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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
_____ DIVISION**

v. Plaintiff,

 Defendant.

Case No.
**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

1. GENERAL

1.1 Purposes and Limitations. Discovery in this action is 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

1 them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
2 procedures that must be followed and the standards that will be applied when a party
3 seeks permission from the court to file material under seal.

4 1.2 Good Cause Statement. [***The “Good Cause Statement” should be**
5 **edited to include or exclude specific information that applies to the particular**
6 **case, i.e., what harm will result from the disclosure of the confidential**
7 **information likely to be produced in this case? Identify the categories of**
8 **documents that are covered under the Stipulated Protective Order. Below is an**
9 **example**]:

10 This action is likely to involve documents or information such as [*insert*
11 *categories of documents/information such as personnel files, trade secrets, customer*
12 *and pricing lists and other valuable research, development, commercial, financial,*
13 *technical and/or proprietary information tailored to the case]* for which special
14 protection from public disclosure and from use for any purpose other than prosecution
15 of this action is warranted. Such confidential and proprietary materials and
16 information consist of, among other things, [*insert specific categories to your case*
17 *such as confidential business or financial information, information regarding*
18 *confidential business practices, or other confidential research, development, or*
19 *commercial information (including information implicating privacy rights of third*
20 *parties), information otherwise generally unavailable to the public, or which may be*
21 *privileged or otherwise protected from disclosure under state or federal statutes, court*
22 *rules, case decisions, or common law. Accordingly, to expedite the flow of*
23 *information, to facilitate the prompt resolution of disputes over confidentiality of*
24 *discovery materials, to adequately protect information the parties are entitled to keep*
25 *confidential, to ensure that the parties are permitted reasonable necessary uses of such*
26 *material in preparation for and in the conduct of trial, to address their handling at the*
27 *end of the litigation, and serve the ends of justice, a protective order for such*
28 *information is justified in this matter. It is the intent of the parties that information*

1 will not be designated as confidential for tactical reasons and that nothing be so
2 designated without a good faith belief that it has been maintained in a confidential,
3 non-public manner, and there is good cause why it should not be part of the public
4 record of this case.

5 **2. DEFINITIONS**

6 2.1 Action: [this pending federal lawsuit]. [*Option: consolidated or related
7 actions.]

8 2.2 Challenging Party: a Party or Non-Party that challenges the designation
9 of information or items under this Order.

10 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
11 how it is generated, stored or maintained) or tangible things that qualify for protection
12 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
13 Cause Statement.

14 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
15 support staff).

16 2.5 Designating Party: a Party or Non-Party that designates information or
17 items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL.”

19 2.6 Disclosure or Discovery Material: all items or information, regardless
20 of the medium or manner in which it is generated, stored, or maintained (including,
21 among other things, testimony, transcripts, and tangible things), that are produced or
22 generated in disclosures or responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as
25 an expert witness or as a consultant in this Action.

26 2.8 House Counsel: attorneys who are employees of a party to this Action.
27 House Counsel does not include Outside Counsel of Record or any other outside
28 counsel.

1 2.9 Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party
4 to this Action but are retained to represent or advise a party to this Action and have
5 appeared in this Action on behalf of that party or are affiliated with a law firm that
6 has appeared on behalf of that party, including support staff.

7 2.11 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.13 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL.”

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
19 from a Producing Party.

20
21 **3. SCOPE**

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

27 Any use of Protected Material at trial shall be governed by the orders of the
28 trial judge. This Order does not govern the use of Protected Material at trial.

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4. DURATION

Once a case proceeds to trial, all of the court-filed information to be introduced that was previously designated as confidential or maintained pursuant to this protective order becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. See Kamakana v. City and Cty. of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Accordingly, the terms of this protective order do not extend beyond the commencement of the trial.

5. DESIGNATING PROTECTED MATERIAL

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

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in
5 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
6 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
7 under this Order must be clearly so designated before the material is disclosed or
8 produced.

9 Designation in conformity with this Order requires:

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

17 A Party or Non-Party that makes original documents available for inspection
18 need not designate them for protection until after the inspecting Party has indicated
19 which documents it would like copied and produced. During the inspection and
20 before the designation, all of the material made available for inspection shall be
21 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents
22 it wants copied and produced, the Producing Party must determine which documents,
23 or portions thereof, qualify for protection under this Order. Then, before producing
24 the specified documents, the Producing Party must affix the "CONFIDENTIAL
25 legend" to each page that contains Protected Material. If only a portion or portions
26 of the material on a page qualifies for protection, the Producing Party also must clearly
27 identify the protected portion(s) (e.g., by making appropriate markings in the
28 margins).

1 (b) for testimony given in depositions that the Designating Party identify
2 the Disclosure or Discovery Material on the record, before the close of the deposition.

3 (c) for information produced in some form other than documentary and
4 for any other tangible items, that the Producing Party affix in a prominent place on
5 the exterior of the container or containers in which the information is stored the legend
6 “CONFIDENTIAL.” If only a portion or portions of the information warrants
7 protection, the Producing Party, to the extent practicable, shall identify the protected
8 portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive the
11 Designating Party’s right to secure protection under this Order for such material.
12 Upon timely correction of a designation, the Receiving Party must make reasonable
13 efforts to assure that the material is treated in accordance with the provisions of this
14 Order.

