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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

_____ ,	)	Case No.
Plaintiff,	)	STIPULATION AND PROPOSED
v.	)	PROTECTIVE ORDER
_____ ,	)	
Defendants.	)	

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 pursuing 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.

1           2.     GOOD CAUSE STATEMENT

2     [\*The “Good Cause Statement” should identify as specifically as possible  
3     the confidential materials and set forth facts showing what harm will result  
4     from the disclosure. Below is an example]:

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

3           The parties further acknowledge, as set forth in Section 14.3, below, that  
4 this Stipulated Protective Order does not entitle them to file confidential  
5 information under seal; Local Civil Rule 79-5 sets forth the procedures that  
6 must be followed and the standards that will be applied when a party seeks  
7 permission from the court to file material under seal. There is a strong  
8 presumption that the public has a right of access to judicial proceedings and  
9 records in civil cases. In connection with non-dispositive motions, good cause  
10 must be shown to support a filing under seal. See Kamakana v. City and  
11 County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen.  
12 Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony  
13 Electrics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated  
14 protective orders require good cause showing), and a specific showing of good  
15 cause or compelling reasons with proper evidentiary support and legal  
16 justification, must be made with respect to Protected Material that a party  
17 seeks to file under seal. The parties' mere designation of Disclosure or  
18 Discovery Material as CONFIDENTIAL does not— without the submission  
19 of competent evidence by declaration, establishing that the material sought to  
20 be filed under seal qualifies as confidential, privileged, or otherwise  
21 protectable—constitute good cause.

22           Further, if a party requests sealing related to a dispositive motion or trial,  
23 then compelling reasons, not only good cause, for the sealing must be shown,  
24 and the relief sought shall be narrowly tailored to serve the specific interest to  
25 be protected. See Pintos v. Pacific Creditors Ass'n., 605 F.3d 665, 677-79 (9th  
26 Cir. 2010). For each item or type of information, document, or thing sought to  
27 be filed or introduced under seal, the party seeking protection must articulate  
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1 compelling reasons, supported by specific facts and legal justification, for the  
2 requested sealing order. Again, competent evidence supporting the application  
3 to file documents under seal must be provided by declaration.

4 Any document that is not confidential, privileged, or otherwise  
5 protectable in its entirety will not be filed under seal if the confidential portions  
6 can be redacted. If documents can be redacted, then a redacted version for  
7 public viewing, omitting only the confidential, privileged, or otherwise  
8 protectable portions of the document, shall be filed. Any application that seeks  
9 to file documents under seal in their entirety should include an explanation of  
10 why redaction is not feasible.

11 4. DEFINITIONS

12 4.1 Action: **[this pending federal lawsuit]. [\*Option: consolidated or**  
13 **related actions.]**

14 4.2 Challenging Party: a Party or Non-Party that challenges the  
15 designation of information or items under this Order.

16 4.3 “CONFIDENTIAL” Information or Items: information  
17 (regardless of how it is generated, stored or maintained) or tangible things that  
18 qualify for protection under Federal Rule of Civil Procedure 26(c), and as  
19 specified above in the Good Cause Statement.

20 4.4 Counsel: Outside Counsel of Record and House Counsel (as well  
21 as their support staff).

22 4.5 Designating Party: a Party or Non-Party that designates  
23 information or items that it produces in disclosures or in responses to discovery  
24 as “CONFIDENTIAL.”

25 4.6 Disclosure or Discovery Material: all items or information,  
26 regardless of the medium or manner in which it is generated, stored, or  
27 maintained (including, among other things, testimony, transcripts, and tangible  
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1 things), that are produced or generated in disclosures or responses to discovery.

2 4.7 Expert: a person with specialized knowledge or experience in a  
3 matter pertinent to the litigation who has been retained by a Party or its  
4 counsel to serve as an expert witness or as a consultant in this Action.

5 4.8 House Counsel: attorneys who are employees of a party to this  
6 Action. House Counsel does not include Outside Counsel of Record or any  
7 other outside counsel.

8 4.9 Non-Party: any natural person, partnership, corporation,  
9 association or other legal entity not named as a Party to this action.

10 4.10 Outside Counsel of Record: attorneys who are not employees of a  
11 party to this Action but are retained to represent a party to this Action and  
12 have appeared in this Action on behalf of that party or are affiliated with a law  
13 firm that has appeared on behalf of that party, and includes support staff.

14 4.11 Party: any party to this Action, including all of its officers,  
15 directors, employees, consultants, retained experts, and Outside Counsel of  
16 Record (and their support staffs).

17 4.12 Producing Party: a Party or Non-Party that produces Disclosure or  
18 Discovery Material in this Action.

19 4.13 Professional Vendors: persons or entities that provide litigation  
20 support services (e.g., photocopying, videotaping, translating, preparing  
21 exhibits or demonstrations, and organizing, storing, or retrieving data in any  
22 form or medium) and their employees and subcontractors.

23 4.14 Protected Material: any Disclosure or Discovery Material that is  
24 designated as “CONFIDENTIAL.”

25 4.15 Receiving Party: a Party that receives Disclosure or Discovery  
26 Material from a Producing Party.  
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1           5.     SCOPE

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

7           Any use of Protected Material at trial shall be governed by the orders of  
8 the trial judge and other applicable authorities. This Order does not govern the  
9 use of Protected Material at trial.

10           6.     DURATION

11           Once a case proceeds to trial, information that was designated as  
12 CONFIDENTIAL or maintained pursuant to this protective order used or  
13 introduced as an exhibit at trial becomes public and will be presumptively  
14 available to all members of the public, including the press, unless compelling  
15 reasons supported by specific factual findings to proceed otherwise are made to  
16 the trial judge in advance of the trial. See Kamakana, 447 F.3d at 1180-81  
17 (distinguishing “good cause” showing for sealing documents produced in  
18 discovery from “compelling reasons” standard when merits-related documents  
19 are part of court record). Accordingly, the terms of this protective order do not  
20 extend beyond the commencement of the trial.

21           7.     DESIGNATING PROTECTED MATERIAL

22           7.1    Exercise of Restraint and Care in Designating Material for

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

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

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

13 7.2 Manner and Timing of Designations. Except as otherwise  
14 provided in this Order, or as otherwise stipulated or ordered, Disclosure of  
15 Discovery Material that qualifies for protection under this Order must be  
16 clearly so designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic  
19 documents, but excluding transcripts of depositions or other pretrial or trial  
20 proceedings), that the Producing Party affix at a minimum, the legend  
21 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page  
22 that contains protected material. If only a portion of the material on a page  
23 qualifies for protection, the Producing Party also must clearly identify the  
24 protected portion(s) (e.g., by making appropriate markings in the margins).  
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26 A Party or Non-Party that makes original documents available for  
27 inspection need not designate them for protection until after the inspecting  
28 Party has indicated which documents it would like copied and produced.

1 During the inspection and before the designation, all of the material made  
2 available for inspection shall be deemed “CONFIDENTIAL.” After the  
3 inspecting Party has identified the documents it wants copied and produced,  
4 the Producing Party must determine which documents, or portions thereof,  
5 qualify for protection under this Order. Then, before producing the specified  
6 documents, the Producing Party must affix the “CONFIDENTIAL legend” to  
7 each page that contains Protected Material. If only a portion of the material on  
8 a page qualifies for protection, the Producing Party also must clearly identify  
9 the protected portion(s) (e.g., by making appropriate markings in the margins).

10 (b) for testimony given in depositions that the Designating Party  
11 identifies the Disclosure or Discovery Material on the record, before the close  
12 of the deposition all protected testimony.

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

19 7.3 Inadvertent Failures to Designate. If timely corrected, an  
20 inadvertent failure to designate qualified information or items does not,  
21 standing alone, waive the Designating Party’s right to secure protection under  
22 this Order for such material. Upon timely correction of a designation, the  
23 Receiving Party must make reasonable efforts to assure that the material is  
24 treated in accordance with the provisions of this Order.  
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1           8.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

2           8.1.   Timing of Challenges. Any Party or Non-Party may challenge a  
3 designation of confidentiality at any time that is consistent with the Court’s  
4 Scheduling Order.

5           8.2   Meet and Confer. The Challenging Party shall initiate the dispute  
6 resolution process under Local Rule 37-1 et seq.

7           8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a  
8 joint stipulation pursuant to Local Rule 37-2.

9           8.4 The burden of persuasion in any such challenge proceeding shall be  
10 on the Designating Party. Frivolous challenges, and those made for an  
11 improper purpose (e.g., to harass or impose unnecessary expenses and burdens  
12 on other parties) may expose the Challenging Party to sanctions. Unless the  
13 Designating Party has waived or withdrawn the confidentiality designation, all  
14 parties shall continue to afford the material in question the level of protection  
15 to which it is entitled under the Producing Party’s designation until the Court  
16 rules on the challenge.  
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18           9.     ACCESS TO AND USE OF PROTECTED MATERIAL

19           9.1 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  
21 with this Action only for prosecuting, defending or attempting to settle this  
22 Action. Such Protected Material may be disclosed only to the categories of  
23 persons and under the conditions described in this Order. When the Action has  
24 been terminated, a Receiving Party must comply with the provisions of section  
25 15 below (FINAL DISPOSITION).  
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1 Protected Material must be stored and maintained by a Receiving Party  
2 at a location and in a secure manner that ensures that access is limited to the  
3 persons authorized under this Order.

4 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
5 otherwise ordered by the court or permitted in writing by the Designating  
6 Party, a Receiving Party may disclose any information or item designated  
7 “CONFIDENTIAL” only to:

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

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

14 (c) Experts (as defined in this Order) of the Receiving Party to  
15 whom disclosure is reasonably necessary for this Action and who have signed  
16 the “Acknowledgment and Agreement to Be Bound” (Exhibit A) [**TO BE**  
17 **NEGOTIATED AND PREPARED BY PARTIES AND ATTACHED TO**  
18 **STIPULATION AND PROPOSED ORDER**];

19 (d) the court and its personnel;

20 (e) court reporters and their staff;

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

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

2 (h) during their depositions, witnesses, and attorneys for witnesses,  
3 in the Action to whom disclosure is reasonably necessary provided: (1) the  
4 deposing party requests that the witness sign the form attached as Exhibit A  
5 hereto; and (2) they will not be permitted to keep any confidential information  
6 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit  
7 A), unless otherwise agreed by the Designating Party or ordered by the court.

8 Pages of transcribed deposition testimony or exhibits to depositions that reveal  
9 Protected Material may be separately bound by the court reporter and may not  
10 be disclosed to anyone except as permitted under this Stipulated Protective  
11 Order; and

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

15 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
16 PRODUCED IN OTHER LITIGATION

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

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

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

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

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

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

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

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

25 (2) promptly provide the Non-Party with a copy of the Stipulated  
26 Protective Order in this Action, the relevant discovery request(s), and a  
27 reasonably specific description of the information requested; and  
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1 (3) make the information requested available for inspection by the  
2 Non-Party, if requested.

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

12 12. UNAUTHORIZED DISCLOSURE OF PROTECTED  
13 MATERIAL

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

24 13. INADVERTENT PRODUCTION OF PRIVILEGED OR  
25 OTHERWISE PROTECTED MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain  
27 inadvertently produced material is subject to a claim of privilege or other  
28 protection, the obligations of the Receiving Parties are those set forth in

1 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
2 modify whatever procedure may be established in an e-discovery order that  
3 provides for production without prior privilege review. Pursuant to Federal  
4 Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on  
5 the effect of disclosure of a communication or information covered by the  
6 attorney-client privilege or work product protection, the parties may  
7 incorporate their agreement in the stipulated protective order submitted to the  
8 court.

9 14. MISCELLANEOUS

10 14.1 Right to Further Relief. Nothing in this Order abridges the right of  
11 any person to seek its modification by the Court in the future.

12 14.2 Right to Assert Other Objections. By stipulating to the entry of this  
13 Protective Order, no Party waives any right it otherwise would have to object  
14 to disclosing or producing any information or item on any ground not  
15 addressed in this Stipulated Protective Order. Similarly, no Party waives any  
16 right to object on any ground to use in evidence of any of the material covered  
17 by this Protective Order.

18 14.3 Filing Protected Material. A Party that seeks to file under seal any  
19 Protected Material must comply with Local Civil Rule 79-5. Protected  
20 Material may only be filed under seal pursuant to a court order authorizing the  
21 sealing of the specific Protected Material. If a Party's request to file Protected  
22 Material under seal is denied by the court, then the Receiving Party may file  
23 the information in the public record unless otherwise instructed by the court.

24 15. FINAL DISPOSITION

25 After the final disposition of this Action, as defined in paragraph 6,  
26 within 60 days of a written request by the Designating Party, each Receiving  
27 Party must return all Protected Material to the Producing Party or destroy such  
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1 material. As used in this subdivision, “all Protected Material” includes all  
2 copies, abstracts, compilations, summaries, and any other format reproducing  
3 or capturing any of the Protected Material. Whether the Protected Material is  
4 returned or destroyed, the Receiving Party must submit a written certification  
5 to the Producing Party (and, if not the same person or entity, to the  
6 Designating Party) by the 60-day deadline that (1) identifies (by category,  
7 where appropriate) all the Protected Material that was returned or destroyed  
8 and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
9 compilations, summaries or any other format reproducing or capturing any of  
10 the Protected Material. Notwithstanding this provision, Counsel are entitled to  
11 retain an archival copy of all pleadings, motion papers, trial, deposition, and  
12 hearing transcripts, legal memoranda, correspondence, deposition and trial  
13 exhibits, expert reports, attorney work product, and consultant and expert  
14 work product, even if such materials contain Protected Material. Any such  
15 archival copies that contain or constitute Protected Material remain subject to  
16 this Protective Order as set forth in Section 6 (DURATION).

17  
18 16. VIOLATION

19 Any violation of this Order may be punished by appropriate measures  
20 including, without limitation, contempt proceedings and/or monetary  
21 sanctions.

22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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24 DATED: \_\_\_\_\_  
25 \_\_\_\_\_  
26 Attorneys for Plaintiff

27 DATED: \_\_\_\_\_  
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Attorneys for Defendant

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
JOHN D. EARLY  
United States Magistrate Judge