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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

COLETTE CALMELET,

Plaintiff,

vs.

BOARD OF TRUSTEES OF THE
CALIFORNIA STATE UNIVERSITY, et al.

Defendant.

Case No. 2-19-cv-2537-MCE-DMC

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal

principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 141 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Court: The Court adjudicating this matter.

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

2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.4 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS EYES ONLY."

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

2.7 Expert: A person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

1 2.8 House Counsel: attorneys who are employees of a party to this action. House
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

3 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
4 entity not named as a Party to this action.

5 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
6 action but are retained to represent or advise a party to this action and have appeared in
7 this action on behalf of that party or are affiliated with a law firm which has appeared on
8 behalf of that party.

9 2.11 Party: any party to this action, including all of its officers, directors, employees,
10 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

11 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
12 Material in this action.

13 2.13 Professional Vendors: persons or entities that provide litigation support
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
16 their employees and subcontractors.

17 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
18 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS EYES ONLY."

19 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
20 Producing Party.

21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only Protected
23 Material (as defined above), but also (1) any information copied or extracted from
24 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
25 Material; and (3) any testimony, conversations, or presentations by Parties or their
26 Counsel that might reveal Protected Material. However, the protections conferred by this
27 Stipulation and Order do not cover the following information: (a) any information that is
28

1 in the public domain at the time of disclosure to a Receiving Party or becomes part of the
2 public domain after its disclosure to a Receiving Party as a result of publication not
3 involving a violation of this Order, including becoming part of the public record through
4 trial or otherwise; and (b) any information known to the Receiving Party prior to the
5 disclosure or obtained by the Receiving Party after the disclosure from a source who
6 obtained the information lawfully and under no obligation of confidentiality to the
7 Designating Party. Any use of Protected Material at trial shall be governed by a separate
8 agreement or order.

9 **4. DURATION**

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

17 **5. DESIGNATING PROTECTED MATERIAL**

18 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party or
19 Non-Party that designates information or items for protection under this Order must take
20 care to limit any such designation to specific material that qualifies under the appropriate
21 standards. The Designating Party must designate for protection only those parts of
22 material, documents, items, or oral or written communications that qualify – so that other
23 portions of the material, documents, items, or communications for which protection is not
24 warranted are not swept unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
26 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
27
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unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

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

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS EYES ONLY" to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS EYES ONLY." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS EYES ONLY" legend to each page that contains Protected Material. If only a portion or

portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

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

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made,

1 the written notice must recite that the challenge to confidentiality is being made in
2 accordance with this specific paragraph of the Protective Order. The parties shall attempt
3 to resolve each challenge in good faith and must begin the process by conferring directly
4 (in voice to voice dialogue; other forms of communication are not sufficient) within 14
5 days of the date of service of notice. In conferring, the Challenging Party must explain the
6 basis for its belief that the confidentiality designation was not proper and must give the
7 Designating Party an opportunity to review the designated material, to reconsider the
8 circumstances, and, if no change in designation is offered, to explain the basis for the
9 chosen designation. A Challenging Party may proceed to the next stage of the challenge
10 process only if it has engaged in this meet and confer process first or establishes that the
11 Designating Party is unwilling to participate in the meet and confer process in a timely
12 manner.

13
14 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court
15 intervention, the Designating Party shall file and serve a motion to retain confidentiality
16 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing
17 that the meet and confer process will not resolve their dispute, whichever is earlier. Each
18 such motion must be accompanied by a competent declaration affirming that the movant
19 has complied with the meet and confer requirements imposed in the preceding
20 paragraph. Failure by the Designating Party to make such a motion including the
21 required declaration within 21 days (or 14 days, if applicable) shall automatically waive
22 the confidentiality designation for each challenged designation. In addition, the
23 Challenging Party may file a motion challenging a confidentiality designation at any time
24 if there is good cause for doing so, including a challenge to the designation of a deposition
25 transcript or any portions thereof. Any motion brought pursuant to this provision must
26 be accompanied by a competent declaration affirming that the movant has complied with
27 the meet and confer requirements imposed by the preceding paragraph.

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

Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Part, a Receiving Party may disclose any information or item designated "CONFIDENTIAL – ATTORNEYS EYES ONLY" only to counsel of record and such counsel's staff as necessary. The designation of CONFIDENTIAL – ATTORNEYS EYES ONLY" is reserved for information which is particularly sensitive because of its commercial or private nature, including financial records, tax records and/or financial statements.

Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
2 employees of said Outside Counsel of Record to whom it is reasonably necessary to
3 disclose the information for this litigation and who have signed the "Acknowledgment
4 and Agreement to Be Bound" that is attached hereto as Exhibit A;

5 (b) the officers, directors, and employees (including House Counsel) of the
6 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
7 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

8 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
9 reasonably necessary for this litigation and who have signed the "Acknowledgment
10 and Agreement to Be Bound" (Exhibit A);

11 (d) the Court and its personnel;

12 (e) Court reporters and their staff, professional jury or trial consultants, mock jurors,
13 and Professional Vendors to whom disclosure is reasonably necessary for this litigation
14 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure is
16 reasonably necessary and who have signed the "Acknowledgment and Agreement to
17 Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by
18 the court. Pages of transcribed deposition testimony or exhibits to depositions that
19 reveal Protected Material must be separately bound by the court reporter and may not
20 be disclosed to anyone except as permitted under this Stipulated Protective Order.

