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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

) Case No. _____

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)
) Plaintiff,

) **STIPULATION AND PROTECTIVE**
) **ORDER REGARDING CONFIDENTIAL**
) **INFORMATION**
) (Single Level of Confidentiality)

vs.

)
)
) Defendants.
)
_____)

In order to protect confidential information obtained by the parties in connection with this case, the parties, by and through their respective undersigned counsel and subject to the approval of the Court, hereby agree as follows:

Part One: Use Of Confidential Materials In Discovery

1. Any party or non-party may designate as “Confidential Information” (by stamping the relevant page or as otherwise set forth herein) any document or response to discovery which that party or non-party considers in good faith to contain information involving trade secrets, or confidential business or financial information, including personal financial information about any party to this lawsuit, putative class members or employee of any party to this lawsuit, information regarding any individual’s banking relationship with any banking institution, including

1 information regarding the individual's financial transactions or financial accounts, and any
2 information regarding any party not otherwise available to the public, subject to protection under
3 Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of Court or under other
4 provisions of California law. Where a document or response consists of more than one page, the
5 first page and each page on which confidential information appears shall be so designated.

6 2. A party or non-party may designate information disclosed during a deposition or
7 in response to written discovery as "Confidential" by so indicating in said responses or on the
8 record at the deposition and requesting the preparation of a separate transcript of such material.
9 In addition, a party or non-party may designate in writing, within thirty (30) days after receipt of
10 said responses or of the deposition transcript for which the designation is proposed, that specific
11 pages of the transcript and/or specific responses be treated as "Confidential Information." Any
12 other party may object to such proposal, in writing or on the record. Upon such objection, the
13 parties shall follow the procedures described in Paragraph 8 below. After any designation made
14 according to the procedure set forth in this paragraph, the designated documents or information
15 shall be treated according to the designation until the matter is resolved according to the
16 procedures described in Paragraph 8 below, and counsel for all parties shall be responsible for
17 marking all previously unmarked copies of the designated material in their possession or control
18 with the specified designation. A party that makes original documents or materials available for
19 inspection need not designate them as Confidential Information until after the inspecting party
20 has indicated which materials it would like copied and produced. During the inspection and
21 before the designation and copying, all of the material made available for inspection shall be
22 considered Confidential Information.

23 3. All Confidential Information produced or exchanged in the course of this case (not
24 including information that is publicly available) shall be used by the party or parties to whom the
25 information is produced solely for the purpose of this case. Confidential Information shall not be
26 used for any commercial competitive, personal, or other purpose.

27 4. Except with the prior written consent of the other parties, or upon prior order of
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1 this Court obtained upon notice to opposing counsel, Confidential Information shall not be
2 disclosed to any person other than:

- 3 (a) counsel for the respective parties to this litigation, including in-house
4 counsel and co-counsel retained for this litigation;
- 5 (b) employees of such counsel;
- 6 (c) individual parties or officers or employees of a party, to the extent deemed
7 necessary by counsel for the prosecution or defense of this litigation;
- 8 (d) consultants or expert witnesses retained for the prosecution or defense of
9 this litigation, provided that each such person shall execute a copy of the
10 Certification annexed to this Order (which shall be retained by counsel to
11 the party so disclosing the Confidential Information and made available for
12 inspection by opposing counsel during the pendency or after the
13 termination of the action only upon good cause shown and upon order of
14 the Court) before being shown or given any Confidential Information, and
15 provided that if the party chooses a consultant or expert employed by the
16 defendant or one of its competitors, the party shall notify the opposing
17 party, or designating non-party, before disclosing any Confidential
18 Information to that individual and shall give the opposing party an
19 opportunity to move for a protective order preventing or limiting such
20 disclosure;
- 21 (e) any authors or recipients of the Confidential Information;
- 22 (f) the Court, court personnel, and court reporters; and
- 23 (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall
24 sign the Certification before being shown a confidential document.
25 Confidential Information may be disclosed to a witness who will not sign
26 the Certification only in a deposition at which the party who designated the
27 Confidential Information is represented or has been given notice that
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Confidential Information produced by the party may be used. At the request of any party, the portion of the deposition transcript involving the Confidential Information shall be designated “Confidential” pursuant to Paragraph 2 above. Witnesses shown Confidential Information shall not be allowed to retain copies.

5. Any persons receiving Confidential Information shall not reveal or discuss such information to or with any person who is not entitled to receive such information, except as set forth herein. If a party or any of its representatives, including counsel, inadvertently discloses any Confidential Information to persons who are not authorized to use or possess such material, the party shall provide immediate written notice of the disclosure to the party whose material was inadvertently disclosed. If a party has actual knowledge that Confidential Information is being used or possessed by a person not authorized to use or possess that material, regardless of how the material was disclosed or obtained by such person, the party shall provide immediate written notice of the unauthorized use or possession to the party whose material is being used or possessed. No party shall have an affirmative obligation to inform itself regarding such possible use or possession.

6. In connection with discovery proceedings as to which a party submits Confidential Information, all documents and chamber copies containing Confidential Information which are submitted to the Court shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the outside of the envelopes, a copy of the first page of the document shall be attached. If Confidential Information is included in the first page attached to the outside of the envelopes, it may be deleted from the outside copy. The word “CONFIDENTIAL” shall be stamped on the envelope and a statement substantially in the following form shall also be printed on the envelope:

“This envelope is sealed pursuant to Order of the Court, contains Confidential Information and is not to be opened or the contents revealed, except by Order of the Court or agreement by the parties.”

