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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSE ORLANDO CANCINO
CASTELLAR, et al.,

Plaintiffs,

v.

CHAD F. WOLF, et al.,

Defendants.

Case No.: 3:17-cv-491-BAS-AHG

**ORDER GRANTING JOINT
MOTION AND ENTERING
AMENDED PROTECTIVE ORDER**

[ECF No. 107]

Before the Court is the parties’ joint motion to amend the protective order. ECF No. 107. The parties stipulate that, “for the depositions of Justin Kelemen (deposition conducted on June 24, 2020), Celina Ortiz (deposition conducted on June 30, 2020), and Nerolee A. Bush (deposition conducted on July 1, 2020), the fourteen (14) day period referenced in paragraph 8 of the Protective Order be extended to thirty (30) days, so that the period for identifying protected materials corresponds with the period for review of a deposition transcript provided under FED. R. CIV. P. 30(e).” Id. at 2. Having reviewed the original protective order, the motion, and the parties’ proposed order, the Court **GRANTS** the motion. The Court added language consistent with the Court’s Chambers Rules¹ to Paragraphs 13 and 34, but otherwise enters the following Amended Protective Order by amending Paragraph 8 exactly as stipulated by the parties:

¹ See Chmb.R. at 3–4 (“Any protective order submitted for the Court’s signature must contain the following two provisions: . . .”).

Recitals and Good Cause Statement

1
2 I. Plaintiffs and Defendants (collectively, the “Parties”) in the above captioned
3 action Cancino Castellar, et al. v. Kelly, et al., Case No. 17-cv-491-BAS-BGS
4 (“Litigation” or “Action”), contemplate that discovery in the Litigation may involve
5 documents, information and tangible things the producing party may reasonably believe
6 in good faith to be protected from disclosure to the public or to one or more of the Parties
7 under Rule 26(c) of the Federal Rules of Civil Procedure.

8 II. The Parties desire to enter into this stipulation to facilitate the discovery
9 process by protecting against the unauthorized disclosure of confidential information.

10 III. The Parties acknowledge that this stipulation (and if approved, Order), does
11 not confer blanket protections on all disclosures or responses to discovery and that the
12 protection it affords only extends to the limited information or items that are entitled,
13 under the applicable legal principles, to be held in confidence.

14 IV. The Parties believe good cause exists for approving the stipulation because
15 the stipulation seeks to protect against injury caused by dissemination of protected
16 documents, information or tangible things.

17 a. The protected documents, information or tangible things to be protected
18 identified infra in paragraph 2, subpart a, include personally identifiable information
19 about individuals other than the named Plaintiffs, the disclosure of which could be
20 prohibited by the Privacy Act or other law. However, the Privacy Act provides, as an
21 exception, that such records may be released “pursuant to the order of a court of
22 competent jurisdiction.” 5 U.S.C. § 552a(b)(11). An order of this Court, therefore, would
23 provide a basis for release of the requested documents and records pursuant to the
24 Privacy Act and Fed. R. Civ. P. 26(c), as well as insulate Defendants from potential
25 liability for improper disclosure. See 5 U.S.C. § 552(g)(1). The parties understand,
26 however, that such an order may not permit disclosure under all other laws.

27 b. The protected documents, information or tangible things to be protected
28 identified infra in paragraph 2, subpart b, include Government records that might contain

1 tactical and other information related to law enforcement activities not made available by
2 the Government to the general public that could be adversely used to circumvent law
3 enforcement efforts. These records could also contain sensitive information about the
4 relevant agencies' internal investigations processes, procedures, staffing, priorities,
5 resources, intelligence and/or methods, which is law enforcement sensitive and should
6 not be released to the public.

7 c. The protected documents, information or tangible things to be protected
8 identified infra in paragraph 2, subpart c, includes Government information from
9 electronic databases, administrative files (or "A-Files"), and other sources concerning
10 individuals in, and/or material witnesses to, this action, including certain categories of
11 confidential information generally restricted from unauthorized disclosure by statute or
12 regulation.

13 d. The protected documents, information or tangible things to be protected
14 identified infra in paragraph 2, subpart d, include all other protected documents,
15 information or tangible things not identified above that the parties agree in writing or the
16 Court orders qualify for protection under Federal Rule of Civil Procedure 26(c).

17 **Stipulation**

18 NOW, THEREFORE, the Parties hereby stipulate and agree, through their
19 undersigned counsel, to the following terms and conditions that they contemplate will
20 govern the production of information that the producing party reasonably and in good
21 faith deems to be entitled to be held in confidence, and further stipulate, agree, and
22 request that the Court enter a protective order (hereafter "Protective Order" or "Order")
23 consistent with the terms of this stipulation.

