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DISCOVERY REFEREE

# SUPERIOR COURT OF THE STATE OF CALIFORNIA

### COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  Plaintiffs,  vs.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  Defendants. | Case No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **PROPOSED PROTECTIVE ORDER**  Hon. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Dept: \_\_  Complaint Filed:\_\_\_\_\_\_\_\_\_\_\_\_  Trial Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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The Discovery Referee hereby recommends the below protective order pursuant to Civil Procedure Code §§ 2025.420, 2030.090, 2031.060, 2033.080 and 2034.250 as follows:

SO, RECOMMENDED:

**THREE TYPES OF CONFIDENTIAL TREATMENT**

A. Any party may, through counsel, designate documents[[1]](#footnote-1) or information as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS ONLY" or “CONFIDENTIAL--TO BE HELD BY THE DISCOVERY REFEREE” to protect the confidentiality of matters that may constitute trade secrets, or proprietary information, or may be protected by personal privacy rights or other such rights, and any information regarding any party not otherwise available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of Court or under other provisions of California law. The items parties may designate for this treatment include but are not necessarily limited to the following: documents; discovery requests and responses; transcripts of depositions; hearings and any other pre-trial motions; and any information contained in any of the foregoing (hereafter "Item" or Items").

B. Items designated "CONFIDENTIAL" shall be used solely for purposes of this litigation, and shall be disclosed only to the parties, their attorneys, their attorney's regular office staff, their expert witnesses (whether prospective or actual), the Court, any Court-appointed arbitrator or mediator, the discovery referee and to any court reporter taking a deposition at which the information is used or disclosed. For any party that is a corporation, the only persons to whom such items shall be disclosed are the corporation's officers, directors, and in house counsel, if any.

C. Items designated "CONFIDENTIAL - TO BE HELD BY THE DISCOVERY REFEREE" shall be enveloped and remained sealed until there is a court order or a stipulation by the parties, ratified by the referee and ordered by the court directing that the document(s) to be produced. No party, counsel or the court appointed referee may review the documents prior to the issue of a court order. Within five (5) court days of the document(s) being unsealed, any party may designate the document(s) as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS ONLY.”

D. Items designated "CONFIDENTIAL - ATTORNEYS ONLY" shall be used solely for purposes of this litigation, and shall be disclosed only to the parties' attorneys, including in house counsel, and those attorneys' regular office staff, the Court, any Court-appointed arbitrator or mediator, and any court reporter taking a deposition at which the information is being disclosed.

E. All persons who view these documents must sign “Attachment A” prior to any inspection of the documents. “Attachment A” must then be forwarded to opposing counsel and the discovery referee within five (5) court days. If a non-disclosed expert or consultant is viewing the document(s) then their name to be redacted from the copy served on opposing counsel.

**AGREEMENTS FOR BROADER DISCLOSURE**

F. The parties may agree to broader disclosure of items designated "CONFIDENTIAL" or 'CONFIDENTIAL - ATTORNEYS ONLY," but only through a writing signed by all attorneys who made or joined in the designation. Those agreements may require as a condition that any additional persons to whom confidential information is disclosed must first sign a document confirming that they have read, understand and will abide by the terms of this stipulation.

**HOW TO DESIGNATE ITEMS FOR CONFIDENTIAL TREATMENT**

G. If a party producing a document intends to designate it or any part of it for confidential treatment under this order, that party shall stamp or otherwise include a legend on the first page of the document to indicate that it is either "CONFIDENTIAL" or 'CONFIDENTIAL - ATTORNEYS ONLY." and stating: "this document is provided pursuant to a protective order. Unauthorized use of this document or the information it contains is punishable by contempt." Where a document or response consists of more than one page, the first page and each page on which confidential information appears shall be so designated. For documents produced prior to the entry of this Protective Order, marking the document “CONFIDENTIAL” is sufficient without further stating “this document is provided pursuant to a protective order. Unauthorized use of this document or the information it contains is punishable by contempt.”

H. If a party producing a document intends to designate it or any part of it for confidential treatment under this order, that party shall stamp or otherwise include a legend on the first page of the document to indicate that it is "CONFIDENTIAL - TO BE HELD BY THE DISCOVERY REFEREE" and stating: "this document is provided pursuant to a protective order. Unauthorized use of this document or the information it contains is punishable by contempt." The party may but need not include the same statements on the subsequent pages of the document. The document is to be produced to the Discovery Referee within five (5) court days of the designation and notify all parties of such designation and delivery.

I. If a party other than the party producing a document intends to designate the document or any part of it for confidential treatment under this stipulation, that party shall inform the other parties of the designation promptly and in writing. Each party receiving the document shall then add the appropriate legends set forth in the previous paragraph.

J. To designate a deposition or any part of it for confidential treatment, a party shall make the designation on the record during the deposition or by a letter promptly sent to opposing counsel after the deposition. Any other designations shall be made in writing and delivered promptly to opposing counsel, or on the record at any proceeding.

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**RESOLVING DISPUTE ABOUT CONFIDENTIALITY**

K. Any party may contest a designation by notifying the designated party in writing and identifying with reasonable specificity the confidential writings contested. The parties shall have thirty days after such notice to meet and confer and attempt to resolve the issue. If the dispute is not resolved within such period, the designated party must make a motion for a protective order with respect to the contested writings, which shall be treated as CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS ONLY" or “CONFIDENTIAL--TO BE HELD BY THE DISCOVERY REFEREE” in accordance with the provisions of this Order until the Court issues a ruling.

