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15
 16 **UNITED STATES DISTRICT COURT**
 17 **DISTRICT OF NEVADA**

18 HONGHUI DENG,
 19 Plaintiff,

20 vs.

21 THE STATE OF NEVADA *ex rel.* THE
 22 BOARD OF REGENTS OF THE NEVADA
 SYSTEM OF HIGHER EDUCATION ON
 23 BEHALF OF THE UNIVERSITY OF
 NEVADA, LAS VEGAS; KEAH-CHOON
 24 TAN,
 25 Defendants.

CASE NO.: 2:17-cv-03019-APG-VCF

STIPULATED PROTECTIVE ORDER

26 Plaintiff HONGHUI DENG (“Plaintiff”) and Defendants STATE OF NEVADA *ex. rel.*
 27 BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, on behalf of
 28 the UNIVERSITY OF NEVADA, LAS VEGAS and KEAH-CHOON TAN, an individual

1 (“Defendants”), by and through their respective counsel of record, hereby submit the following
2 Stipulated Protective Order pursuant to Federal Rule of Civil Procedure 26(c) regarding the
3 confidentiality of the production of material, information, documents, and the giving of testimony
4 in this matter.

5 **I. PURPOSE AND LIMITATIONS**

6 Disclosure and discovery activity in the above-captioned action are likely to involve the
7 production of and testimony via deposition or other sworn statements regarding confidential or
8 private information for which special protection from public disclosure and use for any purpose
9 other than this litigation may be warranted. The parties acknowledge that this protective order does
10 not confer blanket protection for all disclosures or responses to discovery and that the protection it
11 affords from public disclosure and use extends only to limited information or items that are entitled
12 to confidential treatment under the applicable legal principles.

13 **II. DESIGNATION AND USE OF CONFIDENTIAL MATERIAL**

14 A. During this litigation, either party may designate as “confidential” any material produced in
15 discovery only if that party in good faith believes that the material contains protected non-public
16 confidential information under state or federal law. Such discovery material is referred to herein as
17 “confidential material.” The party designating the material is referred to herein as the “designating
18 party.”

19 B. “Confidential material,” as the term is used in this protective order, is testimony, information
20 and/or documents that fall within one or more of the following categories: (a) information prohibited
21 from disclosure by statute; (b) investigative reports, files, and any other supporting or related
22 documents or files related to any investigation undertaken by UNLV; (c) UNLV employee
23 performance evaluations or assessments; (d) medical records or information of similar private,
24 highly personal nature, in which an individual person has a legitimate expectation of privacy; (e)
25 employee files or records of non-parties (f) portions of depositions (audio or video) where
26 confidential material is disclosed or used as an exhibit; and (g) personnel and payroll files of UNLV
27 employees deemed confidential as specified in the Nevada System of Higher Education Code, Title
28 2, Chapter 5, Section 5.6.2 and/or Nevada Administrative Code 284.718. The parties reserve the

1 right to meet and confer over additional categories that may be deemed confidential as discovery
2 continues.

3 C. The designating party will mark each page of appropriate documents as
4 **“CONFIDENTIAL.”** The designation will avoid obscuring or defacing any portion of the discovery
5 material. If a party inadvertently fails to designate discovery material as confidential, but
6 subsequently determines that such material should have been so designated, it will promptly provide
7 written notice to the opposing party of the confidential designation and the material will be treated
8 as confidential from receipt of the notice. On the other hand, if a party designates discovery material
9 as confidential and later determines that it should not have been so designated, it will promptly
10 provide the opposing party written notice of the removal of the designation and a duplicate copy of
11 the discovery material without the confidential marking. All copies of confidential discovery
12 material will also be considered confidential.

13 D. Material designated confidential shall be held in confidence by each qualified recipient to
14 whom it is disclosed, shall be used only for the purposes of this action, and shall not be used in any
15 other pending or future litigation, arbitration, administrative, court, quasi-judicial, or employment
16 related hearings or proceedings, shall not be used for any business, investment, competitive, legal,
17 or governmental purpose, and shall not be disclosed to any person who is not a qualified recipient
18 as provided herein, or as ordered by a court or adjudicative body. All produced confidential material
19 shall be carefully maintained so as to preclude access by persons who are not qualified recipients.