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

23
24 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
25 **OTHER LITIGATION**

26 If a Party is served with a subpoena or a court order issued in other litigation that
27 compels disclosure of any information or items designated in this action as
28 "CONFIDENTIAL," that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall include
2 a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to issue
4 in the other litigation that some or all of the material covered by the subpoena or order
5 is subject to this Protective Order. Such notification shall include a copy of this
6 Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
8 Designating Party whose Protected Material may be affected.

9 If the Designating Party timely seeks a protective order, the Party served with the
10 subpoena or court order shall not produce any information designated in this action as
11 “CONFIDENTIAL” before a determination by the court from which the subpoena or
12 order issued, unless the Party has obtained the Designating Party’s permission. The
13 Designating Party shall bear the burden and expense of seeking protection in that court
14 of its confidential material – and nothing in these provisions should be construed as
15 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
16 from another court.
17

18 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
19 **THIS LITIGATION**

20 (a) The terms of this Order are applicable to information produced by a Non-Party
21 in this action and designated as “CONFIDENTIAL.” Such information produced by
22 Non-Parties in connection with this litigation is protected by the remedies and relief
23 provided by this Order. Nothing in these provisions should be construed as prohibiting
24 a Non-Party from seeking additional protections.

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

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

4 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
5 Order in this litigation, the relevant discovery request(s), and a reasonably specific
6 description of the information requested; and

7 (3) make the information requested available for inspection by the Non-Party.

8 (c) If the Non-Party fails to object or seek a protective order from this court within
9 14 days of receiving the notice and accompanying information, the Receiving Party may
10 produce the Non-Party's confidential information responsive to the discovery request.
11 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
12 any information in its possession or control that is subject to the confidentiality
13 agreement with the Non-Party before a determination by the court. Absent a court
14 order to the contrary, the Non-Party shall bear the burden and expense of seeking
15 protection in this court of its Protected Material.
16

17 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
19 Protected Material to any person or in any circumstance not authorized under this
20 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
21 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
22 all unauthorized copies of the Protected Material, (c) inform the person or persons to
23 whom unauthorized disclosures were made of all the terms of this Order, and (d)
24 request such person or persons to execute the "Acknowledgment and Agreement to Be
25 Bound" that is attached hereto as Exhibit A.

26 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 27 **PROTECTED MATERIAL**

28 When a Producing Party gives notice to Receiving Parties that certain inadvertently

1 produced material is subject to a claim of privilege or other protection, the obligations
2 of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
3 26(b)(5)(B). Upon discovery that a Privileged Document has been produced, the
4 producing party shall promptly notify counsel for the other party who shall promptly
5 return the Privileged Document and all copies of the Privileged Document. If a party
6 contends that a Privileged Document has been erroneously designated as such, the
7 parties will treat the Privileged Document as “attorneys eyes only” until such time as
8 the parties reach agreement as to its privileged status or the court rules upon the matter.
9 The parties reserve the right to contest any determination that a document is privileged
10 or otherwise protected from disclosure. This provision is not intended to modify
11 whatever procedure may be established in an e-discovery order that provides for
12 production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)
13 and (e), insofar as the parties reach an agreement on the effect of disclosure of a
14 communication or information covered by the attorney-client privilege or work product
15 protection, the parties may incorporate their agreement in the stipulated protective
16 order submitted to the court.
17

18 **12. MISCELLANEOUS**

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
20 to seek its modification by the court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
22 Order no Party waives any right it otherwise would have to object to disclosing or
23 producing any information or item on any ground not addressed in this Stipulated
24 Protective Order. Similarly, no Party waives any right to object on any ground to use in
25 evidence of any of the material covered by this Protective Order.

26 12.3 Filing Protected Material. Without written permission from the Designating
27 Party or a Court order secured after appropriate notice to all interested persons, a Party
28 may not file in the public record in this action any Protected Material. A Party that seeks

1 to file under seal any Protected Material must comply with Civil Local Rule 141.
2 Protected Material may only be filed under seal pursuant to a court order authorizing
3 the sealing of the specific Protected Material at issue. If a Receiving Party's request to
4 file Protected Material under seal pursuant to Civil Local Rule 141 is denied by the
5 court, then the Receiving Party may file the information in the public record unless
6 otherwise instructed by the court.

7 12.4 Stipulation in Effect Notwithstanding Lack of Order. The Parties hereto,
8 through their counsel, agree that the terms herein will become effective once this
9 Agreement is fully executed by the Parties. A court order is not necessary to bind the
10 Parties to this Agreement.

11 **13. FINAL DISPOSITION**

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

Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: _____ /s/_____
Attorneys for Plaintiff

DATED: _____ /s/_____
MICHAEL K. BEDOLLA
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: December 21, 2021


DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE

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 Eastern District of California on [date] in the case of *Colette
Calmelet v. Board of Trustees of the California State University*, Case No. 2-19-cv-2537-MCE-
DMC. 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
Eastern 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: _____

Signature: _____

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