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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**
) (Double 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

1 institution, including information regarding the individual’s financial transactions or financial
2 accounts, and any information regarding any party not otherwise available to the public, subject
3 to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of
4 Court or under other provisions of California law. Any party or non-party may designate as “
5 Highly Confidential Information” (by stamping the relevant page or as otherwise set forth
6 herein) any document or response to discovery which that party or non-party considers in good
7 faith to contain information involving highly sensitive trade secrets or confidential business or
8 financial information, the disclosure of which would result in the disclosure of trade secrets or
9 other highly sensitive research, development, production, personnel, commercial, market,
10 financial, or business information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585,
11 8.160, and 8.490 of the California Rules of Court or under other provisions of California law.
12 Where a document or response consists of more than one page, the first page and each page on
13 which confidential information appears shall be so designated.

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

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

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

- 13 (a) counsel for the respective parties to this litigation, including in-house
14 counsel and co-counsel retained for this litigation;
- 15 (b) employees of such counsel;
- 16 (c) individual parties or officers or employees of a party, to the extent deemed
17 necessary by counsel for the prosecution or defense of this litigation;
- 18 (d) consultants or expert witnesses retained for the prosecution or defense of
19 this litigation, provided that each such person shall execute a copy of the
20 Certification annexed to this Order (which shall be retained by counsel to
21 the party so disclosing the Confidential Information and made available
22 for inspection by opposing counsel during the pendency or after the
23 termination of the action only upon good cause shown and upon order of
24 the Court) before being shown or given any Confidential Information, and
25 provided that if the party chooses a consultant or expert employed by the
26 defendant or one of its competitors, the party shall notify the opposing
27 party, or designating non-party, before disclosing any Confidential
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Information to that individual and shall give the opposing party an opportunity to move for a protective order preventing or limiting such disclosure;

- (e) any authors or recipients of the Confidential Information;
- (f) the Court, court personnel, and court reporters; and
- (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall sign the Certification before being shown a confidential document.

Confidential Information may be disclosed to a witness who will not sign the Certification only in a deposition at which the party who designated the Confidential Information is represented or has been given notice that 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. Except with the prior written consent of the other parties, or upon prior order of this Court obtained after notice to opposing counsel, Highly Confidential Information shall be treated in the same manner as “Confidential Information” pursuant to Paragraph 4 above, except that it shall not be disclosed to individual parties or directors, officers or employees of a party.

6. Any persons receiving Confidential or Highly 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 or Highly 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 or Highly Confidential Information is being used or possessed by a person not authorized to use or possess that material, regardless of how the material was

1 disclosed or obtained by such person, the party shall provide immediate written notice of the
2 unauthorized use or possession to the party whose material is being used or possessed. No party
3 shall have an affirmative obligation to inform itself regarding such possible use or possession.

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

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

16 If another court or administrative agency subpoenas or orders production of Confidential or
17 Highly Confidential Information, such party shall promptly notify counsel for the party who
18 produced the material of the pendency of such subpoena or order and shall furnish counsel with a
19 copy of said subpoena or order.

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

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

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

- 12 (a) the party or non-party who claims that the material is Confidential or
13 Highly Confidential Information withdraws such designation in writing; or
- 14 (b) the party or non-party who claims that the material is Confidential or
15 Highly Confidential Information fails to apply to the Court for an order
16 designating the material confidential within the time period specified
17 above after receipt of a written challenge to such designation; or
- 18 (c) the Court rules the material is not Confidential or Highly Confidential
19 Information.

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

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

8 **Part Two: Use of Confidential Materials in Court**

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

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

17 14. A party that files with the Court, or seeks to use at trial, materials designated as
18 Confidential or Highly Confidential Information by anyone other than itself, and who does not
19 seek to have the record containing such information sealed, shall comply with either of the
20 following requirements:

- 21 (a) At least ten (10) business days prior to the filing or use of the Confidential
22 or Highly Confidential Information, the submitting party shall give notice
23 to all other parties, and to any non-party that designated the materials as
24 Confidential or Highly Confidential Information pursuant to this Order, of
25 the submitting party's intention to file or use the Confidential or Highly
26 Confidential Information, including specific identification of the
27 Confidential or Highly Confidential Information. Any affected party or
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non-party may then file a motion to seal, pursuant to California Rule of Court 2.551(b); or

(b) At the time of filing or desiring to use the Confidential or Highly Confidential Information, the submitting party shall submit the materials pursuant to the lodging-under-seal provision of California Rule of Court 2.551(d). Any affected party or non-party may then file a motion to seal, pursuant to the California Rule of Court 2.551(b), within ten (10) business days after such lodging. Documents lodged pursuant to California Rule of Court 2.551(d) shall bear a legend stating that such materials shall be unsealed upon expiration of ten (10) business days, absent the filing of a motion to seal pursuant to Rule 2.551(b) or Court order.

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

IT IS SO STIPULATED.

Dated: _____ By: _____

Dated: _____ By: _____

ORDER

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

1 **CERTIFICATION**

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

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

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

17
18 By: _____

19 Address: _____

20 _____

21 Phone: _____