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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Plaintiff,

Plaintiff,

v.

Defendant,

Defendant.

Case No.: 00cv0000

PROTECTIVE ORDER

The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of such materials as much as practical during the litigation. THEREFORE:

DEFINITIONS

1. The term “confidential information” will mean and include information contained or disclosed in any materials, including documents, portions of documents,

1 answers to interrogatories, responses to requests for admissions, trial or deposition
2 testimony, and transcripts of trial testimony or depositions, including data, summaries, and
3 compilations derived therefrom that is deemed to be confidential information by any party
4 to which it belongs.

5 2. The term “materials” will include, but is not limited to: documents;
6 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other
7 material that identify customers or potential customers; price lists schedules, or other
8 matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks;
9 contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk
10 diaries; appointment books; expense accounts; recordings; photographs; motion pictures;
11 compilations from which information can be obtained and translated into reasonably usable
12 form through detection devices; sketches; drawings; notes (including laboratory notebooks
13 and records); reports; instructions; disclosures; other writings; models and prototypes and
14 other physical objects.

15 3. The term “counsel” will mean outside counsel of record, and other attorneys,
16 paralegals, secretaries, and other support staff employed in the law firms identified
17 below: _____
18 _____

19 [“Counsel” also includes _____, in-house attorneys for
20 [Plaintiff] and _____, in-house attorneys for [Defendant].]

21 GENERAL RULES

22 4. Each party to this litigation that produces or discloses any materials, answers
23 to interrogatories, responses to requests for admission, trial or deposition testimony, and
24 transcripts of trial testimony or depositions, or information that the producing party
25 believes should be subject to this Order may designate the same as “CONFIDENTIAL” or
26 “CONFIDENTIAL – FOR COUNSEL ONLY.”

27 a. Designation as “CONFIDENTIAL”: Any party or non-party subject to
28 this Order may only designate documents or other information in this action as

1 “CONFIDENTIAL” if the designating party or non-party has an articulable, good
2 faith basis to believe that each document or other information designated as
3 confidential qualifies for protection under Federal Rule of Civil Procedure 26(c).

4 b. Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any
5 party may only designate information as “CONFIDENTIAL – FOR COUNSEL
6 ONLY” if, in the good faith belief of such party and its counsel, the information is
7 among that considered to be most sensitive by the party, including but not limited to
8 trade secret or other confidential research, development, financial, or other
9 commercial information.

10 c. Counsel for the parties will agree on a mutually acceptable manner of
11 labeling or marking materials as “CONFIDENTIAL” or “CONFIDENTIAL – FOR
12 COUNSEL ONLY – SUBJECT TO PROTECTIVE ORDER.”

13 5. In the event the producing party elects to produce materials for inspection, no
14 marking need be made by the producing party in advance of the initial inspection. For
15 purposes of the initial inspection, all materials produced will be considered as
16 “CONFIDENTIAL – FOR COUNSEL ONLY,” and must be treated as such pursuant to
17 the terms of this Order. Thereafter, upon selection of specified materials for copying by the
18 inspecting party, the producing party must, within a reasonable time prior to producing
19 those materials to the inspecting party, mark the copies of those materials that contain
20 confidential information with the appropriate confidentiality marking.

21 6. Whenever a deposition taken on behalf of any party involves a disclosure of
22 confidential information of any party:

23 a. The deposition or portions of the deposition must be designated as
24 containing confidential information subject to the provisions of this Order; such
25 designation must be made on the record whenever possible, but a party may
26 designate portions of depositions as containing confidential information after
27 transcription of the proceedings; a party will have until fourteen (14) calendar days
28 after receipt of the deposition transcript to inform the other party or parties to the

1 action of the portions of the transcript to be designated “CONFIDENTIAL” or
2 “CONFIDENTIAL – FOR COUNSEL ONLY”;

3 b. The disclosing party will have the right to exclude from attendance at
4 the deposition, during such time as the confidential information is to be disclosed,
5 any person other than the deponent, counsel (including their staff and associates),
6 the court reporter, and the person(s) agreed upon pursuant to paragraph 9 below; and

7 c. The originals of the deposition transcripts and all copies of the
8 deposition must bear the legend “CONFIDENTIAL” or “CONFIDENTIAL – FOR
9 COUNSEL ONLY,” as appropriate, and the original or any copy ultimately
10 presented to a court for filing must not be filed unless it can be accomplished under
11 seal, identified as being subject to this Order, and protected from being opened
12 except by order of this Court.

