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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANH HUYNH,

Plaintiff,

v.

LIBERTY MUTUAL FIRE INSURANCE
COMPANY; LIBERTY MUTUAL
INSURANCE COMPANY; and DOES 1
through 20, inclusive,

Defendants.

Case No.: 22cv461-LL (NLS)
**ORDER GRANTING JOINT
MOTION FOR ENTRY OF
PROTECTIVE ORDER
AS MODIFIED BY THE COURT**

[ECF No. 16]

The Court having read the parties’ Joint Stipulated Motion for Protective Order (ECF No. 16), finding no objection and good cause appearing,

IT IS HEREBY ORDERED that this motion is **GRANTED**. The following Protective Order is entered, as modified by the Court (see paragraphs VI.A, XII.A, XII.C).

PROTECTIVE ORDER

The Court recognizes that at least some of the documents and information ("materials") being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

1 The materials to be exchanged throughout the course of the litigation between the
2 parties may contain trade secret or other confidential research, technical, cost, price,
3 marketing or other commercial information, as is contemplated by Federal Rule of Civil
4 Procedure 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of such
5 materials as much as practical during the litigation.

6 **I. GOOD CAUSE STATEMENT**

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

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1 **II. DEFINITIONS**

2 A. Action: This pending federal law suit, entitled *Anh Huynh v. Liberty Mutual*
3 *Fire Insurance Company; Liberty Mutual Insurance Company; and Does 1*
4 *through 20, inclusive*, United States District Court for the Central District of
5 California, Case No. 22-cv-0461-LL-NLS.

6 B. Challenging Party: A Party or Non-Party that challenges the designation of
7 information or items under this Order.

8 C. “CONFIDENTIAL” Information or Items: Information (regardless of how it
9 is generated, stored or maintained) or tangible things that qualify for protection
10 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
11 Cause Statement.

12 D. Counsel: Outside Counsel of Record and House Counsel (as well as their
13 support staff).

14 E. Designating Party: A Party or Non-Party that designates information or
15 items that it produces in disclosures or in responses to discovery as
16 “CONFIDENTIAL.”

17 F. Disclosure or Discovery Material: All items or information, regardless of
18 the medium or manner in which it is generated, stored, or maintained (including,
19 among other things, testimony, transcripts, and tangible things), that are produced
20 or generated in disclosures or responses to discovery in this matter.

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

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

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

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

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

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

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

15 N. Protected Material: Any Disclosure or Discovery Material that is designated
16 as “CONFIDENTIAL.”

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

19 **III. SCOPE**

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

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

27 **IV. DURATION**

28 A. Even after final disposition of this litigation, the confidentiality obligations

1 imposed by this Order shall remain in effect until a Designating Party agrees
2 otherwise in writing or a court order otherwise directs. Final disposition shall be
3 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
4 with or without prejudice; and (2) final judgment herein after the completion and
5 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
6 including the time limits for filing any motions or applications for extension of
7 time pursuant to applicable law.

8 **V. DESIGNATING PROTECTED MATERIAL**

9 A. Exercise of Restraint and Care in Designating Material for Protection

10 1. Each Party or Non-Party that designates information or items for
11 protection under this Order must take care to limit any such designation to
12 specific material that qualifies under the appropriate standards. The
13 Designating Party must designate for protection only those parts of material,
14 documents, items, or oral or written communications that qualify so that
15 other portions of the material, documents, items, or communications for
16 which protection is not warranted are not swept unjustifiably within the
17 ambit of this Order.

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

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

27 B. Manner and Timing of Designations

28 1. Except as otherwise provided in this Order (*see, e.g.*, Section B(2)(b))

1 below), or as otherwise stipulated or ordered, Disclosure or Discovery
2 Material that qualifies for protection under this Order must be clearly so
3 designated before the material is disclosed or produced.

4 2. Designation in conformity with this Order requires the following:

5 a. For information in documentary form (e.g., paper or electronic
6 documents, but excluding transcripts of depositions or other pretrial or
7 trial proceedings), that the Producing Party affix at a minimum, the
8 legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”),
9 to each page that contains protected material. If only a portion or
10 portions of the material on a page qualifies for protection, the
11 Producing Party also must clearly identify the protected portion(s)
12 (e.g., by making appropriate markings in the margins).

13 b. A Party or Non-Party that makes original documents available
14 for inspection need not designate them for protection until after the
15 inspecting Party has indicated which documents it would like copied
16 and produced. During the inspection and before the designation, all of
17 the material made available for inspection shall be deemed
18 “CONFIDENTIAL.” After the inspecting Party has identified the
19 documents it wants copied and produced, the Producing Party must
20 determine which documents, or portions thereof, qualify for protection
21 under this Order. Then, before producing the specified documents,
22 the Producing Party must affix the “CONFIDENTIAL legend” to each
23 page that contains Protected Material. If only a portion or portions of
24 the material on a page qualifies for protection, the Producing Party
25 also must clearly identify the protected portion(s) (e.g., by making
26 appropriate markings in the margins).

