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24 SUSAN POLGAR

25 **UNITED STATES DISTRICT COURT**
26 **NORTHERN DISTRICT OF CALIFORNIA**

27 **UNITED STATES OF AMERICA CHESS**
28 **FEDERATION, INC., et al.,**

Plaintiffs,

vs.

POLGAR, et al.,

Defendants.

Case No. 3:08-CV-05126-MHP

STIPULATED PROTECTIVE ORDER

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does not
7 confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords extends only to the limited information or items that are entitled under
9 the applicable legal principles to treatment as confidential. The parties further
10 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order
11 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5
12 sets forth the procedures that must be followed and reflects the standards that will be
13 applied when a party seeks permission from the court to file material under seal.

14 **2. DEFINITIONS**

15 2.1 Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and outside counsel (and their support staff).

17 2.2 Disclosure or Discovery Material: all items or information, regardless of
18 the medium or manner generated, stored, or maintained (including, among other things,
19 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
20 responses to discovery in this matter.

21 2.3 “Confidential” Information or Items: information (regardless of how
22 generated, stored or maintained) or tangible things that qualify for protection under
23 standards developed under F.R.Civ.P. 26(c).

24 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
25 extremely sensitive “Confidential Information or Items” whose disclosure to another Party
26 or nonparty would create a substantial risk of serious injury that could not be avoided by
27 less restrictive means.

28 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material

1 from a Producing Party.

2 2.6 Producing Party: a Party or non-party that produces Disclosure or
3 Discovery Material in this action.

4 2.7. Designating Party: a Party or non-party that designates information or
5 items produced in disclosures or in responses to discovery as “Confidential” or “Highly
6 Confidential — Attorneys’ Eyes Only.”

7 2.8 Protected Material: any Disclosure or Discovery Material that is
8 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

9 2.9. Outside Counsel: attorneys who are not employees of a Party but who
10 are retained to represent or advise a Party in this action.

11 2.10 House Counsel: attorneys who are employees of a Party.

12 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as
13 well as their support staffs).

14 2.12 Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
16 expert witness or as a consultant in this action and who is not a past or a current
17 employee of a Party or of a competitor of a Party’s and who, at the time of retention, is
18 not anticipated to become an employee of a Party or a competitor of a Party’s. This
19 definition includes a professional jury or trial consultant retained in connection with this
20 litigation.

21 2.13 Professional Vendors: persons or entities that provide litigation support
22 services (e.g., photocopying; videotaping; translating; preparing exhibits or
23 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
24 employees and subcontractors.

25 **3. SCOPE**

26 The protections conferred by this Stipulation and Order cover not only Protected
27 Material (as defined above), but also any information copied or extracted therefrom, as
28 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,

1 conversations, or presentations by parties or counsel to or in court or in other settings
2 that might reveal Protected Material.

3 **4. DURATION**

4 Even after the termination of this litigation, the confidentiality obligations imposed
5 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
6 or a court order otherwise directs.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

21 If it comes to a Party's or a non-party's attention that information or items
22 that it designated for protection do not qualify for protection at all, or do not qualify for the
23 level of protection initially asserted, that Party or non-party must promptly notify all other
24 parties that it is withdrawing the mistaken designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in
26 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
27 stipulated or ordered, material that qualifies for protection under this Order must be
28 clearly so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (apart from transcripts of
3 depositions or other pretrial or trial proceedings), that the Producing Party affix the
4 legend “CONFIDENTIAL “or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at
5 the top of each page that contains protected material. If only a portion or portions of the
6 material on a page qualifies for protection, the Producing Party also must clearly identify
7 the protected portion(s) (e.g., by making appropriate markings in the margins) and must
8 specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL”
9 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

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

25 (b) for testimony given in deposition or in other pretrial or trial
26 proceedings, that the Party or non-party offering or sponsoring the testimony identify on
27 the record, before the close of the deposition, hearing, or other proceeding, all protected
28 testimony, and further specify any portions of the testimony that qualify as “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When it is impractical to identify
2 separately each portion of testimony that is entitled to protection, and when it appears
3 that substantial portions of the testimony may qualify for protection, the Party or non-
4 party that sponsors, offers, or gives the testimony may invoke on the record (before the
5 deposition or proceeding is concluded) a right to have up to 20 days to identify the
6 specific portions of the testimony as to which protection is sought and to specify the level
7 of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately
9 designated for protection within the 20 days shall be covered by the provisions of this
10 Stipulated Protective Order.

11 Transcript pages containing Protected Material must be separately
12 bound by the court reporter, who must affix to the top of each such page the legend
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as
14 instructed by the Party or nonparty offering or sponsoring the witness or presenting the
15 testimony.

