidentiality designation was not proper and must give the Designating Party the
2 opportunity to review the designated material, to reconsider the circumstances, and, if no change
3 in designation is offered, to explain the basis for the chosen designation. A Challenging Party
4 may proceed to the next stage of the challenge process only if it has engaged in this meet and
5 confer process first or establishes that the Designating Party is unwilling to participate in the
6 meet and confer process in a timely manner.

7 11. If the Parties cannot resolve a challenge, the Challenging Party may apply to the Court
8 for a ruling under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General
9 Order 62, if applicable) within 21 days of the initial notice of challenge or within 14 days of the
10 Parties agreeing that the meet and confer process will not resolve their dispute, whichever is
11 earlier. Any motion brought pursuant to this provision must be accompanied by a competent
12 declaration affirming that the movant complied with the meet and confer requirements imposed
13 in the preceding paragraph. The burden of persuasion in any such challenge proceeding shall be
14 on the Challenging Party. Frivolous challenges, and those made for an improper purpose (e.g., to
15 harass or impose unnecessary expenses and burdens on the other Parties), may expose the
16 Challenging Party to sanctions. Unless and until this Court enters an order changing the
17 designation of the information, it shall be afforded confidential treatment as provided herein.

18 **AGREEMENT TO DESIGNATE CERTAIN CATEGORIES OF INFORMATION AS**
19 **CONFIDENTIAL INFORMATION**

20 12. Each Party agrees that it will designate the following categories of information as
21 Confidential Information for purposes of this Protective Order if such information is (a)
22 contained in Documents that are produced by that Party in discovery, or (b) discussed in an
23 individually identifiable manner in any filings made by that Party with the Court:

24 (a) Individually identifiable health and medical information, including but not limited to
25 Psycho-educational/ Neuropsychological Assessment Reports, Psychological Reports, Vision
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1 Evaluation Reports, Physical Evaluation Reports, Individualized Education Plans, and/or
2 statements made or documentation submitted by health or medical professionals; and

3 (b) Individually identifiable academic information, including but not limited to grades,
4 school transcripts, grade point averages, and test scores (including LSAT scores).

5 In agreeing to designate these categories of information as Confidential Information hereunder,
6 all Parties preserve all objections that they might have to the production of any documents in
7 their custody or control that contain such Confidential Information, including any relevance
8 objection and any objection that such records should be produced only pursuant to a release or
9 other written authorization from the Person(s) whose individually identifiable information would
10 be disclosed.

11 13. Any Party may challenge another Party's decision not to designate as "Confidential
12 Information" information that the Challenging Party believes falls within the categories
13 described in paragraphs 12(a) and/or 12(b). Any such challenge will be subject to the objection
14 procedures described in paragraphs 14 and 15. A Party does not waive its right to challenge the
15 absence of a confidentiality designation by electing not to mount a challenge promptly after the
16 original production of Disclosure or Discovery Material.

17 14. Whenever a Party objects to the failure to designate Disclosure or Discovery Material as
18 Confidential Information under paragraph 13 of this Protective Order, such Party shall serve its
19 written objections, including notice of the information it contends should be designated as
20 Confidential Information and the basis for each challenge, to the Party that produced the
21 information. To avoid ambiguity, the Challenging Party must state that the challenge is being
22 made in accordance with this specific paragraph of the Protective Order. The challenged Party
23 shall respond within five business days of the date of service of notice. The Parties shall attempt
24 to resolve each challenge in good faith and must begin the process by conferring directly (in
25 voice to voice dialogue) within 14 days of the date of service of notice. In conferring, the
26 Challenging Party must explain the basis for its belief that the challenged information should be

1 designated as Confidential Information under this Protective Order and must give the responding
2 Party the opportunity to review the challenged information, to reconsider the circumstances, and,
3 if no change in designation is offered, to explain the basis for not designating the information as
4 Confidential Information. A Challenging Party may proceed to the next stage of the challenge
5 process only if it has engaged in this meet and confer process first or establishes that the
6 challenged Party is unwilling to participate in the meet and confer process in a timely manner.
7 While a challenge to a failure to designate is pending, the Parties must protect the confidentiality
8 of the document or testimony under the terms of this Protective Order.

