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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 VPR Brands LP,

10 Plaintiff,

11 v.

12 Jupiter Research LLC,

13 Defendant.
14

No. CV-20-02185-PHX-DJH

ORDER

15 Pending before the Court is the parties' Motion for Protective Order (Doc. 21). For
16 good cause appearing, the Court finds that a protective order regarding discovery material
17 (defined below) and the use of confidential documents is necessary because certain
18 information and documentation subject to disclosure and sought through discovery are
19 personal, confidential, and proprietary in nature.¹

20 Accordingly,

21 **IT IS HEREBY ORDERED AS FOLLOWS:**

22 **I. DEFINITIONS**

23 **A. Designated Material**

24 The term "Designated Material" shall mean any Discovery Material (as defined in
25 Section I.C) designated by a Producing Party (as defined in Section I.F) as either

26 ¹ The Court made one change from the parties' proposed order. Under Section IX,
27 Unintentional Disclosure of Attorney-Client or Work Product Material, if the parties
28 disagree about whether a returned or destroyed document is subject to the protections of
the attorney-client privilege or work product immunity, they must first attempt to resolve
the dispute in accordance with the Court's discovery dispute protocol as outlined in the
Rule 16 Scheduling Order. (Doc. 19 at ¶ 10).

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” in
2 accordance with Paragraphs III.A to III.D below. All Designated Material and any
3 information or material copied or derived therefrom, and all copies, excerpts, and
4 summaries thereof, as well as testimony and oral conversations which reveal that
5 information, shall be treated as and hereinafter referred to as Designated Material.

6 **B. Confidential and Highly Confidential - Attorneys’ Eyes Only**

7 1. “CONFIDENTIAL” comprises or contains information that the
8 Producing Party claims in good faith to constitute or relate to sensitive business,
9 financial, or commercial information (including identifying information for
10 customers of the Producing Party) that is not publicly available and provides a
11 commercial advantage to its possessor and the disclosure of which to persons other
12 than those set forth in Section V.A. below would create a substantial risk of serious
13 harm that could not be avoided by less restrictive means.

14 2. “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”
15 comprises or contains information that the Producing Party claims in good faith is
16 information that is of a highly confidential nature and is competitively sensitive or
17 important to the Producing Party’s business, including, but not limited to, non-
18 public pricing and revenue information, and other sensitive financial data, the
19 disclosure of which to persons other than those set forth in Section V.B below could
20 create a risk of harm that could not be avoided by less restrictive means.

21 **C. Discovery Material**

22 The term “Discovery Material” shall mean any Document (as defined at Section
23 I.D), material, item, testimony, or thing filed with or presented to the Court or produced,
24 served, exchanged, or generated during the discovery process, including, for example,
25 exhibits; answers to interrogatories; responses to requests for admissions; responses to
26 requests for production and any documents produced in connection therewith; subpoenas;
27 declarations; affidavits; letters; emails; deposition testimony or transcripts; and all copies,
28 extracts, summaries, compilations, designations, and portions thereof.

1 **D. Documents**

2 The term “Document” shall mean all writings, recordings, or photographic materials
3 as described and defined in Rule 1001 of the Federal Rules of Evidence, including
4 electronically stored information and data, whether produced or created by a Party or
5 another person, and whether produced pursuant to Federal Rule of Civil Procedure 34,
6 pursuant to a subpoena, by agreement, or otherwise. This shall include, but not be restricted
7 to, all interrogatory answers, responses to requests for production or for admission(s),
8 deposition testimony, and deposition exhibits. This Protective Order is not intended to, and
9 shall not, expand, enlarge, or otherwise change any Party’s obligations concerning the
10 scope, limitations, and form of discovery as set forth in any Discovery Plan and Scheduling
11 Order put in place in the Lawsuit.

12 **E. Party**

13 The term “Party” shall refer to any plaintiff or defendant in the Lawsuit, namely,
14 VPR Brands, LP, Jupiter Research, LLC.

15 **F. Producing Party**

16 The term “Producing Party” shall mean any Party to the Lawsuit or any non-party,
17 including its counsel, retained experts, directors, officers, employees, or agents, who
18 produces any Discovery Material during discovery for the Lawsuit.

