

1 Richard G. Grotch, Esq. – SBN 127713
 2 Gina J. Beltramo, Esq. – SBN 203809
3 CODDINGTON, HICKS & DANFORTH
A Professional Corporation, Lawyers
 4 555 Twin Dolphin Drive, Suite 300
 Redwood City, CA 94065-2133
 5 Tel.: 650.592.5400
 Fax: 650.592.5027

6 **ATTORNEYS FOR** Defendant
 United Airlines, Inc.

7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA
 9

10 PATRICIA SMITH,
 11 Plaintiff,
 12 vs.
 13 UNITED AIRLINES, INC., a corporation,
 14 and DOES ONE through TEN, inclusive,
 15 Defendants.
 16

Case No. CV 17-5708 YGR
 STIPULATED PROTECTIVE ORDER FOR
 STANDARD LITIGATION

* As Modified by the Court *

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
 21 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
 22 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
 23 blanket protections on all disclosures or responses to discovery and that the protection it
 24 affords from public disclosure and use extends only to the limited information or items that are
 25 entitled to confidential treatment under the applicable legal principles. The parties further
 26 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not
 27 entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
 28

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

3 **2. DEFINITIONS**

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

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

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

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

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

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

20 2.7 House Counsel: attorneys who are employees of a party to this action.
21 House 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
23 other legal entity not named as a Party to this action.

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

28 ///

1 2.10 Party: any party to this action, including all of its officers, directors,
2 employees, insurers, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this action.

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

10 2.13 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL.”

12 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
13 from a Producing Party.

14 **3. SCOPE**

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

28 ///

1 **4. DURATION**

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

9 **5. DESIGNATING PROTECTED MATERIAL**

10 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

24 5.2 Manner and Timing of Designations. Except as otherwise provided in

25 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
26 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must
27 be clearly so designated before the material is disclosed or produced.

28 ///

1 Designation in conformity with this Order requires:

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

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

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

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

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

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

24 6.3 **Judicial Intervention. If the Parties cannot resolve a challenge without court**
25 **intervention, the parties shall follow the Court's Standing Order in Civil Cases regarding**
26 **Discovery and Discovery Motions. The parties may file a joint letter brief regarding retaining**
27 **confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties**
28 **agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.**

1 **Failure by a Designating Party to file such discovery dispute letter within the applicable 21 or**
2 **14 day period (set forth above) with the Court shall automatically waive the confidentiality**
3 **designation for each challenged designation. If, after submitting a joint letter brief, the Court**
4 **allows that a motion may be filed, any such motion must be accompanied by a competent**
5 **declaration affirming that the movant has complied with the meet and confer requirements**
6 **imposed in the preceding paragraph. The Court, in its discretion, may elect to transfer the**
7 **discovery matter to a Magistrate Judge.**

8 **In addition, the parties may file a joint letter brief regarding a challenge to a**
9 **confidentiality designation at any time if there is good cause for doing so, including a**
10 **challenge to the designation of a deposition transcript or any portions thereof. If, after**
11 **submitting a joint letter brief, the Court allows that a motion may be filed, any motion**
12 **brought pursuant to this provision must be accompanied by a competent declaration**
13 **affirming that the movant has complied with the meet and confer requirements imposed by**
14 **the preceding paragraph. The Court, in its discretion, may elect to refer the discovery matter**
15 **to a Magistrate Judge.**

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

23 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

24 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this case only for
26 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
27 disclosed only to the categories of persons and under the conditions described in this Order.
28 When the litigation has been terminated, a Receiving Party must comply with the provisions of
section 13 below (FINAL DISPOSITION).

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

4 ///

5 ///

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
8 Party may disclose any information or item designated “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
10 as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose
11 the information for this litigation and who have signed the “Acknowledgment and Agreement
12 to Be Bound” that is attached hereto as Exhibit A;

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

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

19 (d) the court and its personnel;

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

24 (f) during their depositions, witnesses in the action to whom disclosure is
25 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
26 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.