9 15. If the Parties cannot resolve a challenge, the Challenging Party may apply to the Court
10 for a ruling under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General
11 Order 62, if applicable) within 21 days of the initial notice of challenge or within 14 days of the
12 Parties agreeing that the meet and confer process will not resolve their dispute, whichever is
13 earlier. Any motion brought pursuant to this provision must be accompanied by a competent
14 declaration affirming that the movant complied with the meet and confer requirements imposed
15 in the preceding paragraph. The burden of persuasion in any such challenge proceeding shall be
16 on the Challenging Party. Frivolous challenges, and those made for an improper purpose (e.g., to
17 harass or impose unnecessary expenses and burdens on the other Parties), may expose the
18 Challenging Party to sanctions. Unless and until this Court enters an order changing the
19 designation of the information, it shall be afforded confidential treatment as provided herein.

20 **RESTRICTIONS ON DISCLOSURE OF CONFIDENTIAL INFORMATION**

21 16. All Confidential Information that is disclosed or produced in connection with this Action
22 may be used only for the purposes of this litigation and shall not be disclosed by any Party, or
23 any agents thereof, to anyone other than the Persons permitted access and under the conditions
24 set forth in paragraphs 17-20, absent advance, written, stipulated agreement by the other Parties,
25 and subject to further provisions in this Protective Order. Confidential Information must be
26 stored and maintained by a Receiving Party at a location and in a reasonably secure manner that

1 ensures that access is limited to the Persons authorized under this Protective Order. Nothing in
2 this Protective Order shall prohibit the transmission of Confidential Information between or
3 among authorized recipients of such information.

4 17. Except by prior order of the Court or permitted in writing by the Designating Party, no
5 Party shall disclose Confidential Information to any Person other than the following Persons:

6 (a) the Party's attorneys of record in this Action, as well as employees of said
7 attorneys to whom it is reasonably necessary to disclose the information for this Action, and
8 Persons or entities that provide litigation support services (e.g., photocopying, videotaping,
9 translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in
10 any form or medium);

11 (b) the Receiving Party's officers, directors, and employees, to whom disclosure is
12 reasonably necessary for the litigation of this Action, subject to the requirements of paragraph 18
13 below;

14 (c) the Party's bona-fide consultants, interpreters, advisors, or Experts as defined in
15 this Protective Order (and their clerical support) consulted by the Parties or their attorneys of
16 record in connection with this Action, whether or not retained to testify at trial, to the extent
17 deemed reasonably necessary for the litigation of this Action, and subject to the requirements of
18 paragraph 18 below;

19 (d) the Court and any appellate courts having jurisdiction of any appeal (including
20 court personnel, jurors, and other court officers, including court reporters and video operators at
21 any depositions), subject to further provisions in this Protective Order;

22 (e) professional jury or trial consultants, mock jurors, and their employees and
23 subcontractors to whom disclosure is reasonably necessary for this litigation, subject to the
24 requirements of paragraph 18 below;

25 (f) the author or recipient of a document containing the information or a custodian or
26 other Person who otherwise possessed or knew the information;

1 (g) any other Person whom the Parties mutually agree in writing may have access to
2 the Confidential Information, subject to the requirements of paragraph 18 below;

3 (h) any Person whom the Court, upon notice and an opportunity to be heard, directs;
4 and

5 (i) any other Person whose assistance may be reasonably sought or required for
6 preparation and/or trial of this Action and to whom disclosure is reasonably necessary, including,
7 but not limited to, potential witnesses and deponents in preparation for and at their depositions,
8 subject to the requirements of paragraph 18 below. Non-Party deponents shall not be permitted
9 to retain Documents containing Confidential Information.

10 18. Before any information designated as Confidential Information is disclosed to any
11 individual or entity identified in paragraphs 17(b), (c), (e), (g), or (i), counsel for the Party
12 proposing to make such disclosure shall instruct the Non-Party to maintain the confidentiality of
13 the Confidential Information.