20 E. For purposes of this stipulation, the following are qualified recipients: (a) the Court and its
21 personnel; (b) counsel of record, in-house counsel, and staff;(c) deposition notaries and staff; (d)
22 parties to this litigation; and the following, provided that they expressly agree to be bound by the
23 terms of this protective order after being provided with a copy of the protective order by counsel and
24 their duty to maintain confidentiality has been explained: (i) any expert or consultant, whether
25 testifying or not, specifically retained in this action; (ii) witness and potential witnesses at, or in
26 preparation for, deposition, trial, or hearing or who otherwise requires the information as directed
27 by counsel; and (iii) litigation support vendors and their personnel who perform copying, data entry,
28 or similar functions.

1 Confidential material may not be disclosed to other persons or entities without prior written
2 consent of the designating party or court order. Disclosure should be made only to the extent
3 reasonably necessary for effective prosecution and defense of the claims in this action and for no
4 other purpose.

5 F. Except as provided herein, qualified recipients shall not use, provide, or otherwise make
6 available to any non-qualified recipient any documents, materials or information designated
7 CONFIDENTIAL in connection with (a) any other pending or future litigation, judicial, and/or
8 administrative proceedings, and/or (b) any other purpose, except as set forth herein.

9 III. CONDITIONS OF DISCLOSURE

10 A. As set forth in paragraph II.E above, before disclosing any document marked
11 CONFIDENTIAL to any person identified in Section II.B above, counsel of record for the receiving
12 party shall advise that person of the terms of this Stipulated Protective Order and that he or she is
13 bound its terms. Further, counsel for the receiving party will ensure that the person has read and
14 agrees to the terms of this Stipulated Protective Order and has acknowledged his or her agreement
15 by signing a copy of the Acknowledgement attached hereto as Exhibit A.

16 B. The parties' counsel will be responsible for their distribution and control of confidential
17 material. They will maintain a list of all persons to whom confidential material has been disclosed
18 and the make the disclosures required as provided in paragraphs II.E and III.A. Confidential material
19 will be copied only by counsel or persons assisting counsel and only for purposes permitted by this
20 order.

21 C. The restrictions set forth in this protective order will not apply to information that is or
22 becomes public knowledge through its authorized release and not in violation of this protective
23 order. Whether material that becomes public will remain confidential under this protective order will
24 be decided based on the standards and procedures herein.

25 D. If confidential material is, or has been produced by a party or third party, the parties in this
26 litigation may designate the previously produced confidential material as such by marking it
27 CONFIDENTIAL, and providing the marked copy to the opposing party who will, within 7 days of
28 the notice of the confidential designation, either (1) agree the material is confidential under the terms

1 of this protective order, or (2) inform the other party that it disagrees the material should be governed
2 by the terms of this protective order, but nonetheless will treat the material as confidential for at least
3 30 days from notice of the confidentiality designation, to give the party desiring protection sufficient
4 time to seek relief from the Court. Treatment of the material as confidential will continue until the
5 Court resolves the issue.

6 E. For each designation, the party designating material as confidential will produce a log,
7 similar to the one attached as Exhibit B, which provides a listing of that party's designation.

8 **IV. PROTECTING CONFIDENTIAL INFORMATION AT DEPOSITIONS**

9 A. During a deposition, either party will advise or disclose to persons present the existence of
10 this protective order if confidential material is discussed or used as an exhibit.

11 B. To designate confidential material in deposition testimony, the designating party will (a)
12 make an oral statement to that effect on the record, and all persons not authorized to review such
13 documents shall leave the deposition room until completion of the answers referring to the
14 document. The reporter shall mark the transcript of the designated testimony "CONFIDENTIAL."