19 **G. Receiving Party**

20 The term “Receiving Party” shall mean any Party to the Lawsuit, including its
21 counsel, retained experts, directors, officers, employees, or agents, who receives any
22 Discovery Material.

23 **II. RESTRICTION ON DISCLOSURE AND USE OF DESIGNATED MATERIAL**

24 **A. Scope**

25 This Order shall encompass all Discovery Material produced during this Lawsuit
26 except that this Order shall not encompass information that (a) is lawfully in the possession
27 of or otherwise known to the Receiving Party or the public before the date of its
28 transmission to the Receiving Party, (b) lawfully comes into the possession of the

1 Receiving Party by means other than by production by Producing Party, or (c) lawfully
2 comes into the possession of or otherwise becomes known to the public after the date of its
3 transmission to the Receiving Party, provided that such information does not become
4 publicly known by any act or omission of the Receiving Party that would be in violation
5 of this Order.

6 **B. Purpose**

7 Designated Materials shall be used solely for purposes of and in connection with
8 this Lawsuit and the information contained therein shall not be used or disclosed for any
9 other purpose, including, without limitation, any business or commercial purpose.

10 **C. Confidentiality**

11 Designated Material and the information derived from such Designated Material
12 (excluding information which is derived lawfully from an independent source) shall not be
13 given, shown, made available, discussed, or otherwise communicated or disclosed in any
14 manner, either directly or indirectly, to any person not authorized to receive the information
15 under the terms of this Order.

16 **D. Maintenance of Designated Material**

17 Designated Material shall be maintained by the Receiving Party at a location and
18 under circumstances reasonably designed to ensure compliance with this Order. The
19 Receiving Party shall protect the confidentiality of Designated Material using procedures
20 that are no less stringent than the measures used to protect the Receiving Parties' own
21 Designated Material or similar confidential material.

22 **E. Restrictions on Designated Materials**

23 The restrictions on the use of Designated Material established by this Order are
24 applicable to the Receiving Party. A Producing Party is free to do whatever it desires with
25 its own Designated Material.

26 **F. Discovery from Non-Parties**

27 Information sought or obtained from a person not a Party to the Lawsuit ("non-
28 party") shall be treated as Designated Material if requested by the non-party. Any such

1 information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
2 ATTORNEYS’ EYES ONLY” pursuant to Paragraphs III.A to III.D by a non-party will
3 be accorded the same protection as the parties’ Designated Material, and will be subject to
4 the same procedures as those governing disclosure of the parties’ Designated Material
5 pursuant to this Order. Any Party may seek to challenge designations by a non-party under
6 the provisions of Paragraph IV.B after providing at least ten (10) business days written
7 notice to the non-party and agreeing that it will not object to the non-party appearing in
8 this Lawsuit for the limited purpose of seeking to preserve its requested designation.

9 **G. Unintentional Disclosure of Designated Material**

10 If Designated Material, or any portion thereof, is disclosed by the Receiving Party
11 to any person or Party not authorized to receive such Designated Material under this
12 Protective Order, then the Receiving Party shall use its best efforts to retrieve immediately
13 all copies of such Designated Material, and to bind such person to the terms of this Order.
14 In such event, the Receiving Party shall also (a) promptly inform such person of all the
15 provisions of this Order; (b) identify such person immediately to the Producing Party; and
16 (c) request that such person execute the Confidentiality Undertaking in Exhibit A.