24 **1. Scope.** The following terms, conditions, procedures, and restrictions govern
25 with respect to documents, electronic data, and any other forms of information produced
26 or voluntarily exchanged in the Litigation by any Party or non-parties ("Third Parties" or
27 singularly, "Third Party"), including any "Writings" (as that term is defined in Rule 1001
28 of the Federal Rules of Evidence); all discovery contemplated by Rules 26 through 36 of

1 the Federal Rules of Civil Procedure, including responses to all written discovery
2 requests and demands, and deposition testimony and exhibits, however recorded; and any
3 other written, recorded, or graphic matters (collectively “Protected Material”).

4 **2. Protected Material.** The categories of Protected Material include:

- 5 a. Information, documents or tangible things protected by the Privacy Act, 5
6 U.S.C. § 552a, et seq., or information that would be covered by the Privacy
7 Act if the subject of the information had been a U.S. citizen or a person
8 lawfully admitted for permanent residence.
- 9 b. Information, documents or tangible things, which may include, among other
10 things, Department of Homeland Security, Immigration and Customs
11 Enforcement and U.S. Customs and Border Protection records regarding law
12 enforcement activities and operations, internal policies, processes and
13 procedures, training materials, and internal investigations which contain
14 information that is law enforcement sensitive, for instance, information
15 which would be protected from disclosure under FOIA, 5 U.S.C. § 552, et
16 seq., under the exemption found at 5 U.S.C. § 552(b)(7)(E).
- 17 c. Information contained in or pertaining to: (1) asylum claims or applications,
18 including applications for relief under the Convention Against Torture
19 (“CAT”) and refugee information; (2) legalization applications under 8
20 U.S.C. § 1255a; (3) Special Agricultural Worker applications under 8 U.S.C.
21 § 1160; (4) applications for temporary protected status (“TPS”) under 8
22 U.S.C. § 1254a; (5) information contemplated by 8 U.S.C. § 1186a(c)(4)(C)
23 concerning any abused alien spouse or child, including information
24 regarding the whereabouts of such spouse or child (see 8 C.F.R. §§
25 216.5(a)(1)(iii) and 1216.5(a)(1)(iii); 8 U.S.C. § 1154(a)(1)(A)(iii), (iv), (v),
26 and (vi); 8 U.S.C. § 1154(a)(1)(B)(ii), (iii) and (iv)); and (6) any other
27 category of information hereinafter given “Protected Material” status by the
28 Court.

1 d. All other protected documents, information or tangible things not identified
2 above that the parties agree in writing or the Court orders qualify for
3 protection under Federal Rule of Civil Procedure 26(c).

4 e. The Parties do not waive their right to assert other or further privileges over
5 the information and redact such information. For instance, Defendants may
6 withhold or redact information that is subject to a claim of privilege such as
7 withholding classified national security information or withholding or
8 redacting any other information subject to a claim of privilege or exemption
9 from disclosure, including but not limited to the Deliberative Process
10 Privilege, Law Enforcement Privilege, Attorney Client Privilege or Attorney
11 Work Product.

12 **3. Designations.** It shall be the duty of the party producing the Protected
13 Material (“Producing Party”) to give notice of material that is to be considered covered
14 by this Protective Order in the manner set forth in paragraphs 5, 8 and 11 below.
15 Protected Material may be designated as “PROTECTED MATERIAL” or
16 “PROTECTED MATERIAL – ATTORNEYS’ EYES ONLY” if the Producing Party
17 believes in good faith that such material is covered by this Protective Order. A Party may
18 designate material that it obtained from a Third Party pursuant to this Protective Order, if
19 it believes in good faith that it qualifies as Protected Material under this Order.

20 **4. Duties.** The duty of the Party or Parties receiving the Protected Material
21 (“Receiving Party”) and of all other persons bound by this Protective Order to maintain
22 the confidentiality of Protected Material so designated shall commence with such notice.
23 Protected Material shall be designated by the Producing Party, subject to the provisions
24 of this Order, with the designation of “PROTECTED MATERIAL” or “PROTECTED
25 MATERIAL – ATTORNEYS’ EYES ONLY.” No person subject to this Protective Order
26 may disclose, in public or private, any Protected Material designated by a Party as
27 “PROTECTED MATERIAL,” or “PROTECTED MATERIAL – ATTORNEYS’ EYES
28 ONLY” except as provided for in this Protective Order or as further ordered by the Court.

1 **5. Method of Designation.** Each page of any material the Producing Party
2 wishes to designate as Protected Material must be labeled “PROTECTED MATERIAL”
3 or “PROTECTED MATERIAL – ATTORNEYS’ EYES ONLY,” at the time the
4 material, or a copy thereof, is provided to the Receiving Party. In the case of material
5 contained in or on media other than paper, the Producing Party shall affix such a label to
6 the material or use its best efforts to identify the material as Protected Material and affix
7 the applicable designation.