15 C. If confidential material is marked as an exhibit during a deposition, or hearing, or other
16 proceeding in this action, and its contents are disclosed in testimony at such proceeding, counsel for
17 the parties will (a) advise the reporter that the exhibit refers to confidential material, and have it so
18 marked. In either instance, the material will be marked confidential, separately bound, and be
19 deemed as such, and subject to the provisions of this Protective Order. The reporter will not furnish
20 copies to anyone other than the parties herein, and, if requested, the witness and his/her counsel.

21 **V. USE OF CONFIDENTIAL INFORMATION IN COURT FILINGS**

22 The parties acknowledge that this protective order does not entitle them to file confidential
23 information under seal without complying with the requisite legal standards and Local Rule 10-5.
24 The parties may agree that the filing party may file documents designated confidential by the other
25 party not under seal. If no such agreement is made before filing, then any documents to be filed with
26 the court containing confidential material will be accompanied by a motion to seal. A motion seeking
27 leave to file a document under seal will be served on opposing counsel, and on the person or entity
28 that has custody and control of the document, if it is different from opposing counsel. The documents

1 and/or information shall be filed under seal with the following legend: THIS DOCUMENT
2 CONTAINS CONFIDENTIAL MATERIAL COVERED BY A PROTECTIVE ORDER OF THE
3 COURT AND IS SUBMITTED PURSUANT TO THAT ORDER. THE CONFIDENTIAL
4 CONTENTS OF THIS DOCUMENT MAY NOT BE DISCLOSED WITHOUT EXPRESS
5 ORDER OF THE COURT.

6 **VI. CHALLENGING A CONFIDENTIAL DESIGNATION**

7 If a party disputes the designation of discovery material as confidential, then the objecting
8 party will notify the designating party in writing by electric mail of such dispute. The notice will
9 identify the material and explain the basis for the objection. The designating party will have 7
10 calendar days to provide a written response by electronic mail to the notice, explaining its reason(s)
11 for designating the material as confidential. Should the objecting party dispute such a reason(s), it
12 will so notify the designating party, and the objecting party will have 21 calendar days from the date
13 of such notice to seek relief from the Court and any motions challenging a confidential designation
14 will be made in compliance with Local Rule 26-7. In the event of a dispute, the parties will continue
15 to treat the disputed material as confidential until the dispute is resolved informally between the
16 parties, or by the court.

17 **VII. NON-PARTY SUBPOENAS AND COURT ORDERS**

18 If any party receives a subpoena from any non-party to this protective order, or is ordered by
19 a court of competent jurisdiction, seeking production or disclosure of confidential material, or
20 otherwise legally required to produce documents or information designated Confidential, that party
21 (the “subpoenaed/ordered party”) will give notice, as soon as practicable and in no event more than
22 5 business days after receiving the subpoena or order, to opposing counsel and furnish a copy of the
23 subpoena, order, or request with said notice. The subpoenaed/ordered party will not disclose any
24 confidential material for 10 business days, or obtaining consent after providing notice to the other
25 party, and in no event make disclosure before notice is given unless ordered by a court. If, within
26 this 10 business day period, court relief is sought from the subpoena with regard to any confidential
27 material, the subpoenaed party will wait for the Court to resolve the issue or applicable rules direct
28 otherwise. Nothing in this paragraph shall be construed to require a party to act contrary to or in

1 contempt of any court order.

2 **VIII. ADDITIONAL RIGHTS**

3 Nothing in this protective order will (a) restrict any party to its own material or discovery
4 material that has not been designated confidential; (b) prejudice any party's right to object to the
5 production or disclosure of information, confidential or otherwise, it considers not subject to
6 discovery; (c) restrict the proper scope of discovery that can be sought by any party; or (d) prejudice
7 any party's right to seek relief from the terms of this protected order.

8 This protected order is without prejudice to the right of any party to move the Court, pursuant
9 to Fed. R. Civ. P. 26(c) or Local Rule 26-7, for an order seeking protection of confidential material
10 sought by or produced through discovery, which protection is different from or in addition to that
11 provided for in this protective order, and such right is expressly reserved. Similarly, each party
12 reserves the right to request the Court to order disclosure of material subject to this protective order
13 or request modification of this protective order.

