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SECURITY  
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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 K.H., on behalf of himself and those similarly	)	Case No. 15-cv-02740 JST
14 situated,	)	
15 Plaintiff,	)	<b>REVISED STIPULATED PROTECTIVE</b>
16 v.	)	<b>ORDER AND [PROPOSED] ORDER RE</b>
17 THE SECRETARY OF THE DEPARTMENT	)	<b>SENSITIVE SECURITY INFORMATION, 49</b>
18 OF HOMELAND SECURITY,	)	<b>C.F.R. PART 1520.</b>
19 Defendant.	)	

20 It is hereby stipulated that the following Protective Order be entered in accordance with Rule  
21 26(c) of the Federal Rules of Civil Procedure and shall hereafter govern the use, handling, and  
22 disposition of information, testimony or documents created, filed, or obtained through discovery in the  
23 above captioned matter ("the Litigation"), which constitute Sensitive Security Information ("SSI") as  
24 defined by 49 C.F.R. Part 1520.

25 1. SSI is a specific category of information that requires protection against unauthorized  
26 disclosure pursuant to 49 U.S.C. § 114(r) and 49 C.F.R. Part 1520. Unauthorized disclosure of SSI may  
27 be detrimental to the security of transportation, may constitute an unwarranted invasion of personal  
28 privacy, or may reveal a trade secret or privileged or confidential commercial or financial information.

REVISED STIPULATED PROTECTIVE ORDER RE SSI  
NO. 15-CV-02740 JST

1 Unauthorized disclosure may also result in a civil enforcement penalty or other enforcement action by  
2 the Transportation Security Administration (“TSA”) against the party making the unauthorized  
3 disclosure. 49 C.F.R. § 1520.17.

4         2. Access to SSI is limited to “covered persons” with a “need to know” as set forth in 49  
5 C.F.R. § 1520.7 and § 1520.11. Because the parties, their attorneys, the Court and its employees are  
6 “covered persons” “with a need to know” certain SSI relevant to this case, this order permits the sharing  
7 in this civil action of relevant information and materials that are marked as SSI or may contain SSI,  
8 provided that they are not classified and are directly relevant to this case. The right of access to  
9 materials marked as SSI or containing SSI shall be limited to the Court and its employees, Plaintiff, and  
10 counsel for the parties, including their paralegal, secretarial and other legal personnel in their employ.  
11 Court reporters retained by the parties for purposes of recording depositions and who have signed a  
12 TSA-approved Non-Disclosure Agreement may also have access to SSI. After they have successfully  
13 passed a TSA background check and signed a TSA-approved Non-Disclosure Agreement, retained and  
14 non-retained expert witnesses and litigation consultants may also have access to SSI.

15         3. The materials encompassed in this protective order include, without limitation, deposition  
16 testimony, deposition exhibits, interrogatory responses, admissions, affidavits, declarations, documents  
17 produced pursuant to compulsory process or voluntarily in lieu of process, and any other documents or  
18 information produced or given to one party by another party or by a third party in connection with in this  
19 matter. Information taken from any of these materials that reveals its substance shall also be subject to  
20 this protective order.

21         4. “Covered persons” have an express duty to protect against the unauthorized disclosure of  
22 SSI. 49 C.F.R. § 1520.9. SSI must be safeguarded in such a way that it is not physically or visually  
23 accessible to persons who do not have a “need to know,” as defined in 49 C.F.R. § 1520.11. When  
24 unattended, SSI must be secured in a locked container or office, or other restricted access area.

25         5. Documents that contain SSI may not be further disseminated to persons without a “need  
26 to know” except with written permission from TSA. SSI must not be disclosed by either party to any  
27 person or entity other than those enumerated in paragraph two.

1           6. All documents subject to this Order shall be marked as “Confidential: Subject to SSI  
2 Protective Order” or similar marking. Documents containing SSI that inadvertently have not been  
3 marked as SSI still must be safeguarded against unauthorized disclosure.