27 c. For testimony given in depositions, that the Designating Party
28 identify the Disclosure or Discovery Material on the record, before the

1 close of the deposition all protected testimony.

2 d. For information produced in form other than document and for
3 any other tangible items, that the Producing Party affix in a prominent
4 place on the exterior of the container or containers in which the
5 information is stored the legend “CONFIDENTIAL.” If only a
6 portion or portions of the information warrants protection, the
7 Producing Party, to the extent practicable, shall identify the protected
8 portion(s).

9 C. Inadvertent Failure to Designate

10 1. If timely corrected, an inadvertent failure to designate qualified
11 information or items does not, standing alone, waive the Designating Party’s
12 right to secure protection under this Order for such material. Upon timely
13 correction of a designation, the Receiving Party must make reasonable
14 efforts to assure that the material is treated in accordance with the provisions
15 of this Order.

16 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 A. Timing of Challenges

18 1. Any party or Non-Party may challenge a designation of
19 confidentiality at any time that is consistent with the Court’s Scheduling
20 Order. **The party objecting to confidentiality must notify, in writing,**
21 **counsel for the designating party of the objected-to materials and the**
22 **grounds for the objection. Such objection on designation of any**
23 **Confidential Information shall be raised in writing within 30 days of the**
24 **challenging party’s receipt of the materials at issue. If the dispute is not**
25 **resolved consensually between the parties within 7 days of receipt of**
26 **such written notice, the parties shall file a joint motion for**
27 **determination of discovery dispute, as outlined in this Court’s**
28 **Chambers Rules, no later than 45 days after the challenging party’s**

1 **receipt of the designated material in issue.**

2 B. Meet and Confer

3 1. The Challenging Party shall initiate the dispute resolution process
4 under Civil Local Rule 26.1(a) et seq.

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

12 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

13 A. Basic Principles

14 1. A Receiving Party may use Protected Material that is disclosed or
15 produced by another Party or by a Non-Party in connection with this Action
16 only for prosecuting, defending, or attempting to settle this Action. Such
17 Protected Material may be disclosed only to the categories of persons and
18 under the conditions described in this Order. When the Action has been
19 terminated, a Receiving Party must comply with the provisions of Section
20 XIII below.

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

24 B. Disclosure of “CONFIDENTIAL” Information or Items

25 1. Unless otherwise ordered by the Court or permitted in writing by the
26 Designating Party, a Receiving Party may disclose any information or item
27 designated “CONFIDENTIAL” only to:
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- 1 a. The Receiving Party’s Outside Counsel of Record in this
2 Action, as well as employees of said Outside Counsel of Record to
3 whom it is reasonably necessary to disclose the information for this
4 Action;
- 5 b. The officers, directors, and employees (including House
6 Counsel) of the Receiving Party to whom disclosure is reasonably
7 necessary for this Action;
- 8 c. Experts (as defined in this Order) of the Receiving Party to
9 whom disclosure is reasonably necessary for this Action and who
10 have signed the “Acknowledgment and Agreement to Be Bound”
11 (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
15 Professional Vendors to whom disclosure is reasonably necessary for
16 this Action and who have signed the “Acknowledgment and
17 Agreement to be Bound” attached as Exhibit A hereto;
- 18 g. The author or recipient of a document containing the
19 information or a custodian or other person who otherwise possessed or
20 knew the information;
- 21 h. During their depositions, witnesses, and attorneys for witnesses,
22 in the Action to whom disclosure is reasonably necessary provided: (i)
23 the deposing party requests that the witness sign the
24 “Acknowledgment and Agreement to Be Bound;” and (ii) they will
25 not be permitted to keep any confidential information unless they sign
26 the “Acknowledgment and Agreement to Be Bound,” unless
27 otherwise agreed by the Designating Party or ordered by the Court.
28 Pages of transcribed deposition testimony or exhibits to depositions

1 that reveal Protected Material may be separately bound by the court
2 reporter and may not be disclosed to anyone except as permitted under
3 this Stipulated Protective Order; and

4 i. Any mediator or settlement officer, and their supporting
5 personnel, mutually agreed upon by any of the parties engaged in
6 settlement discussions.

7 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
8 **OTHER LITIGATION**

9 A. If a Party is served with a subpoena or a court order issued in other litigation
10 that compels disclosure of any information or items designated in this Action as
11 “CONFIDENTIAL,” that Party must:

12 1. Promptly notify in writing the Designating Party. Such notification
13 shall include a copy of the subpoena or court order;

14 2. Promptly notify in writing the party who caused the subpoena or order
15 to issue in the other litigation that some or all of the material covered by the
16 subpoena or order is subject to this Protective Order. Such notification shall
17 include a copy of this Stipulated Protective Order; and

18 3. Cooperate with respect to all reasonable procedures sought to be
19 pursued by the Designating Party whose Protected Material may be affected.