16 (c) for information produced in some form other than documentary,
17 and for any other tangible items, that the Producing Party affix in a prominent place on
18 the exterior of the container or containers in which the information or item is stored the
19 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If
20 only portions of the information or item warrant protection, the Producing Party, to the
21 extent practicable, shall identify the protected portions, specifying whether they qualify as
22 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
24 failure to designate qualified information or items as “Confidential” or “Highly Confidential
25 – Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to
26 secure protection under this Order for such material. If material is appropriately
27 designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the
28 material was initially produced, the Receiving Party, on timely notification of the

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

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

9 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
10 Designating Party's confidentiality designation must do so in good faith and must begin
11 the process by conferring directly (in voice to voice dialogue; other forms of
12 communication are not sufficient) with counsel for the Designating Party. In conferring,
13 the challenging Party must explain the basis for its belief that the confidentiality
14 designation was not proper and must give the Designating Party an opportunity to review
15 the designated material, to reconsider the circumstances, and, if no change in
16 designation is offered, to explain the basis for the chosen designation. A challenging
17 Party may proceed to the next stage of the challenge process only if it has engaged in
18 this meet and confer process first.

19 6.3 Judicial Intervention. A Party that elects to press a challenge to a
20 confidentiality designation after considering the justification offered by the Designating
21 Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil
22 Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in
23 detail the basis for the challenge. Each such motion must be accompanied by a
24 competent declaration that affirms that the movant has complied with the meet and
25 confer requirements imposed in the preceding paragraph and that sets forth with
26 specificity the justification for the confidentiality designation that was given by the
27 Designating Party in the meet and confer dialogue.

28 The burden of persuasion in any such challenge proceeding shall be on the

1 Designating Party. Until the court rules on the challenge, all parties shall continue to
2 afford the material in question the level of protection to which it is entitled under the
3 Producing Party’s designation.

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

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a non-party in connection with this case
7 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
8 Material may be disclosed only to the categories of persons and under the conditions
9 described in this Order. When the litigation has been terminated, a Receiving Party must
10 comply with the provisions of section 11, below (FINAL DISPOSITION).

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

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
15 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
16 may disclose any information or item designated CONFIDENTIAL only to:

17 (a) the Receiving Party’s Outside Counsel of record in this action, as
18 well as employees of said Counsel to whom it is reasonably necessary to disclose the
19 information for this litigation and who have signed the “Agreement to Be Bound by
20 Protective Order” that is attached hereto as Exhibit A;

21 (b) the officers, directors, and employees (including House Counsel)
22 of the Receiving Party to whom disclosure is reasonably necessary for this litigation and
23 who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

24 (c) experts (as defined in this Order) of the Receiving Party to whom
25 disclosure is reasonably necessary for this litigation and who have signed the
26 “Agreement to Be Bound by Protective Order” (Exhibit A);

27 (d) the Court and its personnel;

1 (e) court reporters, their staffs, and professional vendors to whom
2 disclosure is reasonably necessary for this litigation and who have signed the
3 “Agreement to Be Bound by Protective Order” (Exhibit A);

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

10 (g) the author of the document or the original source of the
11 information.

12 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

13 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
14 Designating Party, a Receiving Party may disclose any information or item designated
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

20 (b) Experts (as defined in this Order) (1) to whom disclosure is
21 reasonably necessary for this litigation, (2) who have signed the “Agreement to Be Bound
22 by Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in
23 paragraph 7.4, below, have been followed;

24 (c) the Court and its personnel;

25 (d) court reporters, their staffs, and professional vendors to whom
26 disclosure is reasonably necessary for this litigation and who have signed the
27 “Agreement to Be Bound by Protective Order” (Exhibit A); and
28

1 (e) the author of the document or the original source of the
2 information.

3 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

5 (a) Unless otherwise ordered by the court or agreed in writing by the
6 Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this Order)
7 any information or item that has been designated “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY” first must make a written request to the Designating Party
9 that (1) identifies the specific HIGHLY CONFIDENTIAL information that the Receiving
10 Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert
11 and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s
12 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person
13 or entity from whom the Expert has received compensation for work in his or her areas of
14 expertise or to whom the expert has provided professional services at any time during the
15 preceding five years, and (6) identifies (by name and number of the case, filing date, and
16 location of court) any litigation in connection with which the Expert has provided any
17 professional services during the preceding five years.

18 (b) A Party that makes a request and provides the information
19 specified in the preceding paragraph may disclose the subject Protected Material to the
20 identified Expert unless, within seven court days of delivering the request, the Party
21 receives a written objection from the Designating Party. Any such objection must set
22 forth in detail the grounds on which it is based.

23 (c) A Party that receives a timely written objection must meet and
24 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve
25 the matter by agreement. If no agreement is reached, the Party seeking to make the
26 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in
27 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to
28 do so. Any such motion must describe the circumstances with specificity, set forth in

1 detail the reasons for which the disclosure to the Expert is reasonably necessary, assess
2 the risk of harm that the disclosure would entail and suggest any additional means that
3 might be used to reduce that risk. In addition, any such motion must be accompanied by
4 a competent declaration in which the movant describes the parties' efforts to resolve the
5 matter by agreement (i.e., the extent and content of the meet and confer discussions)
6 and sets forth the reasons advanced by the Designating Party for its refusal to approve
7 the disclosure.