17 **III. PROCEDURE FOR MARKING DESIGNATED MATERIAL**

18 Any Producing Party may mark Designated Material as either “CONFIDENTIAL”
19 or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” in accordance with this
20 Order. The burden of establishing that Designated Material is either “CONFIDENTIAL”
21 or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” as defined herein shall
22 be on the Producing Party. The designation of Designated Material as either
23 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”
24 shall be deemed effective unless and until the Court orders otherwise or the Producing
25 Party withdraws the designation. Designated material must be marked in the following
26 manner:

- 27 1. In the case of documents or any other tangible thing produced,
28 designation shall be made by placing the legend “CONFIDENTIAL” or

1 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" on each page of
2 the document or on the cover or in a prominent place on any other tangible thing
3 prior to production of the document or tangible thing along with a designation,
4 e.g., bates number prefix, of the identity of the Producing Party;

5 2. In the case of electronically stored information ("ESI") produced in
6 native format, designation shall be made by contemporaneously producing a
7 bates-numbered slip sheet bearing the legend "CONFIDENTIAL" or "HIGHLY
8 CONFIDENTIAL - ATTORNEYS' EYES ONLY," and including the
9 corresponding bates number in the file name of the native-format file (e.g.,
10 [FILENAME].xls). Any Party printing or otherwise creating a tangible copy of
11 the native file shall include the legend "CONFIDENTIAL" or "HIGHLY
12 CONFIDENTIAL - ATTORNEYS' EYES ONLY" on each page of the
13 document;

14 3. In producing original files and records for inspection, no marking
15 need be made by the Producing Party in advance of the inspection. For the
16 purposes of the inspection, all documents produced shall be considered as
17 marked "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY." Thereafter, upon selection of specified documents for copying by the Receiving
18 Party, the Producing Party shall mark as either "CONFIDENTIAL" or
19 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," as applicable,
20 the copies of such documents as may contain either CONFIDENTIAL or
21 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY, as defined in
22 Paragraphs I.B.1 and I.B.2 at the time the copies are produced to the Receiving
23 Party. There will be no waiver of confidentiality by the inspection of
24 CONFIDENTIAL or HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
25 ONLY information before it is copied and marked pursuant to this Order; and

26 4. In the case of testimony provided during a deposition or hearing,
27 transcripts or portions thereof shall be designated by the Producing Party either
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1 (i) on the record during the deposition or hearing, in which case the pages of the
2 transcript containing Designated Material shall be marked "CONFIDENTIAL"
3 or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," as applicable,
4 by the reporter, as a Party may direct; or (ii) by captioned, written notice to the
5 reporter and all counsel of record, given within thirty (30) business days after
6 the reporter sends written notice to the witness or the witness's counsel that the
7 transcript is available for review, in which case all counsel receiving such notice
8 shall be responsible for marking the copies of the designated transcript or portion
9 thereof in their possession or control as directed by the Producing Party or
10 witness. Pending expiration of the thirty-day period or the receipt of such written
11 notice from a Party (whichever comes first), all parties and, if applicable, any
12 third-party witnesses or attorneys, shall treat the deposition transcript and the
13 information contained therein as if it had been designated HIGHLY
14 CONFIDENTIAL - ATTORNEYS' EYES ONLY. If no such written notice is
15 provided within the thirty-day period, the designation(s) made during the
16 deposition shall stand. If such written notice is provided, the designation(s)
17 provided in such notice shall be effective upon receipt. No person other than a
18 court reporter or Court personnel shall attend the designated portions of such
19 depositions unless such person is an authorized recipient of Designated Material
20 under the terms of this Order.

21 5. In the event that a deposition or hearing is attended only by persons
22 authorized to receive Designated Material, counsel may, for purposes of
23 efficiency, state on the record that the entire transcript for that day is to be treated
24 as Designated Material until such time as there is a written request to specifically
25 identify the portions of the transcript that are CONFIDENTIAL or HIGHLY
26 CONFIDENTIAL - ATTORNEYS' EYES ONLY. In the event of such request,
27 the Party desiring to maintain the treatment of any portion of the transcript as
28 CONFIDENTIAL or HIGHLY CONFIDENTIAL - ATTORNEYS' EYES

1 ONLY shall specify, by page and line numbers, the designated portions within
2 thirty (30) days of the written request.

3 **IV. CONTESTING THE DESIGNATION**

4 A. No Party to this Lawsuit shall be obligated to challenge the propriety of any
5 designation by any Producing Party, and a failure to do so shall not constitute a waiver or
6 in any way preclude a subsequent challenge in the Lawsuit to the propriety of such
7 designation.

