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 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

11 **Heather L. Chicoine,**
 12 **Plaintiff,**
 13 **v.**
 14 **Pennsylvania Higher Education Assistance**
 15 **Agency,**
 16 **Defendant.**

Case No. 3:17-cv-00926 JST
~~[STIPULATED]~~ PROTECTIVE
ORDER

17 1. PURPOSES AND LIMITATIONS

18 Disclosure and discovery activity in this action are likely to involve production of
 19 confidential, proprietary, or private information for which special protection from public
 20 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
 21 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 22 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 23 all disclosures or responses to discovery and that the protection it affords from public disclosure
 24 and use extends only to the limited information or items that are entitled to confidential treatment
 25 under the applicable legal principles. The parties further acknowledge, as set forth in Section
 26 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential
 27 information under seal and that Civil Local Rule 79-5 sets forth the procedures that must be
 28

1 followed and the standards that will be applied when a party seeks permission from the court to
2 file material under seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
5 items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
7 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
8 of Civil Procedure 26(c).

9 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
10 well as their support staff).

11 2.4 Designating Party: a Party or Non-Party that designates information or items that
12 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

13 2.5 Disclosure or Discovery Material: all items or information, regardless of the
14 medium or manner in which it is generated, stored, or maintained (including, among other things,
15 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
16 responses to discovery in this matter.

17 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
18 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
19 consultant in this action.

20 2.7 House Counsel: attorneys who are employees of a party to this action. House
21 Counsel does not include Outside Counsel of Record or any other outside counsel.

22 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
23 entity not named as a Party to this action.

24 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
25 action but are retained to represent or advise a party to this action and have appeared in this action
26 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

27 2.10 Party: any party to this action, including all of its officers, directors, employees,
28 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

1 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
2 Material in this action.

3 2.12 Professional Vendors: persons or entities that provide litigation support services
4 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
5 organizing, storing, or retrieving data in any form or medium) and their employees and
6 subcontractors.

7 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
8 “CONFIDENTIAL.”

9 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
10 Producing Party.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected Material
13 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
14 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
15 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
16 However, the protections conferred by this Stipulation and Order do not cover the following
17 information: (a) any information that is in the public domain at the time of disclosure to a
18 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
19 a result of publication not involving a violation of this Order, including becoming part of the
20 public record through trial or otherwise; and (b) any information known to the Receiving Party
21 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
22 obtained the information lawfully and under no obligation of confidentiality to the Designating
23 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations imposed by
26 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
27 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
28 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after

1 the completion and exhaustion of all appeals, re-hearings, remands, trials, or reviews of this
2 action, including the time limits for filing any motions or applications for extension of time
3 pursuant to applicable law.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
6 or Non-Party that designates information or items for protection under this Order must take care
7 to limit any such designation to specific material that qualifies under the appropriate standards.
8 The Designating Party must designate for protection only those parts of material, documents,
9 items, or oral or written communications that qualify – so that other portions of the material,
10 documents, items, or communications for which protection is not warranted are not swept
11 unjustifiably within the ambit of this Order.

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

16 If it comes to a Designating Party’s attention that information or items that it designated for
17 protection do not qualify for protection, that Designating Party must promptly notify all other
18 Parties that it is withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
20 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
21 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
22 designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

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

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

12 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
13 Designating Party identify on the record, before the close of the deposition, hearing or other
14 proceeding, all protected testimony that contains confidential information, may be designated
15 “CONFIDENTIAL” and thereby obtain the protections accorded other “CONFIDENTIAL”
16 information.

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

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
23 designate qualified information or items does not, standing alone, waive the Designating Party’s
24 right to secure protection under this Order for such material. Upon timely correction of a
25 designation, the Receiving Party must make reasonable efforts to assure that the material is
26 treated in accordance with the provisions of this Order.

27 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

28 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of

1 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
2 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
3 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
4 challenge a confidentiality designation by electing not to mount a challenge promptly after the
5 original designation is disclosed.