13 7. All confidential information designated as “CONFIDENTIAL” or
14 “CONFIDENTIAL – FOR COUNSEL ONLY” must not be disclosed by the receiving
15 party to anyone other than those persons designated within this Order and must be handled
16 in the manner set forth below and, in any event, must not be used for any purpose other
17 than in connection with this litigation, unless and until such designation is removed either
18 by agreement of the parties, or by order of the Court.

19 8. Information designated “CONFIDENTIAL – FOR COUNSEL ONLY” must
20 be viewed only by counsel (as defined in Paragraph 3) of the receiving party, and by
21 independent experts under the conditions set forth in this Paragraph. The right of any
22 independent expert to receive any confidential information will be subject to the advance
23 approval of such expert by the producing party or by permission of the Court. The party
24 seeking approval of an independent expert must provide the producing party with the name
25 and curriculum vitae of the proposed independent expert, and an executed copy of the form
26 attached hereto as Exhibit A, in advance of providing any confidential information of the
27 producing party to the expert. Any objection by the producing party to an independent
28 expert receiving confidential information must be made in writing within fourteen (14)

1 calendar days following receipt of the identification of the proposed expert. Confidential
2 information may be disclosed to an independent expert if the fourteen-day period has
3 passed and no objection has been made. The approval of independent experts must not be
4 unreasonably withheld.

5 9. Information designated “CONFIDENTIAL” must be viewed only by the
6 named Plaintiff(s) _____, Defendant(s) _____, counsel (as
7 defined in Paragraph 3) of the receiving party, by independent experts (pursuant to the
8 terms of Paragraph 8), by court personnel, and by the additional individuals listed below,
9 provided each such individual has read this Order in advance of disclosure and has
10 executed a copy of the form attached hereto as Exhibit A:

11 a. Executives who are required to participate in policy decisions with
12 reference to this action;

13 b. Technical personnel of the parties with whom counsel for the parties
14 find it necessary to consult, in the discretion of such counsel, in preparation for trial
15 of this action; and

16 c. Stenographic and clerical employees associated with the individuals
17 identified above.

18 10. With respect to material designated “CONFIDENTIAL” or
19 “CONFIDENTIAL – FOR COUNSEL ONLY,” any person indicated on the face of the
20 document to be its originator, author, or a recipient of a copy of the document may be
21 shown the same.

22 11. All information which has been designated as “CONFIDENTIAL” or
23 “CONFIDENTIAL – FOR COUNSEL ONLY” by the producing or disclosing party, and
24 any and all reproductions of that information, must be retained in the custody of the counsel
25 for the receiving party identified in Paragraph 3, except that independent experts authorized
26 to view such information under the terms of this Order may retain custody of copies such
27 as are necessary for their participation in this litigation.
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1 12. Before any materials produced in discovery, answers to interrogatories,
2 responses to requests for admissions, deposition transcripts, or other documents which are
3 designated as “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” are
4 filed with the Court for any purpose, the party seeking to file such material must seek
5 permission of the Court to file the material under seal.

6 13. No document shall be filed under seal unless counsel secures a court order
7 allowing the filing of a document, or portion thereof, under seal. An application to file a
8 document under seal shall be served on opposing counsel and on the person or entity that
9 has custody and control of the document, if different from opposing counsel. If opposing
10 counsel, or the person or entity who has custody and control of the document, wishes to
11 oppose the application, they must contact the Chambers of the judge who will rule on the
12 application to notify the Court that an opposition to the application will be filed.

13 14. At any stage of these proceedings, any party may object to a designation of
14 the materials as confidential information. The party objecting to confidentiality must
15 notify, in writing, counsel for the designating party of the objected-to materials and the
16 grounds for the objection. The parties must thereafter meet and confer in accordance with
17 Civil Local Rule 26.1(a) and Judge Pettit’s Civil Chambers Rules. If the dispute is not
18 resolved consensually between the parties within fourteen calendar days of receipt of such
19 a written notice of objections, the parties may jointly request the Court’s assistance with
20 the dispute in accordance with Judge Pettit’s Civil Chambers Rules. The materials at issue
21 must be treated as confidential information, as designated by the designating party, until
22 the Court has ruled on the objection or the matter has been otherwise resolved.