14 **EXEMPTIONS**

15 19. Unless the Designating Party waives the protections of this Protective Order, no Party
16 will disclose any Confidential Information produced in discovery by any other Party or Non-
17 Party, except as required by law or pursuant to the order of a court of competent jurisdiction
18 directing the disclosure of such Confidential Information, and subject to further provisions in this
19 Protective Order, including this paragraph and paragraph 20. In the event a Receiving Party is
20 required by law (e.g., by subpoena or other process or order) to disclose Confidential
21 Information that has been produced by another Party, such Receiving Party will:

22 (a) to the extent applicable, adhere to those procedures established pursuant to 5
23 U.S.C. § 301 and 28 C.F.R. §§ 16.21-.29 (Touhy regulations applicable to the U.S. Department
24 of Justice);

1 (b) advise the court or other legal authority requiring disclosure that a protective
2 order is in effect in the Northern District of California that protects the Confidential Information
3 from public use or disclosure;

4 (c) provide prompt written notice to the Producing Party so that the Producing Party
5 may seek an appropriate protective order in the action for which disclosure is required to protect
6 the Confidential Information from public use or disclosure; and

7 (d) when necessary to protect the Confidential Information, move to file the
8 Confidential Information under seal with the relevant court of competent jurisdiction.

9 Nothing in these provisions should be construed as authorizing or encouraging a Receiving Party
10 in this Action to disobey a lawful directive from another court.

11 20. To the extent any Party is subject to Freedom of Information Act (“FOIA”) requests,
12 Public Records Act requests, or requests pursuant to similar laws requiring disclosure of records
13 by governmental bodies (a “Public Records Request”), this paragraph and paragraph 19 are not
14 intended to impede a Party’s compliance with the law pertaining to such Public Records
15 Requests. Any such Party receiving a FOIA or Public Records Request seeking Confidential
16 Information shall employ good faith efforts to ensure that Confidential Information covered by
17 this Protective Order is protected from disclosure to the fullest extent of the law.

18 21. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
19 Confidential Information to any Person or in any circumstance not authorized under this
20 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
21 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
22 the Confidential Information, (c) deliver a copy of this Protective Order and explain its terms to
23 the Person or Persons to whom unauthorized disclosures were made, and (d) request such Person
24 or Persons to comply with the terms of this Protective Order.

25 22. The disclosure of Confidential Information by a Party to Persons other than those defined
26 in paragraph 17 above shall not, in and of itself, waive confidentiality in this Action. In addition,

1 the inadvertent or unintentional disclosure by a Party of Confidential Information, regardless of
2 whether the information was so designated at the time of disclosure, shall not waive in whole or
3 in part a Party's claim of confidentiality, either as to the specific information disclosed or as to
4 any other information relating thereto or on the same or related subject matter. In the event that
5 a Party inadvertently fails to designate any Document, Disclosure, or Discovery Material under
6 paragraphs 5–8, it may later designate such Document, Disclosure, or Discovery Material by
7 notifying the other Parties in writing, identifying the particular Document, Disclosure, or
8 Discovery Material it wishes to designate as Confidential Information. All Parties shall
9 thereafter treat the particular Document, Disclosure, or Discovery Material, and all copies
10 thereof, in accordance with the Confidential Information designation and the associated
11 protections under this Protective Order for such Confidential Information. No Person or Party
12 shall incur liability or sanctions with respect to any disclosure that occurred prior to receipt of
13 written notice of a belated designation.

14 23. If additional Persons become Parties to this Action, they shall not have access to
15 Confidential Information produced by or obtained from other Parties until the newly joined Party
16 or its Counsel confirms in writing to all other Parties that they have read this Protective Order
17 and agree to be bound by its terms.

18 **FILING AND USE IN COURT OF CONFIDENTIAL MATERIAL**

19 24. Any Person examined as a witness at deposition or trial may testify concerning all
20 Confidential Information, consistent with the terms of this Protective Order and with any other
21 Court orders relevant thereto.

