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 UNITED AIRLINES, INC.

17  
 18 UNITED STATES DISTRICT COURT  
 19 NORTHERN DISTRICT OF CALIFORNIA

20  
 21 JAMES HARALSON, on behalf of himself and  
 22 others similarly situated,

23 Plaintiff,

24 v.

25 U.S. AVIATION SERVICES CORP., a Nevada  
 corporation; UNITED AIRLINES, INC., a  
 26 Delaware corporation; and DOES 1-50, inclusive,

27 Defendant.

Case No. 3:16-cv-05207-JST

**STIPULATED PROTECTIVE ORDER**

1     1.     PURPOSES AND LIMITATIONS

2             Disclosure and discovery activity in this action are likely to involve production of confidential,  
3     proprietary, or private information for which special protection from public disclosure and from use for  
4     any purpose other than prosecuting/defending this litigation may be warranted. Accordingly, the parties  
5     hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties  
6     acknowledge that this Order does not confer blanket protections on all disclosures or responses to  
7     discovery, and that the protection it affords from public disclosure and use extends only to the limited  
8     information or items that are entitled to confidential treatment under the applicable legal principles. The  
9     parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order  
10    does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
11    procedures that must be followed and the standards that will be applied when a party seeks permission  
12    from the court to file material under seal.

13    2.     DEFINITIONS

14            2.1     Challenging Party: a Party or Non-Party that challenges the designation of information  
15    or items under this Order.

16            2.2     “CONFIDENTIAL” Information or Items: information (regardless of how it is  
17    generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil  
18    Procedure 26(c).

19            2.3     Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as  
20    their support staff).

21            2.4     Designating Party: a Party or Non-Party that designates information or items that it  
22    produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

23            2.5     Disclosure or Discovery Material: all items or information, regardless of the medium or  
24    manner in which it is generated, stored, or maintained (including, among other things, testimony,  
25    transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery  
26    in this matter.

27            2.6     Expert: a person with specialized knowledge or experience in a matter pertinent to the  
28    litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant

1 in this action.

2 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel  
3 does not include Outside Counsel of Record or any other outside counsel.

4 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity  
5 not named as a Party to this action.

6 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but  
7 are retained to represent or advise a party to this action and have appeared in this action on behalf of that  
8 party or are affiliated with a law firm which has appeared on behalf of that party.

9 2.10 Party: any party to this action, including all of its officers, directors, employees,  
10 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

11 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in  
12 this action.

13 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
14 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or  
15 retrieving data in any form or medium) and their employees and subcontractors.

16 2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
17 “CONFIDENTIAL.”

18 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
19 Producing Party.

20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only Protected Material (as  
22 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,  
23 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or  
24 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections  
25 conferred by this Stipulation and Order do not cover the following information: (a) any information that  
26 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public  
27 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this  
28 Order, including becoming part of the public record through trial or otherwise; and (b) any information

1 known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
2 disclosure from a source who obtained the information lawfully and under no obligation of  
3 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a  
4 separate agreement or order.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
7 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
8 otherwise directs. Final disposition shall be deemed to be the later of: (1) dismissal of all claims and  
9 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and  
10 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits  
11 for filing any motions or applications for extension of time pursuant to applicable law.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-  
14 Party that designates information or items for protection under this Order must take care to limit any  
15 such designation to specific material that qualifies under the appropriate standards. The Designating  
16 Party must designate for protection only those parts of material, documents, items, or oral or written  
17 communications that qualify – so that other portions of the material, documents, items, or  
18 communications for which protection is not warranted are not swept unjustifiably within the ambit of  
19 this Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to  
21 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber  
22 or retard the case development process or to impose unnecessary expenses and burdens on other parties)  
23 expose the Designating Party to sanctions. If it comes to a Designating Party's attention that  
24 information or items that it designated for protection do not qualify for protection, that Designating  
25 Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
27 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
28 Discovery Material that qualifies for protection under this Order must be clearly so designated before

1 the material is disclosed or produced.

2 Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic documents, but  
4 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix  
5 the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion or  
6 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify  
7 the protected portion(s) (e.g., by making appropriate markings in the margins).

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

18 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
19 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding,  
20 all protected testimony.

21 (c) for information produced in some form other than documentary and for any other  
22 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
23 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion  
24 or portions of the information or item warrant protection, the Producing Party, to the extent practicable,  
25 shall identify the protected portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate  
27 qualified information or items does not, standing alone, waive the Designating Party’s right to secure  
28 protection under this Order for such material. Upon timely correction of a designation, the Receiving

1 Party must make reasonable efforts to assure that the material is treated in accordance with the  
2 provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or  
7 a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
8 confidentiality designation by electing not to mount a challenge promptly after the original designation  
9 is disclosed.

10 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
11 providing written notice of each designation it is challenging and describing the basis for each challenge.  
12 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the  
13 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective  
14 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by  
15 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within  
16 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for  
17 its belief that the confidentiality designation was not proper and must give the Designating Party an  
18 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
19 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed  
20 to the next stage of the challenge process only if it has engaged in this meet and confer process first or  
21 establishes that the Designating Party is unwilling to participate in the meet and confer process in a  
22 timely manner.

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,  
24 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7  
25 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of  
26 challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their  
27 dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration  
28 affirming that the movant has complied with the meet and confer requirements imposed in the preceding

1 paragraph. Failure by the Designating Party to make such a motion including the required declaration  
2 within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for  
3 each challenged designation. In addition, the Challenging Party may file a motion challenging a  
4 confidentiality designation at any time if there is good cause for doing so, including a challenge to the  
5 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this  
6 provision must be accompanied by a competent declaration affirming that the movant has complied with  
7 the meet and confer requirements imposed by the preceding paragraph.

