

1 JOSEPH J. LEVIN, JR. (*Pro Hac Vice*)
joe.levin@splcenter.org
2 CHRISTINE P. SUN (SBN 218701)
christine.sun@splcenter.org
3 CAREN E. SHORT (*Pro Hac Vice*)
caren.short@splcenter.org
4 SOUTHERN POVERTY LAW CENTER
400 Washington Avenue
5 Montgomery, AL 36104
Telephone: (334) 956-8200
6 Facsimile: (334) 956-8481

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Page 4, paragraph 16, line 23 & 24

7 (*Caption Continued on Next Page*)

8 NOTE: CHANGES MADE BY THE COURT
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 Western Division

12 TRACEY COOPER-HARRIS and) Case No. CV12-887 CBM (AJWx)
13 MAGGIE COOPER-HARRIS,)
14 Plaintiffs,)
15 v.) ~~PROPOSED~~ PROTECTIVE
16 UNITED STATES OF AMERICA;) ORDER
17 ERIC H. HOLDER, JR., in his official)
capacity as Attorney General; and) Hon. Consuelo B. Marshall
18 ERIC K. SHINSEKI, in his official capacity)
as Secretary of Veterans Affairs,)
19 Defendants.)
20 BIPARTISAN LEGAL ADVISORY)
GROUP OF THE U.S. HOUSE)
21 OF REPRESENTATIVES)
Intervenor-Defendant.)
22

1 RANDALL R. LEE (SBN 152672)
randall.lee@wilmerhale.com
2 MATTHEW BENEDETTO (SBN 252379)
matthew.benedetto@wilmerhale.com
3 WILMER CUTLER PICKERING HALE AND DORR LLP
350 South Grand Avenue, Suite 2100
4 Los Angeles, CA 90071
Telephone: (213) 443-5300
5 Facsimile: (213) 443-5400

6 ADAM P. ROMERO (*Pro Hac Vice*)
adam.romero@wilmerhale.com
7 WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
8 New York, NY 10007
Telephone: (212) 230-8800
9 Facsimile: (212) 230-8888

10 EUGENE MARDER (SBN 275762)
eugene.marder@wilmerhale.com
11 WILMER CUTLER PICKERING HALE AND DORR LLP
950 Page Mill Road
12 Palo Alto, CA 94304
Telephone: (650) 858-6000
13 Facsimile: (650) 858-6100

14 *Attorneys for Plaintiffs*

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15 STUART F. DELERY
Acting Assistant Attorney General

16 ANDRE BIROTTE, JR.
17 United States Attorney

18 ARTHUR R. GOLDBERG (DC Bar 180661)
19 Assistant Branch Director

20 JEAN LIN (NY Bar 4074530)
jean.lin@usdoj.gov
21 Senior Trial Counsel
United States Department of Justice
22 Civil Division
Federal Programs Branch
23 20 Massachusetts Ave., N.W.
Washington, DC 20530
24 (202) 514-3716
(202) 616-8470 (Fax)

25 *Attorneys for Defendants*

1 Paul D. Clement (DC Bar 433215)
2 pclement@bancroftpllc.com
3 H. Christopher Bartolomucci (DC Bar 453423)
4 cbartolomucci@bancroftpllc.com
5 Nicholas J. Nelson (DC Bar 1001696)
6 nnelson@bancroftpllc.com
7 Michael H. McGinley (DC Bar 1006943)
8 mmcginley@bancroftpllc.com

9 BANCROFT PLLC
10 1919 M Street, N.W.
11 Suite 470
12 Washington, D.C. 20036
13 202-234-0090 (telephone)
14 202-234-2806 (facsimile)

15 *Of Counsel:*

16 Kerry W. Kircher, General Counsel (DC Bar 386816)
17 Kerry.Kircher@mail.house.gov
18 William Pittard, Deputy General Counsel (DC Bar 482949)
19 William.Pittard@mail.house.gov
20 Christine Davenport, Senior Assistant Counsel (NJ Bar 043682000)
21 Christine.Davenport@mail.house.gov
22 Todd B. Tatelman, Assistant Counsel (VA Bar 66008)
23 Todd.Tatelman@mail.house.gov
24 Mary Beth Walker, Assistant Counsel (DC Bar 501033)
25 MaryBeth.Walker@mail.house.gov

26 OFFICE OF GENERAL COUNSEL,
27 U.S. HOUSE OF REPRESENTATIVES
28 219 Cannon House Office Building
Washington, D.C. 20515
202-225-9700 (telephone)
202-226-1360 (facsimile)

*Counsel for Intervenor-Defendant the Bipartisan
Legal Advisory Group of the U.S. House of Representatives*

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1 The Court, having reviewed the *Joint Stipulation Re Protective Order*
2 (“Stipulation”), entered into on October 17, 2012 between Tracey Cooper-Harris and
3 Maggie Cooper-Harris (“Plaintiffs”); and The United States of America; Eric H.
4 Holder, Jr., in his official capacity as Attorney General; and Eric K. Shinseki, in his
5 official capacity as Secretary of Veterans Affairs (“Defendants”); and the Bipartisan
6 Legal Advisory Group of the U.S. House of Representatives (“Intervenor-Defendant”)
7 (collectively, the “parties”), and for good cause shown, and to facilitate discovery and
8 particularly to facilitate the exchange during discovery of documents, things,
9 information, testimony, and other evidence, hereby rules as follows:

10 **IT IS HEREBY ORDERED** that:

11 WHEREAS, this is an action that asserts violations of equal protection secured
12 by the Fifth Amendment to the United States Constitution;

13 WHEREAS, discovery in this action may require the disclosure by the parties
14 of nonpublic and sensitive personal information;

15 WHEREAS, Intervenor-Defendant seeks to discover information and records
16 from Defendant the Secretary of Veterans Affairs that are protected from disclosure
17 by the Privacy Act of 1974, 5 U.S.C. § 552a and 38 U.S.C. § 5701; and

18 WHEREAS, in order to allow the discovery of confidential personal
19 information by the parties and to permit Intervenor-Defendant to discover such
20 protected information without making this information public, the Court hereby enters
21 this Protective Order, pursuant to 5 U.S.C. § 552a(b)(11), 38 U.S.C. § 5701(b)(2) and
22 Rules 5.2 and 26(c) of the Federal Rules of Civil Procedure, for the purpose of
23 assuring the confidentiality of such information.

24 1. This Protective Order shall govern the production and use in the above-
25 captioned action of “Protected Materials,” produced or provided by any party in
26 response to a discovery request or as a required disclosure.

1 For any records, such as electronic data, whose medium makes such stamping
2 impracticable, the compact disk, diskette, or tape case, and/or accompanying cover
3 letter shall be marked by the producing party in bold type-face: “**CONFIDENTIAL:**
4 **SUBJECT TO PROTECTIVE ORDER**” or a similar marking.

5 8. Documents, records, and/or information produced before the entry of this
6 Order may be designated Protected Materials by notifying each party in writing of the
7 documents, records, and/or information to be so designated within seven (7) calendar
8 days after notice of entry of this Order.

9 9. Deposition transcripts or portions of deposition transcripts may be
10 designated Protected Materials within fourteen (14) days of receipt of the transcript.
11 Any deposition transcript or portion of a deposition transcript not designated Protected
12 Materials at the time of the deposition shall be treated as such until fifteen (15) days
13 after its receipt by all parties, unless the parties agree otherwise.

14 10. Any discovery responses, including responses to interrogatories or
15 requests for admissions, and any pleadings, motions or other papers that incorporate,
16 discuss or otherwise disclose Protected Materials shall be similarly marked by the
17 party creating the document in bold type-face: **CONFIDENTIAL: SUBJECT TO**
18 **PROTECTIVE ORDER** or a similar marking.

19 11. The failure to designate any document, record, and/or information as
20 Protected Materials shall not constitute a waiver of any timely assertion that the
21 materials are covered by this Order.

22 12. No party shall be in violation of this Order for the disclosure of
23 documents, records, and/or information if such disclosure is made prior to the marking
24 of such materials as Protected Materials. If such disclosure is made, the parties and all
25 individuals to whom the disclosure was made shall treat the document, record, and/or
26

1 information as subject to this Order from the date of its designation as Protected
2 Materials forward.

3 13. Protected Materials, and any copies thereof, and the information
4 contained therein, may be disclosed only to: (1) the parties' attorneys of record and
5 persons regularly in their employ, excluding all non-Plaintiff experts and witnesses;
6 and (2) the Court and its personnel, including court reporters.

7 14. Protected Materials, any copies thereof, and any and all the information
8 contained therein, shall be distributed to, and used by, only those individuals listed in
9 paragraph 13 of this Order for the sole purpose of this litigation and shall not be
10 disclosed, in any manner whatsoever, to anyone for any other purpose, and shall not
11 be published or disseminated to the public in any form.

12 15. Any person listed in paragraph 13 (except the Court) who is to review
13 Protected Materials must first agree in writing to be bound by and abide by the terms
14 of this Order, either by signing this Stipulation and Order, or by signing a certification
15 in the form of Exhibit A attached hereto. Such signed and completed certification
16 shall be retained by the attorneys of record for the party receiving Protected Materials.
17 For the purposes of this paragraph, signature by any counsel of record for a party shall
18 constitute a signature of the Stipulation and Order by all counsel of record and persons
19 regularly in their employ.

20 16. Any Protected Materials, including, but not limited to, pleadings,
21 motions, discovery responses, deposition transcripts, or other papers where the
22 contents of Protected Materials are discussed, incorporated, or otherwise disclosed
23 ~~shall be filed with the Court, if at all, under seal.~~ **shall be filed with the Court, if at**
24 **all, under seal with the Court's permission pursuant to Local Rule 79-5.1** If any
25 paper which incorporates any Protected Materials or reveals the contents thereof is
26 filed in this Court, those portions of the papers shall be delivered to the Court

1 enclosed in a sealed envelope bearing the caption of this action, an indication of the
2 nature of the contents, and clearly marked **UNDER SEAL**. In addition to complying
3 with all applicable local rules regarding the filing of documents under seal, the parties
4 shall publicly file a redacted copy of such court submission via the Electronic Case
5 Filing System. The parties will also file an unredacted copy of the submission under
6 seal with the Clerk of this Court and serve other counsel of record with unredacted
7 courtesy copies of the submission.

8 17. It shall be the responsibility of the party who is claiming protected status
9 of any Protected Material to file the necessary application with the Court to request
10 sealing at the appropriate time. The procedure for this application shall be as follows:

11 a. The party seeking to file any Protected Materials (the “Filing
12 Party”) shall notify the other parties in the case seven (7) calendar days in
13 advance of any such filing.

14 b. Any party claiming protected status of the identified Protected
15 Materials shall within four (4) calendar days after receiving the notice from
16 Paragraph a., identify to the Filing Party the Protected Materials: (i) for which it
17 plans to seek a sealing Order; and (ii) for which it plans not to seek a sealing
18 Order.

19 c. Any documents for which sealing will be sought under Paragraph
20 b.i above will be filed under seal by the Filing Party.

21 d. Any documents for which sealing will not be sought under
22 Paragraph b.ii. above will be filed publicly by the Filing Party and the
23 “CONFIDENTIAL” designation will be removed.

24 e. On the same day that the Filing Party files the Protected Materials
25 identified by Paragraph b.i. above, the party or parties claiming protected status
26 will file a motion to seal consistent with the requirements of the Local Rules.

1 f. In the event the Court denies the motion to seal documents
2 containing or referencing Protected Materials, the documents shall be filed with
3 the Court publicly (i.e., shall be unsealed).

4 18. The manner of using any Protected Materials at the trial of this litigation
5 shall, after consultation between counsel, be determined by the Court at or about the
6 time when the final pretrial order is submitted to the Court.

7 19. Within sixty (60) days after the termination of this litigation, including
8 any appeals, all recipients of Protected Materials shall return or destroy all such
9 materials, including all copies thereof, at the written request of the producing party or
10 plaintiffs if not the producing party. Notwithstanding this provision, counsel of record
11 in this action may retain an archival copy of all pleadings, motion papers, exhibits,
12 transcripts, expert reports, legal memoranda, correspondence, or attorney work
13 product, even if such materials contain Protected Materials. Any such archival copies
14 that contain or constitute Protected Materials remain subject to this Order.

15 20. The inadvertent disclosure or production of Protected Materials shall not
16 constitute waiver of the protected status. In the event that any Protected Materials is
17 inadvertently disclosed or produced to an individual or organization not authorized
18 under paragraph 13 of this Order to receive or view such materials, the receiving party
19 must immediately notify the producing party and immediately return or destroy the
20 Protected Materials and any copies thereof, as well as any work product derived
21 therefrom, and must not use or disclose the Protected Materials. In addition, the
22 producing party shall immediately notify Plaintiffs' counsel and shall secure the return
23 or destruction of the inadvertently-produced Protected Materials and any copies
24 thereof, as well as any work product derived therefrom.

25 21. The inadvertent disclosure or production of privileged or attorney work
26 product material shall not constitute waiver of any applicable privileges or protections.

1 In the event that privileged or attorney work product material is inadvertently
2 disclosed or produced, the receiving party must immediately notify the producing
3 party and immediately return or destroy the privileged or attorney work product
4 materials and any copies thereof, as well as any work product derived therefrom, and
5 must not use or disclose the material.

6 22. This Order shall not be deemed a waiver of any party's right to: seek an
7 order compelling discovery with respect to any discovery request; object to any
8 discovery or the production of any document, record, and/or information; assert an
9 applicable protection or privilege; object to the admission of any evidence on any
10 grounds in any proceeding herein; or use its own documents produced in this litigation
11 with complete discretion.

12 23. This Order does not constitute a ruling on whether any particular material
13 is properly discoverable or admissible, and does not constitute a ruling on any
14 potential objection to the production or admissibility of any material.

15 24. The parties agree that the Joint Stipulation and Protective Order shall
16 govern any discovery between the parties prior to its being entered by the Court. In
17 the event the Court denies the parties' motion for a Protective Order, the parties agree
18 that the terms of the Joint Stipulation and Protective Order, as submitted to the Court,
19 shall continue to govern any discovery between the parties and use of such discovery
20 in this action. The parties do not waive any rights other than as provided herein.

21 25. Nothing in this Order shall prevent disclosure as required by law or
22 compelled by order of any court.

23 26. Nothing in this Order shall be construed to confer rights on any third
24 party.

25 27. This Order may be modified by further order of the Court, or by
26 agreement of counsel for the parties subject to the approval of the Court, provided that

1 any such agreement shall be in the form of a written stipulation filed with the clerk of
2 the Court and made a part of the record in this case.

3 28. This Order shall survive the termination of this litigation and the Court
4 shall retain continuing jurisdiction to enforce its terms.

5
6 **IT IS SO ORDERED.**

7 Dated: October 24, 2012



8
9 Hon.
United

Consuelo B. Marshall
States District Judge

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13 Page 4, paragraph 16, line 23 & 24

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