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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION
 11

12	DAVID NIN, JOE NIN, ANA NIN, and)	No. C11-1138 PSG
	LINDA HOPKINS, Individually and as)	
13	Successors-In-Interest to the Estate of JOSE)	STIPULATED PROTECTIVE
	NIN,)	ORDER
14)	
	Plaintiffs,)	
15)	
	v.)	
16)	
	UNITED STATES OF AMERICA,)	
17)	
	Defendant.	

19 1. PURPOSES AND LIMITATIONS

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

1 file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that
2 must be followed and the standards that will be applied when a party seeks permission from the
3 court to file material under seal.

4 2. DEFINITIONS

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

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

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

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

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

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

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

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

25 2.9 Outside Counsel of Record: attorneys who are not employees of a party
26 to this action but are retained to represent or advise a party to this action and have appeared in
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1 this action on behalf of that party or are affiliated with a law firm which has appeared on behalf
2 of that party. Outside Counsel of Record also includes counsel of record for the United States.

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

6 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this action.

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

12 2.13 Protected Material: any Disclosure or Discovery Material that is
13 designated as "CONFIDENTIAL."

14 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
15 from a Producing Party.

16 3. SCOPE

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

3 4. DURATION

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

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for
13 Protection.

14 Each Party or Non-Party that designates information or items for protection under this
15 Order must take care to limit any such designation to specific material that qualifies under the
16 appropriate standards. The Designating Party must designate for protection only those parts of
17 material, documents, items, or oral or written communications that qualify – so that other
18 portions of the material, documents, items, or communications for which protection is not
19 warranted are not swept unjustifiably within the ambit of this Order.
20

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

25 If it comes to a Designating Party's attention that information or items that it designated
26 for protection do not qualify for protection, that Designating Party must promptly notify all
27 other Parties that it is withdrawing the mistaken designation.
28

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
3 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be
4 clearly so designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents, but
7 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
8 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only
9 a 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
11 the margins).

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

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

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

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items does not, standing alone, waive the
5 Designating Party’s right to secure protection under this Order for such material. Upon timely
6 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
7 material is treated in accordance with the provisions of this Order.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
4 court intervention, the Designating Party shall file and serve a motion to retain confidentiality
5 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within
6 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet
7 and confer process will not resolve their dispute, whichever is earlier. Each such motion must
8 be accompanied by a competent declaration affirming that the movant has complied with the
9 meet and confer requirements imposed in the preceding paragraph. Failure by the Designating
10 Party to make such a motion including the required declaration within 21 days (or 14 days, if
11 applicable) shall automatically waive the confidentiality designation for each challenged
12 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
13 designation at any time if there is good cause for doing so, including a challenge to the
14 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
15 this provision must be accompanied by a competent declaration affirming that the movant has
16 complied with the meet and confer requirements imposed by the preceding paragraph.
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18 The burden of persuasion in any such challenge proceeding shall be on the
19 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
20 harass or impose unnecessary expenses and burdens on other parties) may expose the
21 Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality
22 designation by failing to file a motion to retain confidentiality as described above, all parties
23 shall continue to afford the material in question the level of protection to which it is entitled
24 under the Producing Party's designation until the court rules on the challenge.
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1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this case only for
4 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
5 disclosed only to the categories of persons and under the conditions described in this Order.
6 When the litigation has been terminated, a Receiving Party must comply with the provisions of
7 section 13 below (FINAL DISPOSITION).

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

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
12 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
13 Party may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

24 (d) the court and its personnel;

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

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

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

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
12 IN OTHER LITIGATION

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

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

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

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

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

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

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

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

- 16 1. promptly notify in writing the Requesting Party and the Non-Party
17 that some or all of the information requested is subject to a confidentiality agreement with a
18 Non-Party;
- 19 2. promptly provide the Non-Party with a copy of the Stipulated
20 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
21 description of the information requested; and
- 22 3. make the information requested available for inspection by the Non-Party.

23 (c) If the Non-Party fails to object or seek a protective order from this court
24 within 14 days of receiving the notice and accompanying information, the Receiving Party may
25 produce the Non-Party’s confidential information responsive to the discovery request. If the
26 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
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1 in its possession or control that is subject to the confidentiality agreement with the Non-Party
2 before a determination by the court¹. Absent a court order to the contrary, the Non-Party shall
3 bear the 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
6 Protected Material to any person or in any circumstance not authorized under this Stipulated
7 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
8 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
9 the 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
13 PROTECTED MATERIAL

14 When a Producing Party gives notice to Receiving Parties that certain
15 inadvertently produced material is subject to a claim of privilege or other protection, the
16 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
17 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
18 an e-discovery order that provides for production without prior privilege review. Pursuant to
19 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect
20 of disclosure of a communication or information covered by the attorney-client privilege or work
21 product protection, the parties may incorporate their agreement in the stipulated protective order
22 submitted to the court.
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27 ¹The purpose of this provision is to alert the interested parties to the existence of
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect
confidentiality interests in this court.

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the court in the future.

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

9 12.3 Filing Protected Material. Without written permission from he
10 Designating Party or a court order secured after appropriate notice to all interested persons, a
11 Party may not file in the public record in this action any Protected Material. A Party that seeks to
12 file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
13 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
15 only upon a request establishing that the Protected Material at issue is privileged, protectable as a
16 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
17 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court,
18 then the Receiving Party may file the information in the public record pursuant to Civil Local
19 Rule 79-5(e) unless otherwise instructed by the court.
20

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

10
11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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14 DATED: September 9, 2011

Respectfully submitted,

MELINDA HAAG
United States Attorney

/s/ Claire T. Cormier

CLAIRE T. CORMIER²
Assistant United States Attorney

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18 DATED: September 9, 2011

STEBNER AND ASSOCIATES

/s/ Kathryn A. Stebner

KATHRYN A. STEBNER
KARMAN RATLIFF
Attorneys for Plaintiffs

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22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23 DATED: 9/19/2011 _____



PAUL S. GREWAL
United States Magistrate Judge

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28 ² I, Claire T. Cormier, hereby attest that I have on file all holographic signatures for any
signatures indicated by a “conformed” signature (/s/) within this e-filed document.

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name],
4 of _____ [print or type full address],
5 declare under penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Northern District of
7 California on _____ [date] in the case of *Nin v. United States of America*, Case No.
8 C1-1168 PSG. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective 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
14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
16 Order, even if such enforcement proceedings occur after termination of this action.

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

21 Date: _____

22
23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____