23 15. All confidential information must be held in confidence by those inspecting
24 or receiving it and must be used only for purposes of this action. Counsel for each party,
25 and each person receiving confidential information must take reasonable precautions to
26 prevent the unauthorized or inadvertent disclosure of such information. If confidential
27 information is disclosed to any person other than a person authorized by this Order, the
28 party responsible for the unauthorized disclosure must immediately bring all pertinent facts

1 relating to the unauthorized disclosure to the attention of the other parties and, without
2 prejudice to any rights and remedies of the other parties, make every effort to prevent
3 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

4 16. No party will be responsible to another party for disclosure of confidential
5 information under this Order if the information in question is not labeled or otherwise
6 identified as such in accordance with this Order.

7 17. If a party, through inadvertence, produces any confidential information
8 without labeling or marking or otherwise designating it as such in accordance with this
9 Order, the designating party may give written notice to the receiving party that the
10 document or thing produced is deemed confidential information, and that the document or
11 thing produced should be treated as such in accordance with that designation under this
12 Order. The receiving party must treat the materials as confidential, once the designating
13 party so notifies the receiving party. If the receiving party has disclosed the materials before
14 receiving the designation, the receiving party must notify the designating party in writing
15 of each such disclosure.

16 18. Nothing within this Order will prejudice the right of any party to object to the
17 production of any discovery material on the grounds that the material is protected as
18 privileged or as attorney work product.

19 19. Nothing in this Order will bar counsel from rendering advice to their clients
20 with respect to this litigation and, in the course thereof, relying upon any information
21 designated as confidential information, provided that the contents of the information must
22 not be disclosed.

23 20. This Order will be without prejudice to the right of any party to oppose
24 production of any information for lack of relevance or any other ground other than the mere
25 presence of confidential information. The existence of this Order must not be used by either
26 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
27 Procedure.

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1 21. Nothing within this Order will be construed to prevent disclosure of
2 confidential information if such disclosure is required by law or by order of the Court.

3 22. Upon final termination of this action, including any and all appeals, counsel
4 for each party must, upon request of the producing party, return all confidential information
5 to the party that produced the information, including any copies, excerpts, and summaries
6 of that information, or must destroy same at the option of the receiving party, and must
7 purge all such information from all machine-readable media on which it resides.
8 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,
9 memoranda, motions, and other documents filed with the Court that refer to or incorporate
10 confidential information, and will continue to be bound by this Order with respect to all
11 such retained information. Further, attorney work product materials that contain
12 confidential information need not be destroyed, but, if they are not destroyed, the person
13 in possession of the attorney work product will continue to be bound by this Order with
14 respect to all such retained information.

15 23. The restrictions and obligations set forth within this Order will not apply to
16 any information that:

- 17 a. the parties agree should not be designated confidential information;
- 18 b. the parties agree, or the Court rules, is already public knowledge;
- 19 c. the parties agree, or the Court rules, has become public knowledge other
20 than as a result of disclosure by the receiving party, its employees, or its agents in
21 violation of this Order; or
- 22 d. has come or will come into the receiving party's legitimate knowledge
23 independently of the production by the designating party. Prior knowledge must be
24 established by pre-production documentation.

25 24. The restrictions and obligations within this Order will not be deemed to
26 prohibit discussions of any confidential information with anyone if that person already has
27 or obtains legitimate possession of that information.

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1 25. Transmission by email or some other currently utilized method of
2 transmission is acceptable for all notification purposes within this Order.

3 26. This Order may be modified by agreement of the parties, subject to approval
4 by the Court.

5 27. The Court may modify the terms and conditions of this Order sua sponte in
6 the interests of justice or for public policy reasons. The parties prefer the Court provide
7 them with notice of the Court's intent to modify the Order and the content of those
8 modifications, prior to entry of such an order.

9 28. Without separate court order, this Order and the parties' stipulation do not
10 change, amend, or circumvent any court rule or local rule.

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1 EXHIBIT A

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

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4 I, _____ (name), of _____
5 (address), declare under penalty of perjury I have read in its entirety and understand the
6 Protective Order (“Order”) that was issued by the United States District Court for the
7 Southern District of California on _____ (date), in the case of [case
8 name, case number]. I agree to comply with and to be bound by all the terms of the Order,
9 and I understand and acknowledge that failure to so comply could expose me to sanctions
10 and punishment in the nature of contempt. I solemnly promise that I will not disclose in
11 any manner any information or item that is subject to the Order to any person or entity,
12 except in strict compliance with the provisions of the Order.

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