1 If another court or administrative agency subpoenas or orders production of Confidential
2 Information, such party shall promptly notify counsel for the party who produced the material of
3 the pendency of such subpoena or order and shall furnish counsel with a copy of said subpoena or
4 order.

5 7. A party may designate as “Confidential Information” documents or discovery
6 materials produced by a non-party by providing written notice to all parties of the relevant
7 document numbers or other identification within thirty (30) days after receiving such documents
8 or discovery materials. Any party or non-party may voluntarily disclose to others without
9 restriction any information designated by that party or non-party as Confidential Information,
10 although a document may lose its confidential status if it is made public. If a party produces
11 materials designated Confidential Information in compliance with this Order, that production
12 shall be deemed to have been made consistent with any confidentiality or privacy requirements
13 mandated by local, state or federal laws.

14 8. If a party contends that any material is not entitled to confidential treatment, such
15 party may at any time give written notice to the party or non-party who designated the material.
16 The party or non-party who designated the material shall have twenty (20) days from the receipt
17 of such written notice to apply to the Court for an order designating the material as confidential.
18 The party or non-party seeking the order has the burden of establishing that the document is
19 entitled to protection.

20 9. Notwithstanding any challenge to the designation of material as Confidential
21 Information, all documents shall be treated as such and shall be subject to the provisions hereof
22 unless and until one of the following occurs:

- 23 (a) the party or non-party who claims that the material is Confidential
24 Information withdraws such designation in writing; or
- 25 (b) the party or non-party who claims that the material is Confidential
26 Information fails to apply to the Court for an order designating the material
27 confidential within the time period specified above after receipt of a
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written challenge to such designation; or

(c) the Court rules the material is not Confidential Information.

10. All provisions of this Order restricting the communication or use of Confidential Information shall continue to be binding after the conclusion of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the possession of Confidential Information, other than that which is contained in pleadings, correspondence, and deposition transcripts, shall either (a) return such documents no later than thirty (30) days after conclusion of this action to counsel for the party or non-party who provided such information, or (b) destroy such documents within the time period upon consent of the party who provided the information and certify in writing within thirty (30) days that the documents have been destroyed.

11. Nothing herein shall be deemed to waive any applicable privilege or work product protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material protected by privilege or work product protection. Any witness or other person, firm or entity from which discovery is sought may be informed of and may obtain the protection of this Order by written advice to the parties' respective counsel or by oral advice at the time of any deposition or similar proceeding.

Part Two: Use of Confidential Materials in Court

The following provisions govern the treatment of Confidential Information used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those Rules.

12. A party that files with the Court, or seeks to use at trial, materials designated as Confidential Information, and who seeks to have the record containing such information sealed, shall submit to the Court a motion or an application to seal, pursuant to California Rule of Court 2.551.

13. A party that files with the Court, or seeks to use at trial, materials designated as Confidential Information by anyone other than itself, and who does not seek to have the record

1 containing such information sealed, shall comply with either of the following requirements:

2 (a) At least ten (10) business days prior to the filing or use of the Confidential
3 Information, the submitting party shall give notice to all other parties, and
4 to any non-party that designated the materials as Confidential Information
5 pursuant to this Order, of the submitting party's intention to file or use the
6 Confidential Information, including specific identification of the
7 Confidential Information. Any affected party or non-party may then file a
8 motion to seal, pursuant to California Rule of Court 2.551(b); or

9 (b) At the time of filing or desiring to use the Confidential Information, the
10 submitting party shall submit the materials pursuant to the lodging-under-
11 seal provision of California Rule of Court 2.551(d). Any affected party or
12 non-party may then file a motion to seal, pursuant to the California Rule of
13 Court 2.551(b), within ten (10) business days after such lodging.

14 Documents lodged pursuant to California Rule of Court 2.551(d) shall bear
15 a legend stating that such materials shall be unsealed upon expiration of ten
16 (10) business days, absent the filing of a motion to seal pursuant to Rule
17 2.551(b) or Court order.

18 14. In connection with a request to have materials sealed pursuant to Paragraph 12 or
19 Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1)
20 shall contain sufficient particularity with respect to the particular Confidential Information and
21 the basis for sealing to enable the Court to make the findings required by California Rule of Court
22 2.550(d).

23 IT IS SO STIPULATED.

24
25 Dated: _____.

By: _____.

26
27 Dated: _____.

By: _____.

ORDER

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IT IS SO ORDERED.

Dated: _____.

JUDGE OF THE SUPERIOR COURT

1 **CERTIFICATION**

2 I hereby certify my understanding that Confidential Information is being provided to me
3 pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding
4 Confidential Information filed on _____, 200__, in San Mateo County Superior
5 Court Case No. _____ (“Order”). I have been given a copy of that Order and read it.

6 I agree to be bound by the Order. I will not reveal the Confidential Information to
7 anyone, except as allowed by the Order. I will maintain all such Confidential Information,
8 including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent
9 unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will
10 return the Confidential Information, including copies, notes, or other transcriptions made
11 therefrom, to the counsel who provided me with the Confidential Information. I hereby consent
12 to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the
13 Order.

14 I declare under penalty of perjury that the foregoing is true and correct and that this
15 certificate is executed this ___ day of _____, 200__, at _____.

16
17 By: _____

18 Address: _____

19 _____

20 Phone: _____