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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 RODERICK NAVARRO,
12 Plaintiff,
13 v.
14 UNITED STATES OF AMERICA;
15 AMERICAN SCAFFOLD HOLDINGS,
16 INC.; and INTERNATIONAL MARINE
17 AND INDUSTRIAL APPLICATORS,
18 LLC,
19 Defendants.

Case No.: 21cv1820-MMA (NLS)

**ORDER GRANTING JOINT
MOTION FOR ENTRY OF
PROTECTIVE ORDER
AS MODIFIED BY THE COURT**

[ECF No. 25]

19
20 The Court having read the parties' Joint Motion for Protective Order (ECF No. 25),
21 finding no objection and good cause appearing,

22 **IT IS HEREBY ORDERED** that this motion is **GRANTED**. The following
23 Protective Order is entered, as modified by the Court (*see* paragraphs 6.1, 6.2, 12.1,
24 12.3).

25 **PROTECTIVE ORDER**

26 **INTRODUCTION**

27 A. **Purposes and Limitations**

28 Discovery in this action is likely to involve production of confidential, information

1 for which special protection from public disclosure and from use for any purpose other
2 than prosecuting this litigation may be warranted. As to the United States particularly, this
3 action may call for the production of classified information. Accordingly, the parties
4 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order.
5 The parties acknowledge that this Order does not confer blanket protections on all
6 disclosures or responses to discovery and that the protection it affords from public
7 disclosure and use extends only to the limited information or items that are entitled to
8 confidential treatment under the applicable legal principles. The parties further
9 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does
10 not entitle them to file confidential information under seal; Civil Local Rule 79.2 sets forth
11 the procedures that must be followed and the standards that will be applied when a party
12 seeks permission from the court to file material under seal.

13 B. Good Cause Statement

14 This action is likely to involve confidential and/or classified United States
15 Government information for which special protection from public disclosure and from use
16 for any purpose other than prosecution of this action is warranted. Such confidential
17 materials and information consist of, among other things, United States Department of
18 Defense information otherwise generally unavailable to the public, or which may be
19 privileged or otherwise protected from disclosure under state or federal statutes, court rules,
20 case decisions, or common law. Accordingly, to expedite the flow of information, to
21 facilitate the prompt resolution of disputes over confidentiality of discovery materials, to
22 adequately protect information the parties are entitled to keep confidential, to ensure that
23 the parties are permitted reasonable necessary uses of such material in preparation for and
24 in the conduct of trial, to address their handling at the end of the litigation, and serve the
25 ends of justice, a protective order for such information is justified in this matter. It is the
26 intent of the parties that information will not be designated as confidential for tactical
27 reasons and that nothing be so designated without a good faith belief that it has been
28 maintained in a confidential, non-public manner, and there is good cause why it should not

1 be part of the public record of this case.

2 2. DEFINITIONS

3 2.1 Action: this pending federal lawsuit.

4 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
7 is generated, stored or maintained) or tangible things that qualify for protection under
8 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

9 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
10 support staff).

11 2.5 Designating Party: a Party or Non-Party that designates information or items
12 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

13 2.6 Disclosure or Discovery Material: all items or information, regardless of the
14 medium or manner in which it is generated, stored, or maintained (including, among other
15 things, testimony, transcripts, and tangible things), that are produced or generated in
16 disclosures or responses to discovery in this matter.

17 2.7 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
19 expert witness or as a consultant in this Action.

20 2.8 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 2.9 Non-Party: any natural person, partnership, corporation, association, or other
23 legal entity not named as a Party to this action.

24 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
25 Action but are retained to represent or advise a party to this Action and have appeared in
26 this Action on behalf of that party or are affiliated with a law firm which has appeared on
27 behalf of that party, and includes support staff.

28 2.11 Party: any party to this Action, including all of its officers, directors,

1 employees, consultants, retained experts, and Outside Counsel of Record (and their support
2 staffs).

3 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
4 Material in this Action.

5 2.13 Professional Vendors: persons or entities that provide litigation support
6 services (e.g., photocopying, videotaping, translating, preparing exhibits or
7 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
8 their employees and subcontractors.

9 2.14 Protected Material: any Disclosure or Discovery Material that is designated
10 as “CONFIDENTIAL.”

11 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
12 a Propounding Party.

