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19 UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF CALIFORNIA,  
 20 OAKLAND DIVISION

21 MARLON WHITMORE,

22 Plaintiff,

23 v.

24 TIMOTHY WILHELM, an individual; CHRIS  
 25 PETERS, an individual; JESUS AVINA, an  
 individual; THOMAS BOHANON, an  
 26 individual; MICHAEL CLARK, an individual;  
 JOSEPH HORSMAN, an individual; CHARLES  
 BLOUNT, an individual; and DOES 1-25,  
 27 inclusive,  
 28 Defendants.

CASE NO.: 4:13-cv-01408 PJH

**STIPULATED PROTECTIVE ORDER**

LAW OFFICES OF  
 GEARY,  
 SHEA,  
 O'DONNELL,  
 GRATTAN &  
 MITCHELL  
 P.C.

1           1.       PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public disclosure  
4 and from use for any purpose other than prosecuting this litigation would be warranted.

5           Accordingly, the parties hereby stipulate to and petition the court to enter the following  
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket  
7 protections on all disclosures or responses to discovery and that the protection it affords extends  
8 only to the limited information or items that are entitled under the applicable legal principles to  
9 treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that  
10 this Stipulated Protective Order creates no entitlement to file confidential information under seal;  
11 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that  
12 will be applied when a party seeks permission from the court to file material under seal.

13           2.       DEFINITIONS

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

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

20           2.3       “Confidential” Information or Items: information (regardless of how generated,  
21 stored or maintained) or tangible things that qualify for protection under standards developed under  
22 F.R.Civ.P. 26(c).

23           2.4       “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely  
24 sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would  
25 create a substantial risk of serious injury that could not be avoided by less restrictive means.

26           2.5       Receiving Party: a Party that receives Disclosure or Discovery Material from a  
27 Producing Party.

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1           2.6    Producing Party: a Party or non-party that produces Disclosure or Discovery  
2 Material in this action.

3           2.7    Designating Party: a Party or non-party that designates information or items that it  
4 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential —  
5 Attorneys’ Eyes Only.”

6           2.8    Protected Material: any Disclosure or Discovery Material that is designated as  
7 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

8           2.9    Outside Counsel: attorneys who are not employees of a Party but who are retained to  
9 represent or advise a Party in this action.

10          2.10   House Counsel: attorneys who are employees of a Party.

11          2.11   Counsel (without qualifier): Outside Counsel and House Counsel (as well as their  
12 support staffs).

13          2.12   Expert: a person with specialized knowledge or experience in a matter pertinent to  
14 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
15 consultant in this action and who is not a past or a current employee of a Party or of a competitor of  
16 a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or a  
17 competitor of a Party’s. This definition includes a professional jury or trial consultant retained in  
18 connection with this litigation.

19          2.13   Professional Vendors: persons or entities that provide litigation support services  
20 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,  
21 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

22          3.       SCOPE

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

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1           4.     DURATION

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

5           5.     DESIGNATING PROTECTED MATERIAL

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

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

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

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

25           Designation in conformity with this Order requires:

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

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

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

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

1 EYES ONLY”). Only those portions of the testimony that are appropriately designated for  
2 protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

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

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

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
15 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’  
16 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under  
17 this Order for such material. If material is appropriately designated as “Confidential” or “Highly  
18 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,  
19 on timely notification of the designation, must make reasonable efforts to assure that the material is  
20 treated in accordance with the provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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1           6.2    Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s  
2 confidentiality designation must do so in good faith and must begin the process by conferring  
3 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel  
4 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief  
5 that the confidentiality designation was not proper and must give the Designating Party an  
6 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
7 designation is offered, to explain the basis for the chosen designation. A challenging Party may  
8 proceed to the next stage of the challenge process only if it has engaged in this meet and confer  
9 process first.

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

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

21           7.        ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
4 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
5 information or item designated CONFIDENTIAL only to:

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

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

13 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is  
14 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by  
15 Protective Order” (Exhibit A);

16 (d) the Court and its personnel;

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

20 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
21 necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A).

22 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material  
23 must be separately bound by the court reporter and may not be disclosed to anyone except as  
24 permitted under this Stipulated Protective Order.

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

26 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
27 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
28 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY



1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

6 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary  
7 for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit  
8 A);

9 (c) the Court and its personnel;

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

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

14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
15 OTHER LITIGATION.

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

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

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

7 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

1 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected  
2 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
3 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,  
4 even if such materials contain Protected Material. Any such archival copies that contain or  
5 constitute Protected Material remain subject to this Protective Order as set forth in Section 4  
6 (DURATION), above.

7 12. MISCELLANEOUS

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
9 person to seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
11 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
12 producing any information or item on any ground not addressed in this Stipulated Protective Order.  
13 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
14 material covered by this Protective Order.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16  
17 DATED: January 27, 2014

/s/ Benjamin Nisenbaum  
BENJAMIN NISENBAUM  
Attorneys for Plaintiff

18  
19  
20 DATED: January 27, 2014

/s/ Steven C. Mitchell  
STEVEN C. MITCHELL  
Attorneys for Defendants

21  
22  
23 DATED: January 27, 2014

/s/ Caroline L. Fowler  
Attorney for Defendants

24  
25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26  
27 DATED: January 28, 2014

  
UNITED STATES DISTRICT JUDGE

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EXHIBIT A  
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Marlon Whitmore v. Timothy Wilhelm, et al*, C 13 01408 PJH. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

LAW OFFICES OF  
GEARY,  
SHEA,  
O'DONNELL,  
GRATTAN &  
MITCHELL  
P.C.