8 In any such proceeding the Party opposing disclosure to the Expert
9 shall bear the burden of proving that the risk of harm that the disclosure would entail
10 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the
11 Protected Material to its Expert.

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

14 If a Receiving Party is served with a subpoena or an order issued in other
15 litigation that would compel disclosure of any information or items designated in this
16 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,"
17 the Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
18 immediately and in no event more than three court days after receiving the subpoena or
19 order. Such notification must include a copy of the subpoena or court order.

20 The Receiving Party also must immediately inform in writing the Party who
21 caused the subpoena or order to issue in the other litigation that some or all the material
22 covered by the subpoena or order is the subject of this Protective Order. In addition, the
23 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the
24 Party in the other action that caused the subpoena or order to issue.

25 The purpose of imposing these duties is to alert the interested parties to the
26 existence of this Protective Order and to afford the Designating Party in this case an
27 opportunity to try to protect its confidentiality interests in the court from which the
28 subpoena or order issued. The Designating Party shall bear the burdens and the

1 expenses of seeking protection in that court of its confidential material – and nothing in
2 these provisions should be construed as authorizing or encouraging a Receiving Party in
3 this action to disobey a lawful directive from another court.

4 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

13 **10. FILING PROTECTED MATERIAL**

14 Without written permission from the Designating Party or a court order
15 secured after appropriate notice to all interested persons, a Party may not file in the
16 public record in this action any Protected Material. A Party that seeks to file under seal
17 any Protected Material must comply with Civil Local Rule 79-5.

18 **11. FINAL DISPOSITION**

19 Unless otherwise ordered or agreed in writing by the Producing Party,
20 within sixty days after the final termination of this action, each Receiving Party must
21 return all Protected Material to the Producing Party. As used in this subdivision, “all
22 Protected Material” includes all copies, abstracts, compilations, summaries or any other
23 form of reproducing or capturing any of the Protected Material. With permission in writing
24 from the Designating Party, the Receiving Party may destroy some or all of the Protected
25 Material instead of returning it. Whether the Protected Material is returned or destroyed,
26 the Receiving Party must submit a written certification to the Producing Party (and, if not
27 the same person or entity, to the Designating Party) by the sixty day deadline that
28 identifies (by category, where appropriate) all the Protected Material that was returned or

1 destroyed and that affirms that the Receiving Party has not retained any copies,
2 abstracts, compilations, summaries or other forms of reproducing or capturing any of the
3 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
4 archival copy of all pleadings, motion papers, transcripts, legal memoranda,
5 correspondence or attorney work product, even if such materials contain Protected
6 Material. Any such archival copies that contain or constitute Protected Material remain
7 subject to this Protective Order as set forth in Section 4 (DURATION), above.

8 **12. MISCELLANEOUS**

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to disclosing
13 or producing any information or item on any ground not addressed in this Stipulated
14 Protective Order. Similarly, no Party waives any right to object on any ground to use in
15 evidence of any of the material covered by this Protective Order.

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

/s/ Karl S. Kronenberger

DATED: February 18, 2009

Attorneys for UNITED STATES OF
AMERICA CHESS FEDERATION, INC. and
RANDALL D. HOUGH

/s/ G. Whitney Leigh

DATED: February 18, 2009

Attorneys for SUSAN POLGAR

PURSUANT TO STIPULATION, IT IS SO ORDERED. Subject to attached supplemental Order.

DATED: 2/23/09 _____

Marilyn H. Patel
United States District Judge



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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety
and understand the Stipulated Protective Order that was issued by the United States
District Court for the Northern District of California on _____ in the case of
United States of America Chess Federation, Inc., et al., v. Polgar, et al., No. 08-05126-
MHP. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

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

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]


**ORDER APPROVING AND MODIFYING STIPULATED PROTECTIVE ORDER
IN C 08-5126 MHP USA CHESS FEDERATION INC et al -v- SUSAN POLGAR et al**

The above (attached) stipulation re confidentiality is approved except as follows:

- 1) Counsel shall narrowly tailor the documents, materials or papers that come within this order
- 2) As applied to documents, materials or papers filed with the court, this order shall be used sparingly to cover only those items that are clearly trade secret, come within clearly defined areas of privileges accepted in the federal courts, or have a compelling need for confidentiality.
- 3) Documents, material or papers submitted as exhibits to or in support of motions or for pretrial, trial or other court proceedings shall not be filed under seal except by order the court. The parties are reminded that the federal courts are public fora and matters to be heard by the court are conducted publicly. Furthermore, documents, materials or other papers submitted as exhibits will remain as part of the court record and may not be withdrawn without order of the court.
- 4) Under no circumstances shall memoranda or pleadings required to be filed with the court pursuant to the Federal Rules of Civil Procedure or the Civil Local Rules of this District be filed under seal.

IT IS SO ORDERED.

Dated: 2/23/09


Marilyn Hall Patel
United States District Court Judge