13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only Protected
15 Material (as defined above), but also (1) any information copied or extracted from
16 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
17 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
18 that might reveal Protected Material. Any use of Protected Material at trial shall be
19 governed by the orders of the trial judge. This Order does not govern the use of Protected
20 Material at trial.

21 4. DURATION

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

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2 5. DESIGNATING PROTECTED MATERIAL

3 5.1 Exercise of Restraint and Care in Designating Material for Protection.

4 Each Party or Non-Party that designates information or items for protection under this
5 Order must take care to limit any such designation to specific material that qualifies under
6 the appropriate standards. The Designating Party must designate for protection only those
7 parts of material, documents, items, or oral or written communications that qualify so that
8 other portions of the material, documents, items, or communications for which protection
9 is not warranted are not swept unjustifiably within the ambit of this Order. Mass,
10 indiscriminate, or routinized designations are prohibited. Designations that are shown to
11 be clearly unjustified or that have been made for an improper purpose (e.g., to
12 unnecessarily encumber the case development process or to impose unnecessary expenses
13 and burdens on other parties) may expose the Designating Party to sanctions. If it comes
14 to a Designating Party's attention that information or items that it designated for protection
15 do not qualify for protection, that Designating Party must promptly notify all other Parties
16 that it is withdrawing the inapplicable designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
18 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
19 Disclosure or Discovery Material that qualifies for protection under this Order must be
20 clearly so designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic documents, but
23 excluding transcripts of depositions or other pretrial or trial proceedings), that the
24 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
25 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
26 portion or portions of the material on a page qualifies for protection, the Producing Party
27 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in
28 the margins). A Party or Non-Party that makes original documents available for inspection

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

11 (b) for testimony given in depositions that the Designating Party identify, the
12 Disclosure or Discovery Material on the record, before the close of the deposition all
13 protected testimony.

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

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
20 to designate qualified information or items does not, standing alone, waive the Designating
21 Party's right to secure protection under this Order for such material. Upon timely correction
22 of a designation, the Receiving Party must make reasonable efforts to assure that the
23 material is treated in accordance with the provisions of this Order.

24 5.4 If at any time prior to the trial of this action, a producing person or party
25 realizes that some portion(s) of Disclosure or Discovery Material that the person or party
26 previously produced without limitation should be designated as “CONFIDENTIAL”
27 (including Disclosure or Discovery Material that was produced prior to the entry of this
28 order), that person or party may so designate by so apprising all parties in writing, and such

1 designated portion(s) of the Disclosure or Discovery Material will thereafter be treated as
2 “CONFIDENTIAL” and/or under the terms of this order.

3 6. CHALLENGING CONFIDENTIAL DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
5 of confidentiality at any time that is consistent with the Court’s Scheduling Order. **The**
6 **party objecting to confidentiality must notify, in writing, counsel for the designating**
7 **party of the objected-to materials and the grounds for the objection. Such objection**
8 **on designation of any Confidential Information shall be raised in writing within 30**
9 **days of the challenging party’s receipt of the materials at issue. If the dispute is not**
10 **resolved consensually between the parties within 7 days of receipt of such written**
11 **notice, the parties shall file a joint motion for determination of discovery dispute, as**
12 **outlined in this Court’s Chambers Rules, no later than 45 days after the challenging**
13 **party’s receipt of the designated material in issue.**

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
15 process under Local Rule 26.1 et seq. **and this Court’s Chamber Rules, Section VI. See**
16 **<https://www.casd.uscourts.gov/judges/stormes/docs/Stormes%20Civil%20Rules.pdf>**.

17 6.3 The burden of persuasion in any such challenge proceeding shall be on the
18 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
19 harass or impose unnecessary expenses and burdens on other parties) may expose the
20 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
21 confidentiality designation, all parties shall continue to afford the material in question the
22 level of protection to which it is entitled under the Producing Party’s designation until the
23 Court rules on the challenge.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a Non-Party in connection with this Action
27 only for prosecuting, defending, or attempting to settle this Action. Such Protected
28 Material may be disclosed only to the categories of persons and under the conditions

1 described in this Order. When the Action has been terminated, a Receiving Party must
2 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
7 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
8 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 as
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to
11 disclose the information for this Action;

12 (b) the officers, directors, and employees (including House Counsel) of the
13 Receiving Party to whom disclosure is reasonably necessary for this Action;