27 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
28

1 Material must be separately bound by the court reporter and may not be disclosed to anyone
2 except as permitted under this Stipulated Protective Order.

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

5 ///

6 ///

7 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
8 **PRODUCED IN OTHER LITIGATION**

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

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

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

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

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

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

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

6 ///

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

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

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

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

19 (c) If the Non-Party fails to object or seek a protective order from this court
20 within 14 days of receiving the notice and accompanying information, the Receiving Party may
21 produce the Non-Party’s confidential information responsive to the discovery request. If the
22 Non-Party timely seeks a protective order, the Receiving Party shall not produce any
23 information in its possession or control that is subject to the confidentiality agreement with the
24 Non-Party before a determination by the court. Absent a court order to the contrary, the Non-
25 Party shall bear the burden and expense of seeking protection in this court of its Protected
26 Material.

27 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

28

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

8 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
9 **PROTECTED MATERIAL**

10 When a Producing Party gives notice to Receiving Parties that certain
11 inadvertently produced material is subject to a claim of privilege or other protection, the
12 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
13 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
14 an e-discovery order that provides for production without prior privilege review. Pursuant to
15 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect
16 of disclosure of a communication or information covered by the attorney-client privilege or
17 work product protection, the parties may incorporate their agreement in the stipulated
18 protective order submitted to the court.

19 **12. MISCELLANEOUS**

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order no Party waives any right it otherwise would have to object to disclosing or
24 producing any information or item on any ground not addressed in this Stipulated Protective
25 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
26 the material covered by this Protective Order.

27 12.3 Filing Protected Material. Without written permission from the
28 Designating Party or a court order secured after appropriate notice to all interested persons, a

1 Party may not file in the public record in this action any Protected Material. A Party that seeks
2 to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
3 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
4 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
5 only upon a request establishing that the Protected Material at issue is privileged, protectable as
6 a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
7 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court,
8 then the Receiving Party may file the information in the public record pursuant to Civil Local
9 Rule 79-5(e) unless otherwise instructed by the court.

10 **13. FINAL DISPOSITION**

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

26 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
27
28

1 Dated: February 8, 2018

INJIJIAN LAW OFFICE, APC

2 /s/ Susie Injijian

3 By: _____
4 Susie Injijian
5 Attorneys for Plaintiff
6 Patricia Smith

7 ///

8 ///

9 ///

Dated: February 8, 2018

CODDINGTON, HICKS & DANFORTH

10 /s/ Richard G. Grotch

11 By: _____
12 Richard G. Grotch(*)
13 Attorneys for Defendant
14 United Airlines, Inc.

15 (*) I hereby attest that I have on file all
16 holographic signatures indicated by a
17 "conformed" signature (/s/)
18 within this e-filed document or have
19 been expressly authorized to affix the
20 conformed signatures hereon.

21 **[PROPOSED] ORDER**

22 Pursuant to stipulation,

23 IT IS SO ORDERED.

24 Dated: February 13, 2018

25 
26 Honorable Yvonne Gonzalez Rogers
27 United States District Judge
28

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I have
5 read in its entirety and understand the Stipulated Protective Order that was issued by the
6 United States District Court for the Northern District of California on [date] in the case of
7 _____ [insert formal name of the case and the number and initials assigned to it by the
8 court]. I agree to comply with and to be bound by all the terms of this Stipulated Protective
9 Order and I understand and acknowledge that failure to so comply could expose me to
10 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose
11 in any manner any information or item that is subject to this Stipulated Protective Order to any
12 person or entity except in strict compliance with the provisions of this Order.

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

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone
18 number] as my California agent for service of process in connection with this action or any
19 proceedings related to enforcement of this Stipulated Protective Order.

20
21 Date: _____

22 City and State where sworn and signed: _____

23
24 Printed name: _____

25
26 Signature: _____