

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

YADIRA CONTRERAS, ERICA KRONECK, KYLE OLSON, AND HENDRY (“CODY”) RODMAN III,

Plaintiffs,

VS.

HERITAGE UNIVERSITY,

Defendant.

Case No.: 2:22-CV-3034 TOR

STIPULATION AND PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to

1 confidential treatment under the applicable legal principles, and it does not
2 presumptively entitle parties to file confidential information under seal.
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4 **2. “CONFIDENTIAL” MATERIAL**

5 “Confidential” material shall include the following documents and tangible
6 things produced or otherwise exchanged:
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8 (a) All medical and mental health records of the Plaintiffs that would
9 otherwise be confidential under the Health Insurance Portability and
10 Accountability Act of 1996 (HIPAA), including medical and mental health
11 records generated through the course of this litigation;
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13 (b) All educational records of the Plaintiffs that would otherwise be
14 confidential under the Family Education Records Privacy Act, (FERPA);
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16 (c) All records that include the social security numbers of the Plaintiffs;
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18 (d) All records that contain private financial information of the Plaintiffs,
19 including bank account information and/or income tax returns;
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21 (e) All records that contain service member records or official military
22 personnel files;
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24 (f) Any records or communication maintained by the Defendant about the
25 Plaintiffs that contain information about other Heritage University
26 Students that would not be subject to disclosures to third parties under
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1 FERPA personnel records, trade secret information, personal health
2 information, and educational records subject to FERPA;

3 (g) Any portions of personnel files of current or former Heritage University.

4

5 **SCOPE**

6 The protections conferred by this agreement cover not only confidential
7 material (as defined above), but also (1) any information copied or extracted from
8 confidential material; (2) all copies, excerpts, summaries, or compilations of
9 confidential material; and (3) any testimony, conversations, or presentations by
10 parties or their counsel that might reveal confidential material.

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12 However, the protections conferred by this agreement do not cover
13 information that is in the public domain or becomes part of the public domain
14 through trial or otherwise.

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16 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

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18 4.1 **Basic Principles.** A receiving party may use confidential material that
19 is disclosed or produced by another party or by a non-party in connection with this
20 case only for prosecuting, defending, or attempting to settle this litigation.
21 Confidential material may be disclosed only to the categories of persons and under
22 the conditions described in this agreement. Confidential material must be stored and
23 maintained by a receiving party at a location and in a secure manner that ensures that
24 access is limited to the persons authorized under this agreement.
25

1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the designating party, a
3 receiving party may disclose any confidential material only to:

4 (a) the receiving party’s counsel of record in this action, as well as
5 employees of counsel to whom it is reasonably necessary to disclose the information
6 for this litigation;

7 (b) the officers, directors, and employees (including in house
8 counsel) of the receiving party to whom disclosure is reasonably necessary for this
9 litigation, unless the parties agree that a particular document or material produced is
10 for Attorney’s Eyes Only and is so designated;

11 (c) experts and consultants to whom disclosure is reasonably
12 necessary for this litigation and who have signed the “Acknowledgment and
13 Agreement to Be Bound” (Exhibit A);

14 (d) the court, court personnel, and court reporters and their staff;

15 (e) copy or imaging services retained by counsel to assist in the
16 duplication of confidential material, provided that counsel for the party retaining the
17 copy or imaging service instructs the service not to disclose any confidential material
18 to third parties and to immediately return all originals and copies of any confidential
19 material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

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

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

1 5. **DESIGNATING PROTECTED MATERIAL**

2 5.1 **Exercise of Restraint and Care in Designating Material for Protection.**

3 Each party or non-party that designates information or items for protection under
4 this agreement must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The designating party must designate for
6 protection only those parts of material, documents, items, or oral or written
7 communications that qualify, so that other portions of the material, documents,
8 items, or communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this agreement.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or
13 to impose unnecessary expenses and burdens on other parties) expose the
14 designating party to sanctions.

15 If it comes to a designating party's attention that information or items that it
16 designated for protection do not qualify for protection, the designating party must
17 promptly notify all other parties that it is withdrawing the mistaken designation.

18 5.2 **Manner and Timing of Designations.** Except as otherwise provided in
19 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise
20 stipulated or ordered, disclosure or discovery material that qualifies for protection
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1 under this agreement must be clearly so designated before or when the material is
2 disclosed or produced.
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4 (a) Information in documentary form: (e.g., paper or electronic
5 documents and deposition exhibits, but excluding transcripts of depositions or other
6 pretrial or trial proceedings), the designating party must affix the word
7 “CONFIDENTIAL” to each page that contains confidential material. If only a
8 portion or portions of the material on a page qualifies for protection, the producing
9 party also must clearly identify the protected portion(s) (e.g., by making appropriate
10 markings in the margins).