8 **6. Access to Protected Material.** Only the following persons shall have access
9 to or retain material designated as PROTECTED MATERIAL pursuant to this Order:

- 10 a. The Court and its official personnel;
 - 11 b. The Named Parties; and the employees, officers, directors, and executives of
12 the Parties to this Action, including the Parties’ inside counsel;
 - 13 c. Outside counsel for a Party. For the purposes of this Protective Order,
14 “Outside Counsel” means the attorneys representing the Parties for this
15 Action, ACLU Foundation of San Diego and Imperial Counties, Fish &
16 Richardson P.C., Law Office of Leonard B. Simon, P.C. for Plaintiffs and
17 the United States Department of Justice for Defendants. Outside counsel
18 includes any attorneys, paralegals, office clerks, secretaries, and other
19 support staff assisting those attorneys, employed by the above-referenced
20 law firms to whom such disclosure is deemed reasonably necessary by such
21 counsel for the conduct of this litigation;
 - 22 d. Outside experts and consultants retained by the Receiving Party’s Outside
23 Counsel to assist in this Litigation (and the experts’ or consultants’ staff
24 whose duties and responsibilities require access to such materials), who are
25 not past or present employees of the Receiving Party or of an affiliate of the
26 Receiving Party or any other Party;
 - 27 e. Court reporters and translators;
- 28

- 1 f. Outside litigation support personnel retained by Outside Counsel to assist in
2 the preparation and/or litigation of the Action, including contract attorneys
3 or outside copying service vendors or electronic document management
4 vendors;
- 5 g. Any person not otherwise covered by subparagraph (a), (b), or (c), who was
6 involved in the preparation of such material or who received or reviewed
7 such material for purposes other than this Action or who has been alleged to
8 have received or reviewed such material for purposes other than this Action;
- 9 h. Witnesses at deposition not otherwise covered by subparagraphs (a), (b), or
10 (c); and
- 11 i. Persons whom the Producing Party agrees in writing or on the record at a
12 deposition may be shown PROTECTED MATERIAL.
- 13 j. Permitted Disclosure of “PROTECTED MATERIAL – ATTORNEYS’
14 EYES ONLY.” Information with this designation may be disclosed by a
15 non-designating party only to the following persons, and in the following
16 manner:
- 17 1. The Court and its official personnel;
 - 18 2. Outside counsel for a Party. For the purposes of this Protective Order,
19 “Outside Counsel” means the attorneys representing the Parties for this
20 Action, ACLU Foundation of San Diego and Imperial Counties, Fish &
21 Richardson P.C., Law Office of Leonard B. Simon, P.C. for Plaintiffs and
22 the United States Department of Justice for Defendants Outside counsel
23 includes any attorneys, paralegals, office clerks, secretaries, and other
24 support staff assisting those attorneys, employed by the above-referenced
25 law firms to whom such disclosure is deemed reasonably necessary by
26 such counsel for the conduct of this litigation;
 - 27 3. Outside experts and consultants retained by the Receiving Party’s
28 Outside Counsel to assist in this Litigation (and the experts’ or

1 consultants' staff whose duties and responsibilities require access to such
2 materials), who are not past or present employees of the Receiving Party
3 or of an affiliate of the Receiving Party or any other Party;

4 4. Court reporters and translators;

5 5. Outside litigation support personnel retained by Outside Counsel to assist
6 in the preparation and/or litigation of the Action, including contract
7 attorneys or outside copying service vendors or electronic document
8 management vendors;

9 6. Persons whom the Producing Party agrees in writing or on the record at a
10 deposition.

11 **7. Agreement By Persons Accessing Protected Materials.** All persons
12 identified in paragraph 6 (d), (e), (f), (g), (h), (i),(j)(3), (j)(4), (j)(5), and (j)(6) who in the
13 course of the case may be given access to Protected Material shall be required to read this
14 Protective Order and agree, in writing, to be bound by this Protective Order by executing
15 an acknowledgment in the form of Exhibit A that is annexed to this Protective Order. All
16 such acknowledgments shall be maintained in the files of the counsel allowing access by
17 such person to the Protected Material.

