Exhibit 2 to Settlement Agreement

Civil Action No. 1:21-cv-00997 (CJN)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHARLES H., *et al.*, **Plaintiffs,** **v.** **DISTRICT OF COLUMBIA, *et al.*,** **Defendants.**	**Civil Action No. 21-997 (CJN)**

PROTECTIVE ORDER

Pursuant to Fed. R. Civ. P. 26(c) and because ongoing mediation efforts in this action are likely to involve the disclosure of Confidential Information, IT IS HEREBY ORDERED that:

I. Confidential Information

A. Confidential Information Subject to This Protective Order: Any party may designate material to be exchanged with the other party in this matter as "CONFIDENTIAL" under the terms of this Order and Fed. R. Civ. P. 26(c), if such party in good faith reasonably believes that such material contains non-public, confidential, proprietary, personally sensitive, or security-related information that requires the protections provided in this Order. The designation by any party of any material as "CONFIDENTIAL" shall constitute a representation that such material has been reviewed by or under the direction of an attorney for the designating party and that there is a reasonable, good-faith belief that such designation is valid. Materials designated as "CONFIDENTIAL" may include:

> 1. personal identifying information (PII) including, but not limited to, such individual's or his/her family members' home address, telephone number, date of birth, social security number, education information, and disability records;

2. information protected by or specifically prohibited from release by statute or regulation;

3. any other non-public, confidential, proprietary, personally sensitive, or security-related information that requires the protections provided in this Protective Order; and

4. any other information that the Parties jointly agree should be subject to the terms of this Protective Order.

B. Confidential Settlement Material Subject to This Protective Order: Any party may designate any material to be disclosed to another party as "CONFIDENTIAL SETTLEMENT MATERIAL" under the terms of this Order and Fed. R. Evid. 408 if such party intends the material to be disclosed to the other party solely for the purpose of facilitating good-faith settlement discussions. The designation by any party of any material as "CONFIDENTIAL SETTLEMENT MATERIAL" shall constitute a representation that such material has been reviewed by or under the direction of an attorney for the designating party, contains non-public information, and is being provided in furtherance of good-faith settlement discussions.

C. As set forth below, items that are stamped "CONFIDENTIAL" and fall within the definition of Section I.A, or are stamped "CONFIDENTIAL: ATTORNEYS' EYES ONLY" and fall within the definition of Section II.E, shall not be disclosed for any purpose other than as specified during discovery, trial, and/or any appeal in this action. Items that are stamped "CONFIDENTIAL SETTLEMENT MATERIAL" and fall within the definition of Section I.B shall not be disclosed for any purpose unless all parties agree in writing to the specified disclosure.

II. Timing and Classification of Confidential Information

A. Any party wishing to designate information as "CONFIDENTIAL" shall, at the time of production, mark each page of the produced item with the word "CONFIDENTIAL." The designating party may do the same, to designate information as "CONFIDENTIAL:

ATTORNEYS' EYES ONLY" or "CONFIDENTIAL SETTLEMENT MATERIAL." If it is not feasible to add such marking, a cover sheet shall be added to the document with the designation.

B. The Parties shall make a good-faith effort to designate confidential information properly and with the appropriate classification at the time of production. However, inadvertent disclosure by any party of confidential information without any, or the appropriate, classification—regardless of whether the confidential information was designated at the time of disclosure—shall not be deemed a waiver of a party's claim of confidentiality, either as to a specific document or information contained therein. A producing party may correct such inadvertent disclosure by supplemental written notice at any time, accompanied by an appropriately designated copy of the document, with the effect that such document is thereafter subject to the protections of this Order. It shall be the obligation of the producing party to provide the other parties with revised copies of the information being retroactively designated as confidential.