22 25. Without written permission from the Designating Party or a court order secured after
23 appropriate notice to all interested persons, a Party may not file in the public record in this action
24 any Confidential Information. A Party that seeks to file under seal any Confidential Information
25 must comply with Civil Local Rule 79-5 and General Order 62. Confidential Information may
26 only be filed under seal pursuant to a court order authorizing the sealing of the specific

1 Confidential Information at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a
2 sealing order will issue only upon a request establishing that the Confidential Information at
3 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law.

4 26. If a Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5
5 and General Order 62 is denied by the court, then the Party may file the information in the public
6 record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

7 27. The parties agree that prior to the filing of any motion to file Confidential Information
8 under seal, the moving party shall give five days written notice to all other parties. Absent a
9 written objection under paragraphs 10 and 11 to the confidentiality designation, the Parties agree
10 not to oppose the filing of Confidential Material by any Party under seal pursuant to this
11 Protective Order and the filing Party may represent to the Court that it is moving to file under
12 seal without objection by the other Parties.

13 28. The absence of a written objection under paragraphs 10 and 11 to the confidentiality
14 designation does not relieve the parties from filing an Administrative Motion to File Under Seal
15 pursuant to Civil Local Rule 79-5(b) and General Order 62.

16 29. If any Party objects to identified portions of the submitted materials remaining under seal
17 or to the redactions in the filing submitted for the public record, it shall, within fourteen days of
18 submission of the materials, state its objections in a letter emailed to the other Parties' counsel of
19 record. The Parties shall promptly meet and confer to attempt to resolve the objections and, if
20 they cannot be resolved, shall promptly bring the objections to the Court for resolution. Any
21 revised public electronic filing of that submission shall be made by the submitting Party within
22 fourteen days after the Court's decision resolving that dispute.

23 30. If any Confidential Information is disclosed or otherwise used in any court proceeding in
24 this Action prior to trial, it shall not lose its confidential status through such disclosure or use.
25 Counsel for any Party may at the time of or after such disclosure or use request that any portion
26 of any transcript wherein such Confidential Information is disclosed or used, and any exhibits

1 wherein Confidential Information is disclosed or used, be filed under seal with this Court and be
2 accorded the protections of this Protective Order. In the event that any transcript or portion of a
3 transcript is filed under seal pursuant to this paragraph, all parties and their counsel may obtain
4 copies of the sealed transcript without the need for a separate order from the Court under Civil
5 Local Rule 79-5(f).

6 **CONFIDENTIAL MATERIAL AT END OF ACTION**

7 31. The confidentiality obligations imposed by this Protective Order shall survive the final
8 determination of this Action and shall remain in full force and effect and provide the Court with
9 ancillary jurisdiction to enforce its terms until a Designating Party agrees otherwise in writing or
10 a court order otherwise directs. Final determination shall be deemed to be the later of (1) the
11 dismissal of all claims and defenses in this action, with or without prejudice, and (2) final
12 judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials,
13 or reviews of this Action, including the time limits for filing any motions or applications for
14 extension of time pursuant to applicable law. The Parties agree that, pursuant to this provision,
15 any document filed under seal in this Action will continue to be placed under seal by the Court
16 until the expiration of the 10 years provided by General Order 62. Nothing in this provision is
17 intended to affect the normal records destruction policy of the United States Courts.

18 32. After the expiration of the applicable time period during which any Party may appeal the
19 final order entered in this Action, or any Party must, by law, maintain complete files, a Party
20 may request that Confidential Information (including all copies, abstracts, compilations,
21 summaries, and any other format reproducing any of the Confidential Information) produced by
22 it be returned or destroyed at the option of the Receiving Party, which request shall be honored.
23 If the Receiving Party elects to destroy the information rather than return it, a certificate attesting
24 to such destruction must be delivered to each Producing Party within 60 days following such
25 destruction. Nothing in this provision shall limit the rights, if any, of any Party to object to and
26 seek a ruling of the Court concerning a Party's retention of any Confidential Information. This

1 paragraph does not require the destruction of materials protected by the attorney-client privilege
2 or work product doctrine. In addition, counsel for each Party may retain one complete copy of
3 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
4 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
5 consultant and expert work product, even if such materials contain Confidential Information.
6 Any such archival copies that contain or constitute Confidential Information remain subject to
7 this Protective Order.