**FILING DOCUMENTS CONTAINING CONFIDENTIAL INFORMATION**

L A party filing a document that contains or discloses any documents or information previously designated as "CONFIDENTIAL”, "CONFIDENTIAL - ATTORNEYS ONLY" or "CONFIDENTIAL - TO BE HELD BY THE DISCOVERY REFEREE" must comply with CRC 2.550, et seq.

**OTHER ACTIONS**

M. No items disclosed in this action and designated "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS ONLY" shall be used in any other actions. Relief from this order may be sought via a motion upon the showing of good cause.

**GOVERNMENTAL BODIES**

N. In order to provide a document marked as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS ONLY" or any information contained therein to a governmental body, a party must promptly advise opposing counsel in writing. Opposing counsel then must object in writing and seek a protective order within 10 court days or within the time period of the governmental body's order, whichever is less. This paragraph is not applicable to law enforcement or child protective services.

**APPLICATION AND DURATION**

O. This order, and the limits it imposes on the disclosure and use of information, shall apply to any parties subsequently added to the litigation, and shall continue to apply even after the litigation is concluded unless the court orders otherwise or the parties all expressly agree in writing. This order is imposed on the parties, their attorneys, their attorney's regular office staff, their expert witnesses (whether prospective or actual) and their consultants. Any unauthorized use or any documents or information contained in the document that has been designated as confidential shall be punishable by contempt.

P. All documents that are subpoenaed and/or produced that are designated "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS ONLY" or "CONFIDENTIAL - TO BE HELD BY THE DISCOVERY REFEREE" and all documents that reflect information contained therein are to be returned or destroyed once the judgment is final and all appeals in this matter have been exhausted. The party providing any documents to an expert witness (whether prospective or actual) and/or consultant is responsible for obtaining return of all documents designated “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS ONLY” and expert witnesses (whether prospective or actual) and/or consultants are not permitted to retain any copies of any CONFIDENTIAL’ or ‘CONFIDENTIAL ATTORNEYS ONLY” documents.

**CLAWBACK PROVISION**

Q. The production of documents may involve the inadvertent production of information, documents and things, to the extent that such may exist, which one or more of the Parties may deem confidential, proprietary, or commercial information and/or information protected by the attorney-client privilege and attorney work product doctrine, the disclosure of which may have the effect of causing harm to the privacy, commercial, financial and/or legal interests of the individual or entity from which the information was obtained.

R. Upon written notice (or oral notice if notice must be delivered at a deposition) of an unintentional production by one Party (“the Producing Party”), any Party receiving the production (“the Receiving Party”) must promptly return or destroy the specified document and any hard copies the Receiving Party has and may not use or disclose the information until the privilege claim or other claim of protection has been resolved.

S. To the extent that the information contained in a document subject to a claim has already been used in or described in other documents generated or maintained by the Receiving Party, then the Receiving Party will sequester such documents until the claim has been resolved. If the Receiving Party disclosed the specified information before being notified of its inadvertent production, it must take reasonable steps to retrieve it. The Producing Party shall preserve the specified information until the claim is resolved.

T. The Receiving Party shall have ten (10) days from receipt of notification of the inadvertent production to determine in good faith whether to contest such claim and to notify the Producing Party in writing of an objection to the claim of privilege and the grounds for that objection.

U. The Producing Party will then have ten (10) days from the receipt of the objection notice to submit the specified information to the Court under seal for a determination of the claim and will provide the Court with the grounds for the asserted privilege or protection. Any Party may request expedited treatment of any request for the Court's determination of the claim.

V. Upon a determination by the Court that the specified information is protected by the applicable privilege or protection, and if the specified information has been sequestered rather than returned or destroyed, the specified information shall be returned or destroyed.

W. Upon a determination by the Court that the specified information is not protected by the applicable privilege or protection, the Producing Party shall render accessible

any documents that were disabled or rendered inaccessible, unless otherwise ordered by the Court.

**NO WAIVERS**

X. This order is intended to facilitate discovery while preserving claims of confidentiality, not to waive any claims or rights regarding confidentiality. Accordingly, none of the parties shall be deemed to have waived any claims of confidentiality merely because that party has agreed to this order, entered into a stipulated modification of this order, provided information pursuant to this order, or refrained from challenging another party's designation of information as confidential under this order.

SO, RECOMMENDED,

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Katherine Gallo

DISCOVERY REFEREE

**ORDER**

The court, having reviewed the above recommendation of the Discovery Referee, approves of the same. It is therefore ordered that the parties shall comply with the above recommendation.

Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Judge of the Superior Court

**ATTACHMENT A**

**Re: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ V. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SUPERIOR COURT CASE #\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This is to certify that the undersigned has read and is fully familiar with the provisions of the Protective Order signed by the court and filed on\_\_\_\_\_\_\_\_\_\_\_\_\_ in the above-referenced matter (hereafter referred to as "Protective Order").

As a condition precedent to my examination of any materials constituting Confidential Information subject to the Protective Order or my obtaining any information constituting Confidential Information, the undersigned hereby agrees that the Protective Order shall be deemed to be directed to and shall be binding on the undersigned, and the undersigned shall observe and comply with the provisions of the Protective Order.

I hereby consent to be subject to the personal jurisdiction of the Superior Court of California, County of \_\_\_\_\_\_\_\_\_\_\_\_ with respect to any proceedings relative to the enforcement of the Protective Order, including without limitation any proceeding related to contempt of court.

Executed this\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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[Signature]

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[Name]

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[Affiliation]

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[Address]

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[Home Address]

1. “Documents” means (i) any “Writing,” “Original,” and “Duplicate” as those terms are defined by California Evidence Code Sections 250, 255, and 260, which have been produced in discovery in this Proceeding by any person or entity, and (ii) any copies, reproductions, or summaries of all or any part of the foregoing. [↑](#footnote-ref-1)