20 B. If the Designating Party timely seeks a protective order, the Party served
21 with the subpoena or court order shall not produce any information designated in
22 this action as “CONFIDENTIAL” before a determination by the Court from which
23 the subpoena or order issued, unless the Party has obtained the Designating Party’s
24 permission. The Designating Party shall bear the burden and expense of seeking
25 protection in that court of its confidential material and nothing in these provisions
26 should be construed as authorizing or encouraging a Receiving Party in this Action
27 to disobey a lawful directive from another court.
28

1 **IX. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION**

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

8 B. In the event that a Party is required, by a valid discovery request, to produce
9 a Non-Party’s confidential information in its possession, and the Party is subject to
10 an agreement with the Non-Party not to produce the Non-Party’s confidential
11 information, then the Party shall:

- 12 1. Promptly notify in writing the Requesting Party and the Non-Party
13 that some or all of the information requested is subject to a confidentiality
14 agreement with a Non-Party;
- 15 2. Promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a
17 reasonably specific description of the information requested; and
- 18 3. Make the information requested available for inspection by the Non-
19 Party, if requested.

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

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1 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

11 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
12 **PROTECTED MATERIAL**

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

23 **XII. MISCELLANEOUS**

24 A. Right to Further Relief

25 1. Nothing in this Order abridges the right of any person to seek its
26 modification by the Court in the future. **The Court may modify the**
27 **protective order in the interests of justice or for public policy reasons.**

28 B. Right to Assert Other Objections

1 1. By stipulating to the entry of this Protective Order, no Party waives
2 any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated
4 Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective
6 Order.

7 C. Filing Protected Material

8 1. **Nothing shall be filed under seal, and the Court shall not be**
9 **required to take any action, without separate prior order by the Judge**
10 **before whom the hearing or proceeding will take place, after application**
11 **by the affected party with appropriate notice to opposing counsel. The**
12 **parties shall follow and abide by applicable law, including Civ. L.R.**
13 **79.2, ECF Administrative Policies and Procedures, Section II.j, and the**
14 **chambers' rules, with respect to filing documents under seal.** Protected
15 Material may only be filed under seal pursuant to a court order authorizing
16 the sealing of the specific Protected Material at issue. If a Party's request to
17 file Protected Material under seal is denied by the Court, then the Receiving
18 Party may file the information in the public record unless otherwise
19 instructed by the Court.

20 **XIII. FINAL DISPOSITION**

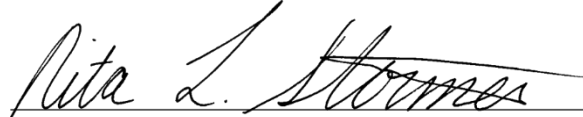
21 A. After the final disposition of this Action, as defined in Section V, within
22 sixty (60) days of a written request by the Designating Party, each Receiving Party
23 must return all Protected Material to the Producing Party or destroy such material.
24 As used in this subdivision, "all Protected Material" includes all copies, abstracts,
25 compilations, summaries, and any other format reproducing or capturing any of the
26 Protected Material. Whether the Protected Material is returned or destroyed, the
27 Receiving Party must submit a written certification to the Producing Party (and, if
28 not the same person or entity, to the Designating Party) by the 60 day deadline that

1 (1) identifies (by category, where appropriate) all the Protected Material that was
2 returned or destroyed and (2) affirms that the Receiving Party has not retained any
3 copies, abstracts, compilations, summaries or any other format reproducing or
4 capturing any of the Protected Material. Notwithstanding this provision, Counsel
5 are entitled to retain an archival copy of all pleadings, motion papers, trial,
6 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
7 and trial exhibits, expert reports, attorney work product, and consultant and expert
8 work product, even if such materials contain Protected Material. Any such
9 archival copies that contain or constitute Protected Material remain subject to this
10 Protective Order as set forth in Section IV.

11 B. Any violation of this Order may be punished by any and all appropriate
12 measures including, without limitation, contempt proceedings and/or monetary
13 sanctions.

14 **IT IS SO ORDERED.**

15 Dated: December 16, 2022

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17 Hon. Nita L. Stormes
18 United States Magistrate Judge
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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of _____
5 _____ [print or type full address], declare under penalty of perjury that I have read in its
6 entirety and understand the Stipulated Protective Order that was issued by the United
7 States District Court for the Southern District of California on [DATE] in the case of *Anh*
8 *Huynh v. Liberty Mutual Fire Insurance Company, et al.*, Case No. 22-cv-0461-LL-NLS.
9 I agree to comply with and to be bound by all the terms of this Stipulated Protective
10 Order and I understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will not
12 disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the provisions of
14 this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Southern District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action.

19 I hereby appoint _____ [print or type full name] of _____
20 _____ [print or type full address and telephone number] as my California
21 agent for service of process in connection with this action or any proceedings related to
22 enforcement of this Stipulated Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed Name: _____

26 Signature: _____

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