4           7. Documents that are marked SSI or, though not marked, contain SSI, shall be treated as  
5 confidential and shall not be published or made available to the general public in any form (whether in  
6 paper or electronic form). A party seeking to file a document in the public record that contains SSI must  
7 request that the Court permit the portions containing SSI be filed under seal. In connection with the  
8 request to file under seal, the party must create a “FAM Name SSI Document” or “Redacted Version  
9 Documents,” which can be publicly filed.

10           8. A “FAM Name SSI Document” is any document in which the only SSI contained therein  
11 are names identifying individuals, other than Plaintiff, as Federal Air Marshals (FAMs), Senior FAMs,  
12 or Federal Air Marshal candidates.<sup>1</sup> If a party wishes to file or produce a FAM Name SSI Document  
13 during the course of the Litigation, that party must create a Redacted Version Document by employing  
14 the First Name, Last Initial convention (e.g., FAM John Doe is redacted to FAM John D.). For FAM  
15 Name SSI Documents created for the purpose of this Litigation (i.e., motions, memoranda, etc.), parties  
16 should perform the redactions during the composition of the Redacted Version Document. For FAM  
17 Name SSI documents that are not created for the purpose of Litigation, but that the parties, nevertheless,  
18 choose to file or produce for litigation purposes (i.e., exhibits to motions or memoranda), parties should  
19 perform the redactions using Adobe PDF redaction tools or by printing and manually redacting.

20           9. Deposition testimony that may contain SSI should be so designated by verbal notice or  
21 written notice within 10 days of receipt of the transcript. However, testimony containing SSI that is not  
22 designated, through mistake, nonetheless must be safeguarded against unauthorized disclosure. If the  
23 parties expect that the only SSI that the deposition testimony will contain will be FAM Name SSI, the  
24 parties may instruct the deponents prior to the deposition to use the First Name convention in their  
25 testimony.

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<sup>1</sup> Identifying individuals as Supervisory Air Marshals in Charge (SACs), Deputy Supervisory Air  
Marshals in Charge (DSACs), Assistant Supervisory Air Marshals in Charge (ASACs), Supervisory  
Federal Air Marshals (SFAMs), or FAMS Civilian Training Instructors does not constitute SSI.

1           10.     If there is a possibility that a party will introduce or disclose SSI at a hearing, or portion  
2 thereof, the party shall request that the hearing be closed to the public. If there is a possibility that a  
3 party will introduce or disclose SSI at trial, the party shall request that the courtroom shall be closed to  
4 the public.

5           11.     Plaintiff and Plaintiff's counsel may use SSI disclosed to them in this Litigation only for  
6 the purposes of the Litigation. SSI may not be further disseminated, including to a jury, except with  
7 written permission from Defendant.

8           12.     All documents subject to this Order in the possession of Plaintiff or Plaintiff's counsel  
9 shall be returned to counsel for Defendant within 60 days of termination of this Litigation, including any  
10 appellate proceedings, or shall be certified in writing to counsel for Defendant to have been destroyed by  
11 Plaintiff or Plaintiff's counsel.

12           13.     Nothing in this Order shall preclude any disclosure of documents subject to this Order to  
13 any Judge, Magistrate, or employee of the Court for purposes of this action.

1           14.     This Order is without prejudice to the rights of any party to make any objection to  
2 discovery or use of SSI, or documents that may contain SSI, permitted by the Federal Rules of Civil  
3 Procedure, or any statute, regulation, or other authority.

4           IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 DATED: January 22, 2016

BRIAN J. STRETCH  
Acting United States Attorney

7           /s/ Wendy M. Garbers  
8           WENDY M. GARBERS  
Assistant United States Attorney

9           Attorneys for THE SECRETARY  
10          OF THE DEPARTMENT OF  
HOMELAND SECURITY

11 DATED: January 22, 2016

MORRIS POLICH & PURDY LLP

12           /s/ Nicholas M. Wieczorek  
13           NICHOLAS M. WIECZOREK

14          Attorneys for PLAINTIFF K.H.

15           PURSUANT TO STIPULATION, IT IS SO ORDERED.

16  
17 DATED: January 25, 2016

  
THE HONORABLE JON S. TIGAR