C. If a producing party inadvertently discloses items that are asserted to be privileged, subject to the work-product doctrine, or otherwise immune from discovery, the producing party shall promptly, upon discovery of such disclosure, (1) advise the receiving party of the inadvertent disclosure in writing; (2) show that the disclosure was inadvertent, that the producing party acted promptly upon discovering the inadvertent disclosure, and that the inadvertence occurred despite reasonable precautions; and (3) request that the item in question be returned or destroyed. Upon such notification and showing, the Parties shall treat the item as privileged or protected unless and until the Parties agree otherwise or the Court determines the matter is not privileged or protected. Within five (5) business days of receiving such notification and showing, all receiving parties shall (1) return the item to the producing party; or (2) confirm in writing to the producing party the

destruction of the item in question, including all excerpts, summaries, compilations, and other documents or records that include, communicate, or reveal the information claimed to be privileged or protected, or (3) notify the producing party in writing of the basis for its disagreement that such information is privileged or protected from disclosure. In the last event only, the receiving party may retain one copy of the item in question for the sole purpose of responding to a motion by the producing party to deem the matter privileged or protected from disclosure and shall comply with (1) or (2) above with respect to all other copies of the item and all other documents or records that include, communicate, or reveal the information claimed to be privileged or protected. Should the Parties be unable to agree on whether the item in question is privileged or protected, the producing party shall file a motion with the Court within fifteen (15) days of its receipt of the receiving party's notice of disagreement under (3) above, to deem the item privileged or protected and to obtain the return of any copy of such item still held by the receiving party.

D. In the case of depositions or other pretrial testimony, the designation of discovery material as confidential shall be made (1) by a statement on the record, by counsel, at the time of such disclosure, or (2) by written notice, sent to all parties within ten (10) days after receiving a copy of the transcript thereof, and in both of the foregoing instances, by directing the court reporter that the appropriate confidentiality legend be affixed to the first page and all portions of the original and all copies of the transcript containing any confidential information. All depositions and other pretrial testimony shall be deemed to be confidential for a period of ten (10) days after receipt of the transcript, after which time such depositions or pretrial testimony shall be treated in accordance with its designation, if any. The Parties may modify this procedure for any particular deposition, through agreement on the record at such deposition, without further order of the Court.

E. Certain items may contain information that is so sensitive that it should not be disclosed to the Parties themselves. A producing party may designate such material as "CONFIDENTIAL: ATTORNEYS' EYES ONLY" if the party reasonably believes that such material contains highly sensitive information the non-essential disclosure of which would likely cause significant harm to anyone (including non-parties), would likely violate the reasonable privacy expectations of anyone (including non-parties), and/or would likely violate the designating party's legal obligations. Such information shall be disclosed only to persons permitted under Section III.A.2 of this Order. Except as otherwise provided in this Order, information designated "CONFIDENTIAL: ATTORNEYS' EYES ONLY" shall not be shown to the Parties, but shall otherwise be treated in the same manner as documents designated as "CONFIDENTIAL."

F. Certain items may be disclosed solely for the purpose of furthering good-faith settlement discussions between the Parties, including (but not limited to) settlement discussions facilitated by a mediator. A producing party may designate such material as "CONFIDENTIAL SETTLEMENT MATERIAL" if the party discloses the item(s) in the course of good-faith settlement discussions and reasonably believes that such material contains information not publicly available. Such information shall be disclosed only to persons permitted under Section III.A.3 of this Order. Except as otherwise provided in this Order, information designated "CONFIDENTIAL SETTLEMENT MATERIAL" shall not be used or disclosed for any purpose outside of settlement discussions or the implementation of a settlement in this litigation but shall otherwise be treated in the same manner as documents designated as "CONFIDENTIAL: ATTORNEYS' EYES ONLY."