11 (b) Testimony given in deposition or in other pretrial proceedings:
12 the parties and any participating non-parties must identify on the record, during the
13 deposition or other pretrial proceeding, all protected testimony, without prejudice to
14 their right to so designate other testimony after reviewing the transcript. Any party
15 or non-party may, within fifteen days after receiving the transcript of the deposition
16 or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,
17 as confidential. If a party or non-party desires to protect confidential information at
18 trial, the issue should be addressed during the pre-trial conference.
19

20 (c) Other tangible items: the producing party must affix in a
21 prominent place on the exterior of the container or containers in which the
22 information or item is stored the word “CONFIDENTIAL.” If only a portion or
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1 portions of the information or item warrant protection, the producing party, to the
2 extent practicable, shall identify the protected portion(s).
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4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the designating party's right to secure protection under this agreement for such
7 material. Upon timely correction of a designation, the receiving party must make
8 reasonable efforts to ensure that the material is treated in accordance with the
9 provisions of this agreement.
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11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any party or non-party may challenge a
13 designation of confidentiality at any time. Unless a prompt challenge to a
14 designating party's confidentiality designation is necessary to avoid foreseeable,
15 substantial unfairness, unnecessary economic burdens, or a significant disruption or
16 delay of the litigation, a party does not waive its right to challenge a confidentiality
17 designation by electing not to mount a challenge promptly after the original
18 designation is disclosed.
19

20 6.2 Meet and Confer. The parties must make every attempt to resolve any
21 dispute regarding confidential designations without court involvement. Any motion
22 regarding confidential designations or for a protective order must include a
23 certification, in the motion or in a declaration or affidavit, that the movant has
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1 engaged in a good faith meet and confer conference with other affected parties in an
2 effort to resolve the dispute without court action. The certification must list the date,
3 manner, and participants to the conference. A good faith effort to confer requires a
4 face-to-face meeting or a telephone conference.

6 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
7 court intervention, the designating party may file and serve a motion to retain
8 confidentiality. The burden of persuasion in any such motion shall be on the
9 designating party. Frivolous challenges, and those made for an improper purpose
10 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
11 expose the challenging party to sanctions. All parties shall continue to maintain the
12 material in question as confidential until the court rules on the challenge.

13 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
14 IN OTHER LITIGATION

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

18 (a) promptly notify the designating party in writing and include a
19 copy of the subpoena or court order;

20 (b) promptly notify in writing the party who caused the subpoena or
21 order to issue in the other litigation that some or all of the material covered by the
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1 subpoena or order is subject to this agreement. Such notification shall include a copy
2 of this agreement; and
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4 (c) cooperate with respect to all reasonable procedures sought to be
5 pursued by the designating party whose confidential material may be affected.
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7 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
9 confidential material to any person or in any circumstance not authorized under this
10 agreement, the receiving party must immediately (a) notify in writing the designating
11 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
12 unauthorized copies of the protected material, (c) inform the person or persons to
13 whom unauthorized disclosures were made of all the terms of this agreement, and
14 (d) request that such person or persons execute the “Acknowledgment and
15 Agreement to Be Bound” that is attached hereto as Exhibit A.
16

17 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
18 **PROTECTED MATERIAL**

21 When a producing party gives notice to receiving parties that certain
22 inadvertently produced material is subject to a claim of privilege or other protection,
23 the obligations of the receiving parties are those set forth in Federal Rule of Civil
24 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
25 may be established in an e-discovery order or agreement that provides for production
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1 without prior privilege review. The parties agree to the entry of a non-waiver order
2 under Fed. R. Evid. 502(d) as set forth herein.
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4 **10. NON-TERMINATION AND RETURN OF DOCUMENTS**

5 Within 60 days after the termination of this action, including all appeals, each
6 receiving party must return all confidential material to the producing party, including
7 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
8 appropriate methods of destruction.

9
10 Notwithstanding this provision, counsel are entitled to retain one archival
11 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
12 correspondence, deposition and trial exhibits, expert reports, attorney work product,
13 and consultant and expert work product, even if such materials contain confidential
14 material.
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16
17 The confidentiality obligations imposed by this agreement shall remain in
18 effect until a designating party agrees otherwise in writing or a court orders
19 otherwise.
20

21
22 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

23 DATED: May 4, 2022

s/ Lara Hruska

24 Lara Hruska, WSBA# 46531
25 Cedar Law PLLC
26 113 Cherry St., PMB 96563
27 Seattle, WA 98104
(206) 607-8277
lara@cedarlawpllc.com
Counsel for Plaintiffs

1
2 DATED: May 5, 2022

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s/Paul J. Triesch

9
10 Paul J. Triesh, WSBA# 17445
11 Keating, Bucklin & McCormack, Inc.,
12 P.S.
13 801 Second Avenue, Suite 1210
14 Seattle, WA 98104
15 (206) 623-8861
16 ptriesch@kbmlawyers.com
17 Attorney for Defendant

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19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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21 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
22 production of any documents in this proceeding shall not, for the purposes of this
23 proceeding or any other federal or state proceeding, constitute a waiver by the
24 producing party of any privilege applicable to those documents, including the
25 attorney-client privilege, attorney work-product protection, or any other privilege or
26 protection recognized by law.

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28 DATED May 6, 2022.



A handwritten signature in blue ink that reads "Thomas O. Rice".

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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 by penalty of perjury that I have read in its entirety and understand the Stipulation Protective Order that was issued by the United States District Court for the _____ District of Washington in the case of *Yadira Contreras, Erica Kroneck, Kyle _____, and Hendry "Cody" Rodman III v. Heritage University*, CASE NO. 22-cv-4 TOR. I agree to comply with and to be bound by all the terms of this Stipulation and Protective Order and I understand and acknowledge that failure to 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 which is subject to this Stipulation and 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 Eastern District of Washington for the purpose of enforcing the terms of this Stipulation and Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature: