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2
3 **UNITED STATES DISTRICT COURT**
4 **CENTRAL DISTRICT OF CALIFORNIA**
5

6
7 Plaintiff,
8
9 vs.
10
11 Defendants.
12

Case No.:

**STIPULATED PROTECTIVE
ORDER**

13 1. A. PURPOSES AND LIMITATIONS
14

15 Discovery in this action is likely to involve production of confidential,
16 proprietary, or private information for which special protection from public
17 disclosure and from use for any purpose other than prosecuting this litigation may
18 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
19 enter the following Stipulated Protective Order. The parties acknowledge that this
20 Order does not confer blanket protections on all disclosures or responses to
21 discovery and that the protection it affords from public disclosure and use extends
22 only to the limited information or items that are entitled to confidential treatment
23 under the applicable legal principles. The parties further acknowledge, as set forth
24 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
25 file confidential information under seal; Civil Local Rule 79-5 sets forth the
26 procedures that must be followed and the standards that will be applied when a party
27 seeks permission from the court to file material under seal.
28

1 B. GOOD CAUSE STATEMENT

2

3 **[*The “Good Cause Statement” should be edited to include or exclude specific**

4 **information that applies to the particular case, i.e., what harm will result from**

5 **the disclosure of the confidential information likely to be produced in this case?**

6 **Below is an example]:**

7

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

13 things, confidential business or financial information, information regarding

14 confidential business practices, or other confidential research, development, or

15 commercial information (including information implicating privacy rights of third

16 parties), information otherwise generally unavailable to the public, or which may be

17 privileged or otherwise protected from disclosure under state or federal statutes,

18 court rules, case decisions, or common law. Accordingly, to expedite the flow of

19 information, to facilitate the prompt resolution of disputes over confidentiality of

20 discovery materials, to adequately protect information the parties are entitled to keep

21 confidential, to ensure that the parties are permitted reasonable necessary uses of

22 such material in preparation for and in the conduct of trial, to address their handling

23 at the end of the litigation, and serve the ends of justice, a protective order for such

24 information is justified in this matter. It is the intent of the parties that information

25 will not be designated as confidential for tactical reasons and that nothing be so

26 designated without a good faith belief that it has been maintained in a confidential,

27 non-public manner, and there is good cause why it should not be part of the public

28 record of this case.

1 2. DEFINITIONS

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

4 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
5 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
8 for protection under Federal Rule of Civil Procedure 26(c), and as
9 specified above in the Good 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 of
16 the medium or manner in which it is generated, stored, or maintained
17 (including, among other things, testimony, transcripts, and tangible
18 things), that are produced or generated in disclosures or responses to
19 discovery in this matter.

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

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

26 2.9 Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.
28

1 2.10 Outside Counsel of Record: attorneys who are not employees of a party
2 to this Action but are retained to represent or advise a party to this Action
3 and have appeared in this Action on behalf of that party or are affiliated
4 with a law firm which has appeared on behalf of that party, and includes
5 support staff.

6 2.11 Party: any party to this Action, including all of its officers, directors,
7 employees, consultants, retained experts, and Outside Counsel of Record
8 (and their support staffs).

9 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
10 Discovery Material in this Action.

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

15 2.14 Protected Material: any Disclosure or Discovery Material that is
16 designated as "CONFIDENTIAL."

17 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
18 from a Producing Party.

19
20 3. SCOPE

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

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

1 4. DURATION

2
3 [ONE POSSIBLE PARAGRAPH] Once a case proceeds to trial, all of the
4 information that was designated as confidential or maintained pursuant to this
5 protective order becomes public and will be presumptively available to all members
6 of the public, including the press, unless compelling reasons supported by specific
7 factual findings to proceed otherwise are made to the trial judge in advance of the
8 trial. See Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1180-81 (9th
9 Cir. 2006) (distinguishing “good cause” showing for sealing documents produced in
10 discovery from “compelling reasons” standard when merits-related documents are
11 part of court record). Accordingly, the terms of this protective order do not extend
12 beyond the commencement of the trial.

13
14 [ALTERNATIVE POSSIBLE PARAGRAPH] Even after final disposition of
15 this litigation, the confidentiality obligations imposed by this Order shall remain in
16 effect until a Designating Party agrees otherwise in writing or a court order otherwise
17 directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
18 and defenses in this Action, with or without prejudice; and (2) final judgment herein
19 after the completion and exhaustion of all appeals, rehearings, remands, trials, or
20 reviews of this Action, including the time limits for filing any motions or
21 applications for extension of time pursuant to applicable law.

22
23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.
25 Each Party or Non-Party that designates information or items for protection under
26 this Order must take care to limit any such designation to specific material that
27 qualifies under the appropriate standards. The Designating Party must designate for
28 protection only those parts of material, documents, items, or oral or written

1 communications that qualify so that other portions of the material, documents, items,
2 or communications for which protection is not warranted are not swept unjustifiably
3 within the ambit of this Order.

4
5 Mass, indiscriminate, or routinized designations are prohibited. Designations
6 that are shown to be clearly unjustified or that have been made for an improper
7 purpose (e.g., to unnecessarily encumber the case development process or to impose
8 unnecessary expenses and burdens on other parties) may expose the Designating
9 Party to sanctions.

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

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this
14 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
15 or ordered, Disclosure or Discovery Material that qualifies for protection under this
16 Order must be clearly so designated before the material is disclosed or produced.

17
18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic documents,
20 but excluding transcripts of depositions or other pretrial or trial
21 proceedings), that the Producing Party affix at a minimum, the legend
22 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each
23 page that contains protected material. If only a portion or portions of the
24 material on a page qualifies for protection, the Producing Party also must
25 clearly identify the protected portion(s) (e.g., by making appropriate
26 markings in the margins).