6 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
7 process by providing written notice of each designation it is challenging and describing the basis
8 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
9 notice must recite that the challenge to confidentiality is being made in accordance with this
10 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
11 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
12 forms of communication are not sufficient) within 14 days of the date of service of notice. In
13 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
14 designation was not proper and must give the Designating Party an opportunity to review the
15 designated material, to reconsider the circumstances, and, if no change in designation is offered,
16 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
17 stage of the challenge process only if it has engaged in this meet and confer process first or
18 establishes that the Designating Party is unwilling to participate in the meet and confer process in
19 a timely manner.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
21 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
22 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
23 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
24 process will not resolve their dispute, whichever is later. Each such motion must be accompanied
25 by a competent declaration affirming that the movant has complied with the meet and confer
26 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such
27 a motion including the required declaration within 21 days (or 14 days, if applicable) shall
28 automatically waive the confidentiality designation for each challenged designation. In addition,

1 the Challenging Party may file a motion challenging a confidentiality designation at any time if
2 there is good cause for doing so, including a challenge to the designation of a deposition
3 transcript or any portions thereof. Any motion brought pursuant to this provision must be
4 accompanied by a competent declaration affirming that the movant has complied with the meet
5 and confer requirements imposed by the preceding paragraph.

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

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
15 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
16 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
17 the categories of persons and under the conditions described in this Order. When the litigation has
18 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
19 DISPOSITION).

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

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
23 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
24 information or item designated "CONFIDENTIAL" only to:

25 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
26 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
27 information for this litigation and who have signed the;

28 (b) the officers, directors, and employees (including House Counsel) of the Receiving

1 Party to whom disclosure is reasonably necessary for this litigation;

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

5 (d) the court and its personnel;

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

9 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
10 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
11 unless otherwise covered in subparagraphs 7.2(a)-(e) or agreed by the Designating Party or
12 ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that
13 reveal Protected Material must be separately bound by the court reporter and may not be
14 disclosed to anyone except as permitted under this Stipulated Protective Order.

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

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

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

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

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

28 (c) cooperate with respect to all reasonable procedures sought to be pursued by the

1 Designating Party whose Protected Material may be affected.

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

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

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

16 (b) In the event that a Party is required, by a valid discovery request, to produce a
17 Non-Party’s confidential information in its possession, and the Party is subject to an agreement
18 with the Non-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 Order
22 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
27 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely
28 seeks a protective order, the Receiving Party shall not produce any information in its possession

1 or control that is subject to the confidentiality agreement with the Non-Party before a
2 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
3 burden and expense of seeking 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
6 Material to any person or in any circumstance not authorized under this Stipulated Protective
7 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
8 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
9 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
10 made of all the terms of this Order, and (d) request such person or persons to execute the
11 “Acknowledgment and Agreement to Be Bound” 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
15 produced material is subject to a claim of privilege or other protection, the obligations of the
16 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
17 provision is not intended to modify whatever procedure may be established in an e-discovery
18 order that provides for production without prior privilege review. Pursuant to Federal Rule of
19 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
20 communication or information covered by the attorney-client privilege or work product
21 protection, the parties may incorporate their agreement in the stipulated protective order
22 submitted to the court.

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
25 seek its modification by the court in the future, and nothing in this Protective Order shall be
26 construed to prevent a Party from seeking such further provisions enhancing or limiting
27 confidentiality as may be appropriate.
28

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
2 Order no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence of any of the material covered
5 by this Protective Order.

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

17 12.4 Waiver. No action taken in accordance with this Protective Order shall be
18 construed as a waiver of any claim or defense in the action or of any position as to discoverability
19 or admissibility of evidence. Neither the entry of this Order nor the designation of any
20 information as "Confidential," nor the failure to make such designation, shall constitute evidence
21 with respect to any issue in this action.

22 12.5 The Court retains the right to allow disclosure of any subject covered by this
23 stipulation or to modify this stipulation at any time in the interest of justice.

24 13. FINAL DISPOSITION

25 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
26 Receiving Party must return all Protected Material to the Producing Party or destroy such
27 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
28 compilations, summaries, and any other format reproducing or capturing any of the Protected

1 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
2 submit a written certification to the Producing Party (and, if not the same person or entity, to the
3 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
4 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
5 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
6 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
7 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
8 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
9 product, and consultant and expert work product, even if such materials contain Protected
10 Material. Any such archival copies that contain or constitute Protected Material remain subject to
11 this Protective Order as set forth in Section 4 (DURATION).

12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13
14 Dated: June 9, 2017

Anderson, Ogilvie & Brewer LLP

15
16 By: /s/ Mark F. Anderson

Mark F. Anderson

17 Counsel for Plaintiff
18 HEATHER L. CHICOINE

19 Dated: June 9, 2017

Donald E. Bradley

20
21 By: /s/ Donald E. Bradley

Musick Peeler & Garrett LLP

22 Counsel for Defendant
23 PENNSYLVANIA HIGHER EDUCATION
24 ASSISTANCE AGENCY

25 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

26 Dated: June 13, 2017

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Judge of the United States District Court