8 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
9 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary  
10 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the  
11 Designating Party has waived the confidentiality designation by failing to file a motion to retain  
12 confidentiality as described above, all parties shall continue to afford the material in question the level  
13 of protection to which it is entitled under the Producing Party's designation until the court rules on the  
14 challenge.

## 15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
17 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
18 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the  
19 categories of persons and under the conditions described in this Order. When the litigation has been  
20 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
21 DISPOSITION).

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

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the  
25 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information  
26 or item designated "CONFIDENTIAL" only to:

27 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees  
28 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for

1 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached  
2 hereto as Exhibit A;

3 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
4 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
7 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to  
8 Be Bound” (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and  
11 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed  
12 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
14 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
15 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition  
16 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court  
17 reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

18 (g) the author or recipient of a document containing the information or a custodian or  
19 other person who otherwise possessed or knew the information.

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
21 LITIGATION

22 If a Party is served with a subpoena or a court order issued in other litigation that compels  
23 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

24 (a) promptly notify in writing the Designating Party. Such notification shall include a  
25 copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
27 other litigation that some or all of the material covered by the subpoena or order is subject to this  
28 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

1 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
2 Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with the subpoena or  
4 court order shall not produce any information designated in this action as “CONFIDENTIAL” before a  
5 determination by the court from which the subpoena or order issued, unless the Party has obtained the  
6 Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking  
7 protection in that court of its confidential material – and nothing in these provisions should be construed  
8 as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another  
9 court.

10 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
11 LITIGATION

12 (a) The terms of this Order are applicable to information produced by a Non-Party in this  
13 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection  
14 with this litigation is protected by the remedies and relief provided by this Order. Nothing in these  
15 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
17 Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-  
18 Party not to produce the Non-Party’s confidential information, then the Party shall:

19 (1) promptly notify in writing the Requesting Party and the Non-Party that some  
20 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

21 (2) promptly provide the Non-Party with a copy of the Stipulated Protective  
22 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the  
23 information requested; and

24 (3) make the information requested available for inspection by the Non-Party.

25 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
26 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-  
27 Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a  
28 protective order, the Receiving Party shall not produce any information in its possession or control that

1 is subject to the confidentiality agreement with the Non-Party before a determination by the court.  
2 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking  
3 protection in this court of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
13 MATERIAL

14 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
15 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are  
16 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
17 whatever procedure may be established in an e-discovery order that provides for production without  
18 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach  
19 an agreement on the effect of disclosure of a communication or information covered by the attorney-  
20 client privilege or work product protection, the parties may incorporate their agreement in the stipulated  
21 protective order submitted to the court.

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its  
24 modification by the court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no  
26 Party waives any right it otherwise would have to object to disclosing or producing any information or  
27 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any  
28 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1           12.3 Filing Protected Material. Without written permission from the Designating Party or a  
2 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
3 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material  
4 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a  
5 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local  
6 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue  
7 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a  
8 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is  
9 denied by the court, then the Receiving Party may file the information in the public record pursuant to  
10 Civil Local Rule 79-5(e) unless otherwise instructed by the court.

11 13. FINAL DISPOSITION

12           Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
13 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As  
14 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries,  
15 and any other format reproducing or capturing any of the Protected Material. Whether the Protected  
16 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
17 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline  
18 that (1) identifies (by category, where appropriate) all the Protected Material that was returned or  
19 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations,  
20 summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding  
21 this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,  
22 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,  
23 expert reports, attorney work product, and consultant and expert work product, even if such materials  
24 contain Protected Material. Any such archival copies that contain or constitute Protected Material  
25 remain subject to this Protective Order as set forth in Section 4 (DURATION).

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2  
3 DATED: April 6, 2017

Respectfully submitted,

4 SETAREH LAW GROUP

5 By: /s/ H. Scott Leviant  
Shaun Setareh  
6 Thomas Segal  
7 H. Scott Leviant

8 Attorneys for Plaintiff  
JAMES HARALSON

9 DATED: April 6, 2017

Respectfully submitted,

10 VEDDER PRICE (CA), LLP

11 By: /s/ Brendan Dolan  
Brendan Dolan  
12 Christopher A. Braham

13 Attorneys for Defendant  
14 U.S. AVIATION SERVICES, CORP.

15 DATED: April 6, 2017

Respectfully submitted,

16 SEYFARTH SHAW LLP

17 By: /s/ Elizabeth J. MacGregor  
Catherine M. Dacre  
18 Michael A. Wahlander  
19 Elizabeth J. MacGregor

20 Attorneys for Defendant  
21 UNITED AIRLINES, INC.

22 **ATTESTATION PURSUANT TO LOCAL RULE 5-1(i)(3)**

23 I, Elizabeth J. MacGregor, attest that concurrence in the filing of this stipulation has been  
24 obtained from the signatories, H. Scott Leviant, Counsel for Plaintiff JAMES HARALSON, and  
25 Brendan Dolan, Counsel for Defendant U.S. AVIATION SERVICES, CORP.

26 Executed this 6th day of April 2017, in San Francisco, CA.

27 /s/ Elizabeth J. MacGregor  
28 Elizabeth J. MacGregor

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: April 11, 2017

  
\_\_\_\_\_  
Honorable Jon S. Tigar  
United States District Court Judge

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