8 **NON-PARTY'S CONFIDENTIAL INFORMATION**

9 33. The terms of this Protective Order are applicable to Confidential Information produced
10 by a Non-Party in this Action and designated by the Non-Party or any Party as "Confidential
11 Information" in accordance with the restraints set forth in paragraphs 6-8. Only information that
12 meets the definition of Confidential Information contained in paragraph 4(c) may be designated
13 as "Confidential Information" subject to this Protective Order. The designation of information or
14 material as "Confidential Information" shall not be construed as a concession by any Party that
15 such information or material is relevant or material to any issue or is otherwise discoverable, or
16 by the non-designating Parties that such information or material does, in fact, constitute or
17 contain Confidential Information. Such information produced by Non-Parties and designated as
18 Confidential Information in connection with this litigation is protected by the remedies and relief
19 provided by this Protective Order. Nothing in these provisions should be construed as
20 prohibiting a Non-Party from seeking additional protections.

21 **MISCELLANEOUS**

22 34. Nothing in this Protective Order abridges the right of any Party to seek its modification
23 by the Court in the future. This Protective Order, or any portion thereof, may be modified,
24 amended, or vacated by further order of the Court upon the motion of any Party.

25 35. Nothing herein shall be deemed, construed, or asserted to affect in any way a Party's
26 right to object to disclosing or producing any information or item on any ground not addressed in

1 this Protective Order. Similarly, no Party waives any right to object on any ground to the use in
2 evidence of any of the material covered by this Protective Order. This Protective Order is
3 without prejudice to all rights of the Parties as set forth in the Federal Rules of Civil Procedure
4 and, except where expressly stated herein, is not intended to supersede the Federal Rules of Civil
5 Procedure, this Court’s Civil Local Rules and General Orders, U.S. District Judge Edward M.
6 Chen’s and Magistrate Judge Kandis A. Westmore’s Standing Orders, and any other applicable
7 orders or rules.

8 36. Nothing herein shall be construed to limit in any way a Person’s right to waive the
9 protections of this Protective Order and permit the use of his or her own Confidential
10 Information by a Party or any agent or joint investigator of that Party.

11 37. Nothing herein shall be construed to alter or limit in any way a Party’s right to use or
12 disclose its own records or proprietary information, including, but not limited to, records or
13 information received from third parties outside the context of this litigation, for any purpose
14 outside of and wholly unrelated to this Action.

15 38. This Protective Order is without prejudice to any Person’s rights as set forth in any
16 contract, confidentiality agreement, or privacy law and is not intended to supersede any such
17 contracts, agreements, or laws.

18 39. Prior to trial of this Action, counsel for the Parties shall confer as to whether this
19 Protective Order should be amended for trial and attempt to reach agreement on the handling of
20 Confidential Material at trial. If the Parties agree to amend this Protective Order for trial, such
21 agreement, or proposals if no agreement can be reached, shall be submitted to the Court for
22 consideration. If, for any reason, an amended protective order is not agreed upon and entered by
23 the Court, this Protective Order shall govern the protection of any Confidential Information
24 during trial in this Action, pending any further ruling by the Court.

25 ~~40. In the event anyone shall violate or threaten to violate any terms of this Protective Order,~~
26 ~~the aggrieved party may immediately apply to the Court to obtain injunctive relief against such~~

1 ~~Person. The Court shall retain jurisdiction over such Person for the purpose of enforcing this~~
2 ~~Protective Order.~~

3 41. This Stipulation may be signed in counterparts.
4
5

6 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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8 United States Attorney
9 Northern District of California

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Signed this 26th day of March, 2013.



KANDIS A. WESTMORE
UNITED STATES MAGISTRATE JUDGE

² I, R. Sybil Villanueva, hereby attest that I gained the concurrence of all signatories whose signatures are represented by /s/ in the filing of this document.