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

17 (d) the court and its personnel;

18 (e) court reporters and their staff;

19 (f) professional jury or trial consultants, mock jurors, and Professional
20 Vendors to whom disclosure is reasonably necessary for this Action and who have
21 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (g) the author or recipient of a document containing the information or a custodian
23 or other person who otherwise possessed or knew the information;

24 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
25 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
26 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not
27 be permitted to keep any confidential information unless they sign the “Acknowledgment
28 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating

1 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
2 depositions that reveal Protected Material may be separately bound by the court reporter
3 and may not be disclosed to anyone except as permitted under this Stipulated Protective
4 Order; and

5 (i) any mediator or settlement officer, and their supporting personnel, mutually
6 agreed upon by any of the parties engaged in settlement discussions.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
8 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 shall include
13 a copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order to issue
15 in the other litigation that some or all of the material covered by the subpoena or order is
16 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 pursued by the
19 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
24 Party shall bear the burden and expense of seeking protection in that court of its
25 confidential material and nothing in these provisions should be construed as authorizing or
26 encouraging a Receiving Party in this Action to disobey a lawful directive from another
27 court.
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2 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
3 PRODUCED IN THIS LITIGATION

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

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

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

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

19 (3) make the information requested available for inspection by the Non-Party,
20 if requested.

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

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2 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED MATERIAL

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

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
24 to seek its modification by the Court in the future. **The Court may modify the protective**
25 **order in the interests of justice or for public policy reasons.**

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this
27 Protective Order no Party waives any right it otherwise would have to object to disclosing
28 or producing any information or item on any ground not addressed in this Stipulated

1 Protective Order. Similarly, no Party waives any right to object on any ground to use in
2 evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. **Nothing shall be filed under seal, and the Court**
4 **shall not be required to take any action, without separate prior order by the Judge**
5 **before whom the hearing or proceeding will take place, after application by the**
6 **affected party with appropriate notice to opposing counsel. The parties shall follow**
7 **and abide by applicable law, including Civ. L.R. 79.2, ECF Administrative Policies**
8 **and Procedures, Section II.j, and the chambers' rules, with respect to filing**
9 **documents under seal.** Protected Material may only be filed under seal pursuant to a court
10 order authorizing the sealing of the specific Protected Material at issue. If a Party's request
11 to file Protected Material under seal is denied by the court, then the Receiving Party may
12 file the information in the public record unless otherwise instructed by the court.

13 13. FINAL DISPOSITION

14 After the final disposition of this Action, as defined in paragraph 4, within 60 days
15 of a written request by the Designating Party, each Receiving Party must return all
16 Protected Material to the Producing Party or destroy such material. As used in this
17 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
18 summaries, and any other form reproducing or capturing any of the Protected Material.
19 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
20 a written certification to the Producing Party (and, if not the same person or entity, to the
21 Designating Party) by the 60 day deadline that (1) identifies (by category, where
22 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
23 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any
24 other format reproducing or capturing any of the Protected Material. Notwithstanding this
25 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers,
26 trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and
27 trial exhibits, expert reports, attorney work product, and consultant and expert work
28 product, even if such materials contain Protected Material. Any such archival copies that

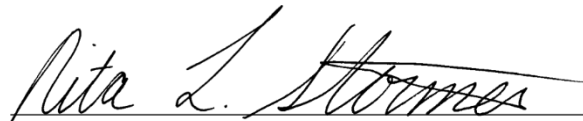
1 contain or constitute Protected Material remain subject to this Protective Order as set forth
2 in Section 4 (DURATION).

3 14. VIOLATION OF ORDER

4 Any violation of this Order may be punished by any and all appropriate measures
5 including, without limitation, contempt proceedings and/or monetary sanctions.

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7 **IT IS SO ORDERED.**

8 Dated: May 20, 2022

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10 Hon. Nita L. Stormes
11 United States Magistrate Judge
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

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4 I, _____, of _____, declare
5 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 Southern
7 District of California on in the case of *Wheeler v. Exelis Inc.*, Case No.: 16-cv-1075-
8 LAB-AGS. 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
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
11 that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for
15 the Southern District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order.

17
18 Date: _____

19
20 City and State where sworn and signed: _____

21
22 Printed name: _____

23
24 Signature: _____