18 **8. Designation of Protected Material at Depositions.** Except as provided
19 below, in the case of depositions, designation of the portion of the transcript (including
20 exhibits) which contains Protected Material shall be made by a statement to such effect
21 on the record in the course of the deposition; or upon review of such transcript, by
22 counsel for the party to whose Protected Material the deponent has had access, said
23 counsel designating within fourteen (14) calendar days after counsel's receipt of the
24 transcript, and listing on a separate piece of paper the numbers of the pages of the
25 transcript containing Protected Material designated PROTECTED MATERIAL or
26 PROTECTED MATERIAL –ATTORNEYS' EYES ONLY, inserting the page number
27 list at the end of the transcript, and mail serving copies of the list to counsel for all Parties
28 so that it may be affixed to the face of the transcript and each copy thereof. Pending such

1 designation by counsel, the entire deposition transcript, including exhibits, shall be
2 deemed PROTECTED MATERIAL or PROTECTED MATERIAL – ATTORNEYS’
3 EYES ONLY. If no designation is made within fourteen (14) calendar days after receipt
4 of the transcript, the transcript shall be considered not to contain any Protected Material
5 other than those portions designated on the record during the deposition, if any.

6 The foregoing paragraph shall not apply for purposes of the depositions of Justin
7 Kelemen (deposition conducted on June 24, 2020), Celina Ortiz (deposition conducted on
8 June 30, 2020), and Nerolee A. Bush (deposition conducted on July 1, 2020). For
9 purposes of the foregoing three depositions only, designation of the portion of the
10 transcript (including exhibits) which contains Protected Material shall be made by a
11 statement to such effect on the record in the course of the deposition; or upon review of
12 such transcript, by counsel for the party to whose Protected Material the deponent has
13 had access, said counsel designating within thirty (30) calendar days after counsel’s
14 receipt of the transcript, and listing on a separate piece of paper the numbers of the pages
15 of the transcript containing Protected Material designated PROTECTED MATERIAL or
16 PROTECTED MATERIAL –ATTORNEYS’ EYES ONLY, inserting the page number
17 list at the end of the transcript, and mail serving copies of the list to counsel for all Parties
18 so that it may be affixed to the face of the transcript and each copy thereof. Pending such
19 designation by counsel, the entire deposition transcript, including exhibits, shall be
20 deemed PROTECTED MATERIAL or PROTECTED MATERIAL – ATTORNEYS’
21 EYES ONLY. If no designation is made within thirty (30) calendar days after receipt of
22 the transcript, the transcript shall be considered not to contain any Protected Material
23 other than those portions designated on the record during the deposition, if any.

24 **9. Use of Protected Material at a Deposition.** If, during the course of any
25 deposition, (a) an attorney-of-record for any Party desires to make inquiry into
26 information subject to the designation of PROTECTED MATERIAL or PROTECTED
27 MATERIAL – ATTORNEYS’ EYES ONLY or (b) an attorney-of-record for any Party
28 asserts that an answer to a specific inquiry is subject to the foregoing designation, the

1 attorney shall make such inquiry only in the presence of those persons authorized to
2 access such information. Such testimony shall be designated as PROTECTED
3 MATERIAL or PROTECTED MATERIAL – ATTORNEYS’ EYES ONLY as
4 appropriate, and the Parties to this Protective Order shall treat it as subject to the
5 provision for disclosure set forth in this Protective Order. Counsel for either Party shall
6 have the right to exclude from oral depositions, other than the deponent and the reporter,
7 any person who is not authorized by this Protective Order to receive documents or
8 information designated PROTECTED MATERIAL or PROTECTED MATERIAL –
9 ATTORNEYS’ EYES ONLY. Such right of exclusion shall be applicable only during
10 periods of examination or testimony directed to or comprising PROTECTED
11 MATERIAL or PROTECTED MATERIAL – ATTORNEYS’ EYES ONLY information.

12 **10. Court Reporter at Deposition.** Any court reporter at a deposition shall
13 agree, before transcribing any testimony designated as protected, that all Protected
14 Material is and shall remain PROTECTED MATERIAL or PROTECTED MATERIAL –
15 ATTORNEYS’ EYES ONLY and shall not be disclosed except as provided under this
16 Order.

17 **11. Treatment of Protected Material during Inspection of Documents.** It is
18 contemplated that a Party might make available certain of its files for inspection by other
19 Parties, which files may contain protected material as well as non-protected material, and
20 that following such inspection, the inspecting party will designate documents to be
21 copied and the copies will be furnished or produced to it. All documents and their
22 contents made available for such inspection shall be treated as PROTECTED
23 MATERIAL or PROTECTED MATERIAL – ATTORNEYS’ EYES ONLY until the
24 Party allowing inspection has had a reasonable opportunity, not to exceed twenty one
25 (21) calendar days absent an agreement by the parties, to designate and mark those
26 documents which were copied as PROTECTED MATERIAL or PROTECTED
27 MATERIAL – ATTORNEYS’ EYES ONLY.

28

1 **12. Copies, Summarizations, Extracts Protected.** Protected Material
2 designated under this Order shall include, without limitation: (a) all copies, extracts, and
3 complete or partial summaries prepared from such documents, things, or information so
4 designated; (b) portions of deposition transcripts and exhibits to deposition transcripts
5 that contain, summarize, or reflect the content of any such documents, things, or
6 information; and (c) portions of briefs, memoranda, or any other writings filed with the
7 Court and exhibits thereto that contain, summarize, or reflect the content of any such
8 documents, things, or information.

9 **13. Pleadings And Briefs Containing Protected Material.** To the extent that
10 any Party seeks to file any paper with the Court that contains, summarizes, or reflects any
11 Protected Material, the Party shall request that the material be filed under seal pursuant to
12 the procedures set forth in Southern District of California Local Civil Rule (“LRCiv”)
13 79.2 and Magistrate Judge Allison H. Goddard’s Chambers Rules, unless the Parties
14 agree that the documents can be redacted to remove the Protected Material.

15 **14. Court Hearings and Other Proceedings.** Nothing contained in this
16 Protective Order shall be construed to prejudice any Party’s right to use before the Court
17 any Protected Material. However, before doing so, to the extent not otherwise authorized
18 to be so used hereunder, the Party intending to use Protected Material shall so inform the
19 Court and the Producing Party, and any Party or Third Party may apply to the Court for
20 appropriate protection, including clearing the hearing room or courtroom of persons not
21 entitled to receive Protected Material pursuant to paragraph 6.

22 **15. Testimony at Pretrial Court Hearings and Other Proceedings.** All
23 testimony elicited during hearings and other proceedings that counsel for a Party or Third
24 Party indicated on the record may be subject to the protections of this Order shall be
25 deemed PROTECTED MATERIAL or PROTECTED MATERIAL – ATTORNEYS’
26 EYES ONLY until the expiration of twenty one (21) calendar days after delivery of a
27 copy of the transcript of the testimony by the court reporter to counsel who requested a
28 copy of the transcript. Within the twenty one (21) calendar day period following such

1 mailing of the transcript, any Party may move to seal the transcript under LRCiv 79.2,
2 designating all or any portion of the testimony as PROTECTED MATERIAL or
3 PROTECTED MATERIAL – ATTORNEYS’ EYES ONLY. Upon being informed that
4 certain portions of a transcript are designated as PROTECTED MATERIAL or
5 PROTECTED MATERIAL – ATTORNEYS’ EYES ONLY, each Party must have each
6 copy in their custody, possession or control immediately marked with the appropriate
7 designation at the appropriate pages. Such designation must remain until the Court rules
8 on the motion to seal.

9 **16. This Order Only Applies To Pretrial Discovery.** Nothing contained in this
10 Order shall restrict or limit any Party’s right to present Protected Material to the Court
11 during a trial in the Action. The use of Protected Material at trial shall be governed by the
12 pretrial order.

13 **17. This Order Does Not Apply To Non-Private Information.** The
14 restrictions set forth in this Protective Order shall not apply to documents, things, or
15 information that: (a) have been publicly disclosed by either Party; or (b) have been
16 independently obtained by the Receiving Party through lawful means. If the Producing
17 Party challenges the Receiving Party’s invocation of this provision, then the Receiving
18 Party shall provide written documentation showing the material falls within categories of
19 non-private information referenced in this provision. This paragraph does not purport to
20 waive or in any other way limit any protection that exists under law, including The
21 Privacy Act, 8 U.S.C. § 552a, et seq.

22 **18. Challenge to Designations.** If a Receiving Party seeks removal of
23 protection for particular items designated as Protected Material on the ground that such
24 protection is not warranted under controlling law, the following procedure shall be used:

- 25 a. The Receiving Party seeking such removal shall give counsel of record for
26 the Producing Party, notice thereof, in writing by facsimile or email
27 followed by a hard copy sent next business day courier, specifying the
28 documents, things, or information for which such removal is sought and the

1 reasons for the request. The Producing Party shall have ten (10) business
2 days after receiving that notification within which to object to the removal of
3 protection afforded by this Protective Order. Any such objection shall be
4 made in writing (by facsimile or email followed by a hard copy sent next
5 business day courier). Failure to object within the requisite time limit is
6 deemed a waiver of any claim to protection for that specific document,
7 thing, or information under this Protective Order.

8 b. If the Producing Party objects to the removal of the protection afforded by
9 this Protective Order and the Receiving Party intends to submit the dispute
10 to the Court for a ruling, the Receiving Party shall request to meet-and-
11 confer with the Producing Party.

12 c. If the Parties cannot reach agreement concerning the matter, the Receiving
13 Party seeking such removal may submit to the Court for ruling a noticed
14 motion to be relieved entirely or in part from the provisions of this
15 Protective Order. The designated material shall continue to be treated in
16 accordance with the original designation until the issue is resolved by Order
17 of this Court or by agreement of the Parties.