14 **IX. RETURN OF CONFIDENTIAL MATERIAL**

15 Within 60 days after this action is concluded, including any appeals, materials designated as
16 confidential, and copies thereof, will be returned to the producing party. This provision will not
17 apply to court filings or pleadings, briefs, or correspondence maintained by counsel during the
18 ordinary courses of business. Rather than returning confidential material, it may be destroyed, with
19 proper verification of the destruction by the party in possession of the confidential material. .

20 **X. BINDING EFFECT**

21 This protective order will remain in full force and effect at all times during which any party
22 to this stipulated protective order, or any person having been provided with a copy of the protective
23 order by counsel for one of the parties, retains possession, custody, or control of any confidential
24 material. The court shall retain jurisdiction to enforce the provisions of the Protective Order and to
25 make such amendments, modifications, and additions to this Protective Order as the court may from
26 time to time deem appropriate. The parties reserve the right, at any time during this litigation, to
27 petition the court to modify, amend, or add to the list of qualified recipients.

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XI. UNAUTHORIZED DISCLOSURE OR INADVERTENT PRODUCTION

If either party learns that, by inadvertence or otherwise, it disclosed confidential material to any person or in any circumstance not authorized under this protective order, the receiving party must immediately (a) notify the designating party in writing of the unauthorized disclosure, (b) use its best efforts to retrieve all unauthorized copies of the confidential material, (c) inform the person(s) of the terms of the protective order, and (d) advise such person(s) of the existence of the protective order and their obligation to maintain confidentiality of any unauthorized disclosure or inadvertent production pursuant to that order.

Pursuant to Federal Rule of Evidence 502(d) and (e), attorney-client, work product, or any other privilege will not be waived by disclosure connected to this litigation. As a result, the parties agree that nothing in this protective order will be deemed to limit or waive the attorney-client, work product, or any other applicable privilege.

DATED: November 28, 2018

DATED: November 28, 2018

/S/ LYNDA P. KING

/S/ MARY F. CHAPMAN

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Attorney for Plaintiff

IT IS SO ORDERED.

DATED this 28th day of November, 2018.


UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGEMENT OF STIPULATED CONFIDENTIALITY AGREEMENT

AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury hereby acknowledge and certify that I have received and read in its entirety the Stipulated Protective Order (“Order”) that was issued by the United States District Court for the District of Nevada (“Court”) entered on _____
[insert date of Order] in the case of Honghui Deng v. State of Nevada ex. rel. Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada, Las Vegas, and Keah-Choon Tan, Case No.: 2-17-cv-03019-APG-VCF. I am a qualified recipient pursuant to the Order and agree to the receipt of confidential material as defined by the Order. I have read and understand the terms and conditions of the Order, agree to comply with and be bound by all of its provisions, and consent to the continuing jurisdiction of the Court, even if such enforcement proceedings occur after the case is terminated. I further acknowledge that failure to comply with the terms and conditions of the Order expose me to sanctions and punishment in the nature of contempt. I agree that I will not disclose in any manner any confidential material to any person or entity, or for any purpose other than as provided in the Order.

DATED this ____ day of _____, 20____.

Signature: _____

Printed Name: _____

Company: _____

Street Address: _____

City, State, Zip Code _____

Phone Number: _____

EXHIBIT B

[Name of Case]
[Jurisdiction]

CONFIDENTIALITY LOG, #
of _____ [Insert Name of Party Designating]

Issued As of _____ [Insert Date of Issuance]

	Date of Orig Production of Docs & Source	Bates-Stamp Numbers or Identifier *	Date of Protective Designation and Production	Description of Docs or Info	Basis & Authority for Confidentiality Designation	Signed Acknowledgment Y/N
1	EXAMPLE: June 15, 2018, From Dr. Doe	DDD002—004, Full Pages	July 13, 2018	Plaintiff's Med Records	Private Medical Records from Dr. Doe	
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*If document does not have a bates-stamp number, please otherwise identify it (i.e. deposition transcript page and lines being designated, describe third party doc—"5/13/15 Smith Email to Jones Re: Trade Secret Recipe"...)