

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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? Below is an example**]:

8 This action is likely to involve trade secrets, customer and pricing lists and
9 other valuable research, development, commercial, financial, technical and/or
10 proprietary information for which special protection from public disclosure and from
11 use for any purpose other than prosecution of this action is warranted. Such
12 confidential and proprietary materials and information consist of, among other things,
13 confidential business or financial information, information regarding confidential
14 business practices, or other confidential research, development, or commercial
15 information (including information implicating privacy rights of third parties),
16 information otherwise generally unavailable to the public, or which may be privileged
17 or otherwise protected from disclosure under state or federal statutes, court rules, case
18 decisions, or common law. Accordingly, to expedite the flow of information, to
19 facilitate the prompt resolution of disputes over confidentiality of discovery materials,
20 to adequately protect information the parties are entitled to keep confidential, to
21 ensure that the parties are permitted reasonable necessary uses of such material in
22 preparation for and in the conduct of trial, to address their handling at the end of the
23 litigation, and serve the ends of justice, a protective order for such information is
24 justified in this matter. It is the intent of the parties that information will not be
25 designated as confidential for tactical reasons and that nothing be so designated
26 without a good faith belief that it has been maintained in a confidential, non-public
27 manner, and there is good cause why it should not be part of the public record of this
28 case.

1 **2. DEFINITIONS**

2 2.1 Action: [this pending federal lawsuit]. [*Option: consolidated or related
3 actions.]

4 2.2 Challenging Party: a Party or Non-Party that challenges the designation
5 of information or items under this Order.

6 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
7 how it is generated, stored or maintained) or tangible things that qualify for protection
8 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
9 Cause Statement.

10 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
11 support staff).

12 2.5 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL.”

15 2.6 Disclosure or Discovery Material: all items or information, regardless
16 of the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced or
18 generated in disclosures or responses to discovery in this matter.

19 2.7 Expert: a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve as
21 an expert witness or as a consultant in this Action.

22 2.8 House Counsel: attorneys who are employees of a party to this Action.
23 House Counsel does not include Outside Counsel of Record or any other outside
24 counsel.

25 2.9 Non-Party: any natural person, partnership, corporation, association, or
26 other legal entity not named as a Party to this action.

27 2.10 Outside Counsel of Record: attorneys who are not employees of a party
28 to this Action but are retained to represent or advise a party to this Action and have

1 appeared in this Action on behalf of that party or are affiliated with a law firm that
2 has appeared on behalf of that party, including support staff.

3 2.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL.”

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
15 from a Producing Party.

16

17 **3. SCOPE**

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

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

25

26 **4. DURATION**

27 Once a case proceeds to trial, all of the court-filed information to be introduced
28 that was previously designated as confidential or maintained pursuant to this

1 protective order becomes public and will be presumptively available to all members
2 of the public, including the press, unless compelling reasons supported by specific
3 factual findings to proceed otherwise are made to the trial judge in advance of the
4 trial. See Kamakana v. City and Cty. of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir.
5 2006) (distinguishing “good cause” showing for sealing documents produced in
6 discovery from “compelling reasons” standard when merits-related documents are
7 part of court record). Accordingly, the terms of this protective order do not extend
8 beyond the commencement of the trial.

9
10 **5. DESIGNATING PROTECTED MATERIAL**

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in
28 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise

1 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
2 under this Order must be clearly so designated before the material is disclosed or
3 produced.

4 Designation in conformity with this Order requires:

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

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

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

26 (c) for information produced in some form other than documentary and
27 for any other tangible items, that the Producing Party affix in a prominent place on
28 the exterior of the container or containers in which the information is stored the legend

1 “CONFIDENTIAL.” If only a portion or portions of the information warrants
2 protection, the Producing Party, to the extent practicable, shall identify the protected
3 portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive the
6 Designating Party’s right to secure protection under this Order for such material.
7 Upon timely correction of a designation, the Receiving Party must make reasonable
8 efforts to assure that the material is treated in accordance with the provisions of this
9 Order.

10

11 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court’s
14 Scheduling Order.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process under Local Rule 37-1, et seq. Any discovery motion must strictly
17 comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

18 6.3 Burden. The burden of persuasion in any such challenge proceeding
19 shall be on the Designating Party. Frivolous challenges, and those made for an
20 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
21 other parties) may expose the Challenging Party to sanctions. Unless the Designating
22 Party has waived or withdrawn the confidentiality designation, all parties shall
23 continue to afford the material in question the level of protection to which it is entitled
24 under the Producing Party’s designation until the Court rules on the challenge.

25 //
26 //
27 //
28 //

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

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 Action only for prosecuting, defending, or attempting to settle this Action. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the Action has been terminated, a Receiving
7 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
12 otherwise ordered by the Court or permitted in writing by the Designating Party, a
13 Receiving Party may disclose any information or item designated
14 “CONFIDENTIAL” only to:

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

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

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

23 (d) the Court and its personnel;

24 (e) court reporters and their staff;

25 (f) professional jury or trial consultants, mock jurors, and Professional
26 Vendors to whom disclosure is reasonably necessary for this Action and who have
27 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
28

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

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

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

14
15 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
16 **PRODUCED IN OTHER LITIGATION**

17 If a Party is served with a subpoena or a court order issued in other litigation
18 that compels disclosure of any information or items designated in this Action as
19 "CONFIDENTIAL," that Party must:

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

22 When a Producing Party gives notice to Receiving Parties that certain
23 inadvertently produced material is subject to a claim of privilege or other protection,
24 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
25 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
26 may be established in an e-discovery order that provides for production without prior
27 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
28 parties reach an agreement on the effect of disclosure of a communication or

1 information covered by the attorney-client privilege or work product protection, the
2 parties may incorporate their agreement in the stipulated protective order submitted
3 to the Court.

4
5 **12. MISCELLANEOUS**

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
7 person to seek its modification by the Court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this
9 Protective Order, no Party waives any right it otherwise would have to object to
10 disclosing or producing any information or item on any ground not addressed in this
11 Stipulated Protective Order. Similarly, no Party waives any right to object on any
12 ground to use in evidence of any of the material covered by this Protective Order.

13 12.3 Filing Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
15 only be filed under seal pursuant to a court order authorizing the sealing of the specific
16 Protected Material at issue; good cause must be shown in the request to file under
17 seal. If a Party's request to file Protected Material under seal is denied by the Court,
18 then the Receiving Party may file the information in the public record unless
19 otherwise instructed by the Court.

20
21 **13. FINAL DISPOSITION**

22 After the final disposition of this Action, within 60 days of a written request by
23 the Designating Party, each Receiving Party must return all Protected Material to the
24 Producing Party or destroy such material. As used in this subdivision, "all Protected
25 Material" includes all copies, abstracts, compilations, summaries, and any other
26 format reproducing or capturing any of the Protected Material. Whether the Protected
27 Material is returned or destroyed, the Receiving Party must submit a written
28 certification to the Producing Party (and, if not the same person or entity, to the

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

11

12 **14. VIOLATION OF ORDER**

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

16

17 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

18

19

20 DATED _____

21

22

23 _____

24 Attorneys for Plaintiff

25

26

27 DATED: _____

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Attorneys for Defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

v. Plaintiff,

 Defendant.

Case No.

**[PROPOSED] ORDER RE
STIPULATED PROTECTIVE
ORDER**

Having considered the papers, and finding that good cause exists, the Parties' Stipulated Protective Order is **granted**.

IT IS SO ORDERED.

DATED: _____, 2023

BRIANNA FULLER MIRCHEFF
UNITED STATES MAGISTRATE JUDGE