18 **19. No Waiver by Failure to Challenge Designation.** For purposes of the
19 Action or any other action, no Party concedes that any Protected Material designated as
20 PROTECTED MATERIAL or PROTECTED MATERIAL – ATTORNEYS’ EYES
21 ONLY does in fact contain or reflect Protected Material. A Party shall not be obligated to
22 challenge the propriety of the designation of Protected Material at the time made, and
23 failure to do so shall not preclude a subsequent challenge.

24 **20. Inadvertent Disclosure of Protected Material.** The failure by a Producing
25 Party to designate specific documents or materials as Protected Material shall not, by
26 itself, be deemed a waiver in whole or in part of a claim of confidentiality as to such
27 documents or materials. Upon written notice to the Receiving Party of such failure to
28 designate, or of incorrect designation, the Receiving Party shall cooperate to retrieve

1 disseminated copies, and restore the confidentiality of the inadvertently disclosed
2 information beyond those persons authorized to review such information pursuant to
3 paragraph 6, and shall thereafter take reasonable steps to ensure that the Protected
4 Material is treated in accordance with the designation. No person or Party shall incur any
5 liability under this Protective Order with respect to disclosure that occurred prior to the
6 receipt of written notice of the mistaken designation.

7 **21. Disclosure to Producing Party's Personnel.** Nothing in this Protective
8 Order shall affect the right of the Producing Party to disclose to its officers, directors,
9 employees, consultants, or experts, any documents, things, or information designated by
10 it as Protected Material pursuant to this Order; such disclosure shall not waive the
11 protection of this Protective Order and shall not entitle other Parties or their attorneys to
12 disclose such information, documents, things, or information in violation of this Order.

13 **22. Disclosure to Unauthorized Persons.** If information subject to this
14 Protective Order is disclosed to any unauthorized person either through inadvertence,
15 mistake, or otherwise without authorization by the Producing Party, or other than in the
16 manner authorized by this Protective Order, the person responsible for the disclosure
17 shall immediately (a) inform the Producing Party of all pertinent facts relating to such
18 disclosure, including without limitation, the name, address, and telephone number of the
19 recipient and his or her employer; (b) use his or her best efforts to retrieve the disclosed
20 information and all copies thereof; (c) advise the recipient of the improperly disclosed
21 information, in writing, of the terms of this Protective Order; (d) make his or her best
22 efforts to require the recipient to execute an agreement to be bound by the terms of this
23 Protective Order in the form of the declaration attached to this Protective Order as
24 Exhibit A; and (e) take all other reasonable steps to prevent further disclosure by or to the
25 unauthorized person who received the Protected Material.

26 **23. "Admissibility" of Protected Material.** This Protective Order shall not
27 constitute a waiver of any Party's or non-party's right to object to the admissibility into
28 evidence of any Protected Material under Federal law.

1 **24. All Objections Preserved.** This Protective Order is intended to provide a
2 mechanism for handling the disclosure or production of Protected Material to which there
3 is no objection other than confidentiality. The protection afforded by this Order shall in
4 no way affect a Producing Party’s right to withhold or redact documents as: (a) privileged
5 under the attorney-client or other privilege, (b) protected by the work product doctrine, or
6 (c) otherwise exempted from discovery under Rule 26 of the Federal Rules of Civil
7 Procedure or under any law. Additionally, this Protective Order shall not prejudice the
8 right of a Party to: (a) seek additional protective treatment for any information it
9 considers to be very highly sensitive, or otherwise exempt from disclosure, such that the
10 protections in this Protective Order would be insufficient, (b) object to the designation of
11 any document or information as PROTECTED MATERIAL or PROTECTED
12 MATERIAL – ATTORNEYS’ EYES ONLY, or (c) seek any modification of or relief
13 from any provision of this Protective Order, either generally or as to any particular
14 Protected Material, by properly noticed motion with notice to all Parties and their
15 respective counsel.

16 **25. Advice to Client.** Nothing in this Protective Order shall prevent or
17 otherwise restrict counsel from rendering legal advice to the clients in this Litigation and,
18 in the course of this Litigation, relying generally on examination of designated Protected
19 Materials; provided, however, that in rendering such advice and otherwise
20 communicating with such client, counsel shall not disclose the specific contents of
21 Protected Materials to persons not authorized to receive such material pursuant to the
22 Protective Order.

23 **26. Inadvertent Disclosure of Privileged Information.**

- 24 a. The inadvertent disclosure of Material covered by the attorney-client
25 privilege, the work-product doctrine, or any other recognized privilege shall
26 be governed by Federal Rule of Evidence 502 and this Protective Order.
27 b. If, in connection with the pending Litigation, a Producing Party
28 inadvertently discloses information subject to a claim of a privilege or

1 protection described in paragraph 26(a) (“Inadvertently Disclosed
2 Information”), the disclosure of the Inadvertently Disclosed Information
3 shall not constitute or be deemed a waiver or forfeiture of any claim of
4 privilege or work-product protection that the Producing Party would
5 otherwise be entitled to assert with respect to the Inadvertently Disclosed
6 Information and its subject matter.