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16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court’s
19 Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37-1, et seq. Any discovery motion must strictly
22 comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

23 6.3 Burden. The burden of persuasion in any such challenge proceeding
24 shall be on the Designating Party. Frivolous challenges, and those made for an
25 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
26 other parties) may expose the Challenging Party to sanctions. Unless the Designating
27 Party has waived or withdrawn the confidentiality designation, all parties shall
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1 continue to afford the material in question the level of protection to which it is entitled
2 under the Producing Party’s designation until the Court rules on the challenge.

3 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 Action only for prosecuting, defending, or attempting to settle this Action. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. When the Action has been terminated, a Receiving
9 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

13 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
14 otherwise ordered by the Court or permitted in writing by the Designating Party, a
15 Receiving Party may disclose any information or item designated
16 “CONFIDENTIAL” only to:

17 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
18 well as employees of said Outside Counsel of Record to whom it is reasonably
19 necessary to disclose the information for this Action;

20 (b) the officers, directors, and employees (including House Counsel) of
21 the Receiving Party to whom disclosure is reasonably necessary for this Action;

22 (c) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this Action and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (d) the Court and its personnel;

26 (e) court reporters and their staff;

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1 (f) professional jury or trial consultants, mock jurors, and Professional
2 Vendors to whom disclosure is reasonably necessary for this Action and who have
3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

6 (h) during their depositions, witnesses, and attorneys for witnesses, in
7 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
8 party requests that the witness sign the form attached as Exhibit A hereto; and (2) they
9 will not be permitted to keep any confidential information unless they sign the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
11 agreed by the Designating Party or ordered by the Court. Pages of transcribed
12 deposition testimony or exhibits to depositions that reveal Protected Material may be
13 separately bound by the court reporter and may not be disclosed to anyone except as
14 permitted under this Stipulated Protective Order; and

15 (i) any mediator or settlement officer, and their supporting personnel,
16 mutually agreed upon by any of the parties engaged in settlement discussions.

17
18 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
19 **PRODUCED IN OTHER LITIGATION**

20 If a Party is served with a subpoena or a court order issued in other litigation
21 that compels disclosure of any information or items designated in this Action as
22 “CONFIDENTIAL,” that Party must:

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

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

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

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

11
12 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
13 **PRODUCED IN THIS LITIGATION**

14 (a) The terms of this Order are applicable to information produced by a Non-
15 Party in this Action and designated as “CONFIDENTIAL.” Such information
16 produced by Non-Parties in connection with this litigation is protected by the
17 remedies and relief provided by this Order. Nothing in these provisions should be
18 construed as prohibiting a Non-Party from seeking additional protections.

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

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

26 (2) promptly provide the Non-Party with a copy of the Stipulated
27 Protective Order in this Action, the relevant discovery request(s), and a reasonably
28 specific description of the information requested; and

1 (3) make the information requested available for inspection by the Non-
2 Party, if requested.

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

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

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

21
22 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
23 **PROTECTED MATERIAL**

24 When a Producing Party gives notice to Receiving Parties that certain
25 inadvertently produced material is subject to a claim of privilege or other protection,
26 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
27 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
28 may be established in an e-discovery order that provides for production without prior

1 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
2 parties reach an agreement on the effect of disclosure of a communication or
3 information covered by the attorney-client privilege or work product protection, the
4 parties may incorporate their agreement in the stipulated protective order submitted
5 to the Court.

6
7 **12. MISCELLANEOUS**

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order, no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in this
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any
14 ground to use in evidence of any of the material covered by this Protective Order.

15 12.3 Filing Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
17 only be filed under seal pursuant to a court order authorizing the sealing of the specific
18 Protected Material at issue; good cause must be shown in the request to file under
19 seal. If a Party's request to file Protected Material under seal is denied by the Court,
20 then the Receiving Party may file the information in the public record unless
21 otherwise instructed by the Court.

22
23 **13. FINAL DISPOSITION**

24 After the final disposition of this Action, within 60 days of a written request by
25 the Designating Party, each Receiving Party must return all Protected Material to the
26 Producing Party or destroy such material. As used in this subdivision, "all Protected
27 Material" includes all copies, abstracts, compilations, summaries, and any other
28 format reproducing or capturing any of the Protected Material. Whether the Protected

1 Material is returned or destroyed, the Receiving Party must submit a written
2 certification to the Producing Party (and, if not the same person or entity, to the
3 Designating Party) by the 60 day deadline that (1) identifies (by category, where
4 appropriate) all the Protected Material that was returned or destroyed, and (2) affirms
5 that the Receiving Party has not retained any copies, abstracts, compilations,
6 summaries or any other format reproducing or capturing any of the Protected Material.
7 Notwithstanding this provision, counsel are entitled to retain an archival copy of all
8 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
9 correspondence, deposition and trial exhibits, expert reports, attorney work product,
10 and consultant and expert work product, even if such materials contain Protected
11 Material. Any such archival copies that contain or constitute Protected Material
12 remain subject to this Protective Order as set forth in Section 4 (DURATION).

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14 **14. VIOLATION OF ORDER**

15 Any violation of this Order may be punished by any and all appropriate
16 measures including, without limitation, contempt proceedings and/or monetary
17 sanctions.

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19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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22 DATED: _____

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24 _____
Attorneys for Plaintiff(s)

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27 DATED: _____

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Attorneys for Defendant(s)

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: _____

Honorable Anna Y. Park
United States Magistrate Judge

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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [**full name**], of _____
[**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 Central District of California on _____ [**date**] in the case of _____ [**insert case name and number**]. 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 Central 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 _____ [**full name**] of _____ [**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 signed: _____

1 Printed name: _____

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3 Signature: _____

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