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

13 (b) for testimony given in depositions that the Designating Party identify the
14 Disclosure or Discovery Material on the record, before the close of the deposition
15 all protected testimony.

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

22
23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
24 designate qualified information or items does not, standing alone, waive the
25 Designating Party’s right to secure protection under this Order for such material.
26 Upon timely correction of a designation, the Receiving Party must make reasonable
27 efforts to assure that the material is treated in accordance with the provisions of this
28 Order.

1
2 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

3 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
4 designation of confidentiality at any time that is consistent with the Court's
5 Scheduling Order.

6 6.2 Meet and Confer. The Challenging Party shall initiate the
7 informal dispute resolution process set forth in the Court's Procedures and
8 Schedules. see <http://www.cacd.uscourts.gov/honorable-alka-sagar>

9 6.3 The burden of persuasion in any such challenge proceeding shall be on
10 the Designating Party. Frivolous challenges, and those made for an improper
11 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
12 parties) may expose the Challenging Party to sanctions. Unless the Designating
13 Party has waived or withdrawn the confidentiality designation, all parties shall
14 continue to afford the material in question the level of protection to which it is
15 entitled under the Producing Party's designation until the Court rules on the
16 challenge.

17
18 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 7.1 Basic Principles. A Receiving Party may use Protected Material that
20 is disclosed or produced by another Party or by a Non-Party in connection with
21 this Action only for prosecuting, defending, or attempting to settle this Action.
22 Such Protected Material may be disclosed only to the categories of persons and
23 under the conditions described in this Order. When the Action has been
24 terminated, a Receiving Party must comply with the provisions of section 13
25 below (FINAL DISPOSITION).

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

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving
3 Party may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

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

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

19 (h) during their depositions, witnesses, and attorneys for witnesses, in the
20 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
21 requests that the witness sign the form attached as Exhibit A hereto; and (2) they
22 will not be permitted to keep any confidential information unless they sign the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
24 agreed by the Designating Party or ordered by the court. Pages of transcribed
25 deposition testimony or exhibits to depositions that reveal Protected Material may
26 be separately bound by the court reporter and may not be disclosed to anyone except
27 as permitted under this Stipulated Protective Order; and
28

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

3
4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
5 OTHER LITIGATION

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

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

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

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

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

25
26 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
27 PRODUCED IN THIS LITIGATION

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

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

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

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

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

18 (c) If the Non-Party fails to seek a protective order from this court within 14 days
19 of receiving the notice and accompanying information, the Receiving Party may
20 produce the Non-Party’s confidential information responsive to the discovery
21 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
22 not produce any information in its possession or control that is subject to the
23 confidentiality agreement with the Non-Party before a determination by the court.
24 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
25 of seeking protection in this court of its Protected Material.

26
27 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL
28

1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
2 Protected Material to any person or in any circumstance not authorized under this
3 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
4 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
5 to retrieve all unauthorized copies of the Protected Material, (c) inform the person
6 or persons to whom unauthorized disclosures were made of all the terms of this
7 Order, and (d) request such person or persons to execute the “Acknowledgment and
8 Agreement to Be Bound” that is attached hereto as Exhibit A.

9
10 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 When a Producing Party gives notice to Receiving Parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection,
14 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
15 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
16 may be established in an e-discovery order that provides for production without prior
17 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
18 parties reach an agreement on the effect of disclosure of a communication or
19 information covered by the attorney-client privilege or work product protection, the
20 parties may incorporate their agreement in the stipulated protective order submitted
21 to the court.

22
23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
25 person to seek its modification by the Court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this
27 Protective Order no Party waives any right it otherwise would have to object to
28 disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
5 only be filed under seal pursuant to a court order authorizing the sealing of the
6 specific Protected Material at issue. If a Party's request to file Protected Material
7 under seal is denied by the court, then the Receiving Party may file the information
8 in the public record unless otherwise instructed by the court.

9
10
11 13. FINAL DISPOSITION

12 After the final disposition of this Action, as defined in paragraph 4, within 60
13 days of a written request by the Designating Party, each Receiving Party must return
14 all Protected Material to the Producing Party or destroy such material. As used in
15 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
16 summaries, and any other format reproducing or capturing any of the Protected
17 Material. Whether the Protected Material is returned or destroyed, the Receiving
18 Party must submit a written certification to the Producing Party (and, if not the same
19 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
20 (by category, where appropriate) all the Protected Material that was returned or
21 destroyed and (2) affirms that the Receiving Party has not retained any copies,
22 abstracts, compilations, summaries or any other format reproducing or capturing any
23 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
24 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
25 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
26 reports, attorney work product, and consultant and expert work product, even if such
27 materials contain Protected Material. Any such archival copies that contain or
28

1 constitute Protected Material remain subject to this Protective Order as set forth in
2 Section 4 (DURATION).

3
4 14. Any violation of this Order may be punished by any and all appropriate measures
5 including, without limitation, contempt proceedings and/or monetary sanctions.

6
7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8
9 DATED _____

10
11 _____
12 Attorneys for Plaintiff

13
14 DATED: _____

15
16 _____
17 Attorneys for Defendant

18
19 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

20 DATED: _____

21
22 _____
23 Honorable Alka Sagar
24 United States Magistrate Judge

1
2 EXHIBIT A

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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

15 I further agree to submit to the jurisdiction of the United States District Court for the
16 Central District of California for the purpose of enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of
18 this action. I hereby appoint _____ [print or type full
19 name] of _____ [print or type full address
20 and telephone number] as my California agent for service of process in connection
21 with this action or any proceedings related to enforcement of this Stipulated
22 Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____