- 7 c. If a claim of inadvertent disclosure is made by a Producing Party with
8 respect to Inadvertently Disclosed Information, the Receiving Party shall,
9 within five (5) business days, return or destroy all copies of the Inadvertently
10 Disclosed Information and provide a certification of counsel that all such
11 Inadvertently Disclosed Information has been returned or destroyed.
- 12 d. Within twenty-one (21) calendar days of the notification that such
13 Inadvertently Disclosed Information has been returned or destroyed, or
14 within a different time upon written agreement of the Parties or order of the
15 Court, the Producing Party shall produce a privilege log with respect to the
16 Inadvertently Disclosed Information.
- 17 e. Nothing in this Protective Order shall limit the right of any Party to petition
18 the Court for an order compelling production of such Inadvertently
19 Disclosed Information, or for an in-camera review of the Inadvertently
20 Disclosed Information.

21 **27. Good Faith Designations.** Each Party agrees that designation of Protected
22 Material and responses to requests to permit further disclosure of Protected Material shall
23 be made in good faith and not: (a) to impose burden or delay on an opposing Party, or (b)
24 for tactical or other advantage in litigation. Further, each Party agrees to make best efforts
25 to avoid as much as possible inclusion of Protected Material in briefs and other captioned
26 documents filed in court, in order to minimize sealing and designating such documents as
27 Protected Material.

28

1 **28. Use of Information Subject To Protective Order.** The Receiving Party’s
2 use of any information or documents obtained from the Producing Party subject to this
3 Protective Order, including all information derived therefrom, shall be restricted to use in
4 this Litigation (subject to the applicable rules of evidence and subject to the
5 confidentiality of such materials being maintained) and shall not be used by anyone
6 subject to the terms of this agreement, for any purpose outside of this Litigation or any
7 other proceeding between the Parties, except as otherwise provided in this Order.

8 **29. Defendants’ Use of Protected Material.** Where Defendants have a legal
9 obligation to disclose or share Protected Material, or information derived from such
10 material, including with other government entities, Defendants will meet and confer with
11 Plaintiffs prior to any disclosure.

12 **30. Meet And Confer.** Prior to filing any motion or application before the Court
13 to enforce this Protective Order, the moving party shall notify the other Party(ies) in
14 writing and meet and confer in good faith in an attempt to resolve their dispute(s).

15 **31. Injunctive Relief.** In the event anyone violates or threatens to violate any of
16 the terms of this Protective Order, the Parties and Third Parties agree that the aggrieved
17 party may, subject to the “meet and confer” requirement set forth above, apply to the
18 Court to obtain injunctive relief against any such person violating or threatening to
19 violate any of the terms of this Protective Order. In the event the aggrieved party brings
20 such motion or application, the responding person subject to the provisions of this
21 Protective Order shall not employ as a defense the claim that the aggrieved party
22 possesses an adequate remedy at law. The Parties and Third Parties shall not use or
23 reveal, directly or indirectly, any information in violation of this Protective Order.

24 Because of the confidential and proprietary nature of the information contemplated to be
25 covered by this Protective Order, the Parties and Third Parties’ agree that legal remedies
26 are inadequate. Therefore, the Parties and Third Parties stipulate that injunctive relief is
27 an appropriate remedy to prevent any person from using or disclosing Protected Material
28 in violation of this Protective Order. The Parties and Third Parties waive and release any

1 and all requirements for a bond or undertaking to support any injunctive relief for
2 enforcement of this Protective Order.

3 **32. Other Actions.** If any Party is (a) subpoenaed in another action, (b) served
4 with a demand in another action to which it is a Party, or (c) served with any legal
5 process by one not a party to this action, seeking information or material which was
6 produced or designated as PROTECTED MATERIAL or PROTECTED MATERIAL –
7 ATTORNEYS’ EYES ONLY by someone other than that Party, the Party shall give
8 prompt actual written notice, by hand or facsimile transmission, within ten (10) calendar
9 days of receipt of such subpoena, demand, or legal process, to those who produced the
10 Protected Material as PROTECTED MATERIAL or PROTECTED MATERIAL –
11 ATTORNEYS’ EYES ONLY prior to compliance with the subpoena so as to allow the
12 Producing Party to seek protection from the relevant court(s). Nothing in this Protective
13 Order shall be construed as requiring the Party or anyone else covered by this Protective
14 Order to challenge or appeal any order requiring production of information or material
15 covered by this Protective Order, or to subject itself to any penalties for noncompliance
16 with any legal process or order, or to seek any relief from this Court.