III. Handling of Confidential Information

A. CONFIDENTIAL information will be treated during the course of this action, including appeal, as follows:

1. Material marked "CONFIDENTIAL" (but not "CONFIDENTIAL: ATTORNEYS' EYES ONLY" or "CONFIDENTIAL SETTLEMENT MATERIAL") shall be treated during this action, including appeal, as proprietary and shall be disclosed or provided only to: (a) parties, and clients; (b) counsel who are attorneys of record (including such counsel's partners, associates, associated counsel, paralegals, interns, and secretarial, technical, and clerical personnel); (c) experts employed by such counsel for consultation or to render expert reports under Fed. R. Civ. P. 26(a)(2) (and the secretarial and clerical personnel of such experts); (d) technical consultants or vendors and all related staff retained to handle discovery, including but not limited to electronic discovery; (e) court personnel, certified court reporters, and the Parties' respective copy vendors and other litigation support vendors; (f) the author of the document, the subject of the document, and each recipient of a copy of the document; (g) witnesses at deposition, hearing, or trial, to the extent reasonably necessary to aid in the prosecution, defense, or settlement of this action; (h) any mediator or other person appointed, assigned, or engaged by the Parties or the Court to attempt to resolve any or all issues in this action; and (i) any other person upon order of the Court or written stipulation of all Parties. Any information designated "CONFIDENTIAL" by the producing party shall be treated as proprietary and shall not be used or disclosed by any receiving party for any purpose, other than as specified during discovery, trial, and/or any appeal in this action.

2. Material may alternatively be marked as "CONFIDENTIAL: ATTORNEYS' EYES ONLY." Such material may be disclosed, revealed, summarized, described, characterized, or otherwise communicated or made available in whole or in part only to the following persons: (a) counsel who are attorneys of record (including such counsel's partners, associates, associated counsel, paralegals, interns, and secretarial, technical, and clerical

personnel); (b) experts employed by such counsel for consultation or to render expert reports under Fed. R. Civ. P. 26(a)(2) (and the secretarial and clerical personnel of such experts); (c) any mediator or other person appointed, assigned, or engaged by the Parties or the Court to attempt to resolve any or all of the issues in this action, to the extent reasonably necessary to aid in the prosecution, defense, or settlement of this action; (d) deponents and their counsel, provided that relevant portions of the deposition transcript are also designated as "CONFIDENTIAL: ATTORNEYS' EYES ONLY"; (e) court personnel, certified court reporters, and the parties' respective copy vendors and other litigation support vendors, and (f) the author of the document, the subject of the document (if the subject is a person), and each recipient of a copy of the document; and (g) any other person upon order of the Court or written stipulation of undersigned counsel.

3. Material may alternatively be marked as "CONFIDENTIAL SETTLEMENT MATERIAL." Such material may be disclosed, revealed, summarized, described, characterized, or otherwise communicated or made available in whole or in part only to the following persons: (a) counsel who are attorneys of record (including such counsel's partners, associates, associated counsel, paralegals, interns, and secretarial, technical, and clerical personnel); (b) experts employed by such counsel for consultation (and the secretarial and clerical personnel of such experts); (c) any mediator assigned or engaged by the Parties or the Court to attempt to resolve any or all of the issues in this action, to the extent reasonably necessary to aid in the settlement of this action; and (d) any other person upon written stipulation of undersigned counsel.

B. Individuals who receive material marked "CONFIDENTIAL" under Section III.A.1 or "CONFIDENTIAL: ATTORNEYS' EYES ONLY" material under Sections III.A(2) of

this Protective Order shall sign a statement acknowledging their agreement to the terms of this Protective Order in the form of Exhibit A. However, if a witness is to be shown such discovery material for the first time at a deposition or hearing, the requirements of this paragraph will be satisfied for purposes of that deposition or hearing if that witness is informed of the confidential order and its terms, unless a document in the form attached as Exhibit A is available, in which case the witness's execution of said form shall be procured and appended to the deposition transcript as an exhibit.

C. Attorneys engaged in good-faith settlement discussions in this case, including as part of a formal mediation process, shall sign a statement acknowledging their agreement to the terms of this Protective Order in the form of Exhibit A before receiving or viewing any material marked "CONFIDENTIAL SETTLEMENT MATERIAL." Any attorney who signs such a statement may thereafter receive or view any such materials in the course of this litigation without signing another form. Anyone listed in Section III.A.3.a above, including individuals who are not attorneys, must sign a statement in the form of Exhibit A before receiving or viewing any materials marked "CONFIDENTIAL SETTLEMENT MATERIAL."

D. When any sealed or confidential document is used at a hearing, in a motion, or in other papers, the filing or moving party shall comply with the requirements of LCvR 5.1(h) and the Court's Standing Order of February 7, 2022, ECF No. 99. If a sealed or confidential document is inadvertently filed and made accessible to the public, the filing or moving party shall immediately take the appropriate steps to remove or otherwise protect from public disclosure the sealed or confidential document. The Parties may not consent to waiving the requirements of LCvR 5.1(h).

IV. Challenges to Confidentiality Designations

A. If any party disagrees at any stage with the designation of any information as "CONFIDENTIAL" or "CONFIDENTIAL: ATTORNEYS' EYES ONLY," the Parties shall first try to resolve the dispute in good faith informally. Any receiving party may request that the producing or designating party withdraw the applicable designation regarding any information. Any such request shall be made in writing, served on counsel for the producing or designating party, and shall identify: (1) the material that the receiving party contends is improperly designated; and (2) the basis for the receiving party's objection(s) to the designation.

B. If the Parties cannot resolve their dispute informally, the receiving party may object to the designation by motion before the Court. The burden of proving the confidentiality of the designated information shall be borne by the party that produced the information and/or designated it as "CONFIDENTIAL" or "CONFIDENTIAL: ATTORNEYS' EYES ONLY." If a motion should be filed, the initial designation shall remain in place until the Court has ruled on such motion and thereafter shall be governed by the Court's ruling. If the Parties cannot resolve their dispute informally, and a party elects to file no motion with the Court, the initial designation shall remain in place.

C. The designation of any item as a "CONFIDENTIAL SETTLEMENT MATERIAL" may not be challenged except on the basis that the information in question (1) is publicly available, or (2) has not been exchanged solely in furtherance of good-faith settlement discussions.

D. The acceptance by any party of any information designated "CONFIDENTIAL," "CONFIDENTIAL: ATTORNEYS' EYES ONLY," or "CONFIDENTIAL SETTLEMENT

MATERIAL" shall not constitute evidence, an admission or concession that the information actually is confidential or proprietary.

V. Confidential Information at Depositions

A. Other than Court personnel and Court reporters, only the Parties, counsel of record for the parties (including such counsel's partners, associates, associated counsel, paralegals, and law clerks), the witness (including his or her attorney), experts who have signed the agreement in Exhibit A, and any other person otherwise who, pursuant to this Order, is permitted to access the material in question may be present at any examination concerning confidential information of another party or a third party.

B. All deposition transcripts, exhibits, or information disclosed during a deposition shall be treated as confidential subject to the Protective Order for ten (10) business days after receipt of each of the transcripts. During that time, any party may designate any part of such material as "CONFIDENTIAL" or "CONFIDENTIAL: ATTORNEYS' EYES ONLY" by notifying all other parties in writing of such designation.

C. Desposition transcripts, testimony or exhibits designated as "CONFIDENTIAL" or "CONFIDENTIAL: ATTORNEYS' EYES ONLY" shall only be disclosed to those individuals permitted to access such material pursuant to this Order. No third party shall be allowed access to any depostion transcript, testimony or exhibit designated as such unless he or she first executes the declaration attached as Exhbit A, acknowledging and agreeing to be bound by the terms of this Protective Order.

VI. Confidential Information in Court Filings

A. The submission to the Court of any information designated in the Court's Standing Order of February 7, 2022, shall be handled in accordance with the terms of that Order. ECF No. 99.

B. Information designated as "CONFIDENTIAL" that meets the definition in section I.A, or as "CONFIDENTIAL: ATTORNEYS' EYES ONLY" that meets the definition in Section II.E, does not lose its designation if that information is subsequently filed with the Court by any designating party, non-designating party, or third party, whether that submission is made by written motion, pleading, memorandum, or any other submission to the Court, including, without limitation, any demonstratives, attachments, transcripts, appendices, and/or exhibits submitted to the Court.

C. All transcripts, depositions, exhibits, answers to interrogatories, and other information previously designated "CONFIDENTIAL" or "CONFIDENTIAL: ATTORNEYS' EYES ONLY" under this Protective Order and filed with the Court in accordance with Fed. R. Civ. P. 5.2(d) by any party or third party, or any pleading, memorandum or other submission to the Court purporting to discuss, reproduce, summarize, or paraphrase any such confidential information, shall be filed electronically under seal or, if filed in paper format, in sealed envelopes or other appropriate sealed containers pursuant to LCvR 5.1(h) and Part II.H of the Clerk's Office General Information and Civil Filing Procedures. All such filings shall include the caption of this litigation, an indication of the nature of the contents, the words "CONFIDENTIAL" and "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," and a statement in substantially the following form: "This envelope, containing documents that are filed in this case by (name or party), is not to be opened, nor are the contents to be displayed or revealed, except by order of the

Court or consent of all the parties." For clarity, the parties may choose to redact the information designated "CONFIDENTIAL" or "CONFIDENTIAL: ATTORNEYS' EYES ONLY" from such transcripts, depositions, exhibits, answers to interrogatories, and other information. The redacted versions of such documents need not be filed under seal.

VII. Use of Confidential Information in Open Court

A. Any item marked as "CONFIDENTIAL" or "CONFIDENTIAL: ATTORNEYS' EYES ONLY" does not lose its designation as such if the item is subsequently offered during hearings, at trials, or otherwise in open court by any party or a third party, whether elicited or presented through argument/and or objections in open court, statements to the jury, direct examination, cross-examination and/or redirect examination, or through any demonstratives, attachments, transcript, appendix, and/or exhibits offered in open court.

B. The use of items marked as "CONFIDENTIAL" or "CONFIDENTIAL: ATTORNEYS' EYES ONLY" during hearings, at trials, or otherwise in open court shall be subject to such protection as the Court shall determine at the time. Nothing in this Protective Order shall be deemed a waiver of any right to object on any ground to the admission in evidence of any confidential information. A party that intends to introduce its own confidential information at a hearing or trial shall be responsible for taking appropriate measures with the Court to maintain its confidentiality. In the event that a party intends to introduce an opponent's confidential information, it shall notify the opponent in writing prior to the time at which it intends to introduce the opponent's confidential information. If the opponent desires to maintain the confidentiality of its material, it shall be responsible for taking appropriate measures with the Court to maintain its confidentiality. No party may use any information designated as "CONFIDENTIAL SETTLEMENT MATERIAL" in any litigation proceeding without the written consent of the

designating party, unless the material so designated has been produced pursuant to Fed. R. Civ. P. 26 or made public subsequent to its designation.

VIII. Exclusion of Public Domain Information

Nothing in this Protective Order shall preclude any party to the lawsuit, their attorneys or any other person from disclosing or using, in any manner or for any purpose, any information in the public domain**.**

IX. Non-Waiver of Privileges and Objections

A. Nothing in this Protective Order shall be construed to require the production of any information that is privileged or otherwise protected from disclosure (Protected Material). The entry of this Protective Order shall not constitute a waiver by any party of any objection to the disclosure or production of any information or material during discovery.

B. Nothing in this Protective Order shall be construed to mean that the production of confidential information (in whole or in part) constitutes either: (1) an admission by any party that the produced information is relevant, authentic, properly produced, or admissible at trial; or (2) a waiver of any right properly to withhold from production any other document.

C. Nothing in this Protective Order shall bar any person from asserting the attorney-client privilege, the work-product doctrine, or any applicable privilege or immunity as to any material, including any material that may have been inadvertently produced.

D. The production or disclosure of any Protected Material, including privileged material, attorney work product, or other item containing protected information, shall not be deemed a waiver of the privilege, work product, or other protection or immunity from discovery by the producing party in this or any subsequent state or federal proceeding under Federal Rule of Evidence 502. If any party should learn of the improper production or disclosure of Protected

Material by any other party, the receiving party shall provide written notice of such production or disclosure within three business days and immediately return or destroy the Protected Material.

X. Miscellaneous

A. Nothing in this Protective Order shall be construed as limiting or otherwise restricting a party's use of its own confidential information for any purpose.

B. Nothing in this Protective Order shall be construed as waiving either party's right to assert the confidentiality and/or non-admissibility of any oral statement made during the course of good-faith settlement negotiations.

C. This Protective Order shall survive the final termination of this litigation and shall continue to apply to all confidential information that has not properly become a matter of public record. Following final termination of this litigation, this Court shall retain jurisdiction over the parties and all persons who received access to confidential information under the terms of this Protective Order.

D. This Protective Order shall be binding upon the Parties, upon their attorneys, and upon the Parties and their attorneys' successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, officers, directors, employees, agents, and independent contractors, and other persons or organizations over which they have control.

E. This Protective Order shall not restrict any attorney from rendering advice to the attorney's party-client regarding this action and shall not restrict the attorney and the attorney's party-client from relying upon an examination of confidential information in the course of the attorney's representation. However, in rendering such advice and in otherwise communicating with the party-client, the attorney shall not disclose the proprietary substance of any confidential

information or the source of any confidential information to anyone not authorized to receive such documents, items, materials or information under the terms of this Protective Order.

F. Within thirty (30) days after the final termination of this action, including all appeals, and unless otherwise required by law, upon request the attorneys for each party shall assemble and return to the opposing party confidential information produced by the opposing party or shall destroy all copies that respective parties have in their possession, custody, or control and inform the opposing party that they have done so. The attorneys for the Parties may retain all pleadings and litigation documents, including exhibits and their own memoranda containing confidential information, but such litigation documents and memoranda shall be used only for the purpose of preserving a file on this action, and shall not be disclosed to anyone other than the outside attorneys to whom such information was previously disclosed without the written permission of the opposing party or an Order of this Court.

G. In the event that a party seeks discovery from a third party to this action, that third party may invoke the terms of this Protective Order in writing to all parties to this suit and produce any such discovery in accordance with, and subject to the terms of this Order.

APPROVED AND SO ORDERED this 6th day of December, 2022.

THE HONORABLE CARL J. NICHOLS
Judge, United States District Court
for the District of Columbia

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHARLES H., *et al.*, **Plaintiffs,** **v.** **DISTRICT OF COLUMBIA, *et al.*,** **Defendants.**	**Civil Action No. 21-997 (CJN)**

ACKNOWLEDGEMENT OF CONFIDENTIALITY

I understand that confidential information may be revealed to me for purposes of the above-captioned lawsuit.

I certify that I have read the Protective Order entered in this lawsuit. I am aware that, by agreement among the parties, as so ordered by the Court, such information may not be used for any purposes other than the purposes specified in the Protective Order. I agree to maintain the confidentiality of any information provided to me that has been designated as "CONFIDENTIAL," "CONFIDENTIAL: ATTORNEYS' EYES ONLY," or "CONFIDENTIAL SETTLEMENT MATERIAL" and to abide by the terms of the Protective Order.

I am aware that any unauthorized use or disclosure by me of any information designated in one of these ways will be treated as a breach of the Protective Order.

Dated: _____

_____
PRINT NAME

_____
SIGNATURE