17 **33. Survival and Final Disposition of Designated Material.** Final termination
18 of the Litigation, including exhaustion of appellate remedies, shall not terminate the
19 limitations on use and disclosure imposed by the Protective Order.

- 20 a. Upon final termination of the Litigation by final judgment (whether by
21 settlement, trial, or otherwise), including the time for filing and resolution of
22 all appeals, or within such other period as the Parties may agree upon, and
23 upon written request of the producing Party, all Protected Material and
24 copies of Protected Material, including such material in the hands of outside
25 experts or consultants, shall be delivered to counsel of record for the
26 Producing Party of such material. In the absence of any such written request,
27 any Protected Material shall be destroyed within sixty (60) calendar days of
28 final termination of the Litigation. In the event of destruction, the producing

1 Party shall promptly be advised in writing that such Protected Material has
2 been destroyed.

3 b. Any Protected Material filed or lodged with and retained by the Court shall
4 not be subject to the provisions of this paragraph 33.

5 c. Notwithstanding the foregoing, in-house counsel and Outside Counsel may
6 retain copies of briefs and other papers filed with the Court, deposition
7 transcripts, discovery responses, and attorney work product that contains or
8 constitutes Protected Material. Further, in-house counsel and Outside
9 Counsel are not required to delete information that may reside on their
10 firm's electronic back-up systems that are over-written in the normal course
11 of business. Any such archival copies that contain or constitute Protected
12 Material remain subject to this Protective Order and shall be maintained in a
13 safe and secure manner.

14 **34. Amendment or Termination of Protective Order.** No part of the
15 restrictions imposed by this Protective Order may be terminated, except by written
16 stipulation executed by counsel of record for each Producing Party or by an Order of this
17 Court for good cause shown. The Court may modify the protective order sua sponte in
18 the interests of justice or for public policy reasons. The terms of this Protective Order
19 shall survive termination of the Action.

20 **35. Jurisdiction for Enforcement.** The Court retains jurisdiction subsequent to
21 settlement or entry of judgment to enforce the terms of this Protective Order for 60 days.
22 While the Court retains jurisdiction, each person to whom disclosure of any Protected
23 Information is made agrees to subject himself to the jurisdiction of the Court in which
24 this action is pending for the purpose of proceedings relating to the performance under,
25 compliance with, or violation of this Protective Order.

26 //

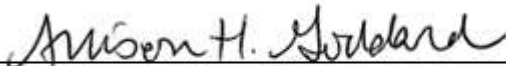
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1 **36. Limitations.** Nothing in this Order shall be deemed to restrict in any manner
2 the use by any party of its own documents or materials. Nothing in this Protective Order
3 should be construed as prohibiting a non-party from seeking additional protections of
4 records or information that it owns or controls.

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6 **IT IS SO ORDERED.**

7 Dated: July 22, 2020



Honorable Allison H. Goddard
United States Magistrate Judge

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EXHIBIT A

**ACKNOWLEDGMENT AND AGREEMENT CONCERNING
PROTECTED INFORMATION**

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4 **1.** My name is _____ (first, middle initial,
5 last).

6 **2.** I live at _____ (street address),
7 _____ (city), _____ (state) _____ (zip code).

8 **3.** I am employed as a/an _____ by
9 _____ (company), which is located at
10 _____ (street address), _____
11 (city), _____ (state) _____ (zip code). Its telephone number is
12 _____.

13 I have read the attached Stipulated Protective Order entered in the action of
14 Cancino Castellar, et al., v. Wolf, et al., pending in the Southern District of California
15 and bearing Case No. 3:17-cv-00491-BAS-AHG, and a copy of the Stipulated Protective
16 Order has been given to me.

17 **4.** I agree to be bound by the terms of the Stipulated Protective Order, and agree
18 that any Protected Material, within the meaning of the Stipulated Protective Order, will
19 be used by me only to assist counsel in connection with the above-referenced litigation or
20 as otherwise authorized by the Stipulated Protective Order.

21 **5.** I agree that I will not disclose or discuss Protected Material so designated with
22 anyone other than the persons described in paragraph 6 of the Stipulated Protective
23 Order.

24 **6.** I understand that any disclosure or use of Protected Material in any manner
25 contrary to the provisions of the Stipulated Protective Order may subject me to sanctions
26 for contempt of the Court’s Order.

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1 7. I agree to be subject in personam to the jurisdiction of the Southern District of
2 California in connection with any proceeding relating to the enforcement of the
3 Stipulated Protective Order.

4 I declare under penalty of perjury that the foregoing is true and correct.

5
6 _____

7 Date

Signature

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