8 B. Any Party may contest a claim of confidentiality. Any Party objecting to the
9 designation of any Discovery Material as either CONFIDENTIAL or HIGHLY
10 CONFIDENTIAL - ATTORNEYS' EYES ONLY must give outside counsel of record for
11 the Producing Party (or, if the Producing Party is not represented by counsel in the Lawsuit,
12 the Producing Party itself) written notice of its reasons for the objection at least thirty (30)
13 days prior to the commencement of trial in this Lawsuit. The Producing Party will then
14 have ten (10) business days after receipt of such notice to change the designation or respond
15 in writing why the designation is appropriate. Failing resolution after service of the written
16 notice of its reasons for the objection, the Producing Party objecting may, on a duly noticed
17 motion, seek a protective order to maintain the designation. On such motion, the Producing
18 Party asserting confidentiality has the burden of showing that the designation is
19 appropriate. The information designated as either CONFIDENTIAL or HIGHLY
20 CONFIDENTIAL - ATTORNEYS' EYES ONLY shall remain as such (i) unless the
21 Producing Party does not respond in writing why the designation is appropriate within ten
22 (10) business days after receipt of the written notice of the objecting Party's reasons for
23 the objection; (ii) until the matter is resolved by Court order; or (iii) until agreement of the
24 Producing Party.

25 **V. DISCLOSURE OF DESIGNATED MATERIALS**

26 A. Unless otherwise directed by the Court or authorized in writing by the Producing
27 Party, Discovery Material designated as CONFIDENTIAL under this Order may be
28 disclosed by the Receiving Party only to the following persons:

1 1. counsel of record for the Receiving Party, including their regularly
2 employed support staff (law clerks, paralegals, secretaries, and clerical staff)
3 assisting with the Lawsuit;

4 2. the parties' respective attorneys (irrespective of whether they are
5 counsel of record in the Lawsuit), including their in-house counsel and regularly
6 employed support staff (law clerks, paralegals, secretaries, and clerical staff)
7 assisting with the Lawsuit;

8 3. the officers, directors, and employees of the Receiving Party to
9 whom disclosure is directly necessary for the Lawsuit;

10 4. Judges, Magistrate Judges, law clerks, and clerical personnel of
11 the Court before which the Lawsuit is pending including any appellate Court,
12 and the jury, if any;

13 5. court reporters and other persons involved in recording or
14 transcribing hearings, trial testimony, or deposition testimony in the Lawsuit;

15 6. consultants (not including trial and jury consultants), or experts
16 and their staff who are expressly retained or sought to be retained by an attorney
17 described in subparagraph 1 or 2 of this section to provide assistance in the
18 Lawsuit, provided that any such persons first execute the Confidentiality
19 Undertaking in Exhibit A. Disclosures under this sub-paragraph are to be made
20 only to the extent necessary to perform such assistance;

21 7. any person who authored and/or received the particular
22 CONFIDENTIAL information sought to be disclosed to that person, or any
23 witness testifying in a deposition or hearing when the examining attorney has a
24 good faith basis to believe the witness is the author and/or received the particular
25 CONFIDENTIAL information sought to be disclosed to that witness. Any
26 witness testifying in a deposition or hearing may be shown CONFIDENTIAL
27 information of a Producing Party provided that the witness is: (a) a current
28 employee, attorney, director, officer, or agent of the Producing Party, or a

1 corporate designee of the Producing Party under Rule 30(b)(6) of the Federal
2 Rules of Civil Procedure; or (b) a former employee, attorney, director, officer,
3 or agent of the Producing Party if, at the time of the witness' employment, the
4 CONFIDENTIAL information was in existence and the witness had access to
5 such CONFIDENTIAL information;

6 8. litigation support vendors retained by outside counsel for such
7 functions as photocopying, scanning, stenography, videography, imaging, or
8 preparation of graphics, demonstratives, and audio and/or video productions or
9 other exhibits for deposition, trial, or other court proceedings in the Lawsuit, but
10 only if they execute the Confidentiality Undertaking in Exhibit A, and only to
11 the extent necessary for the particular litigation support services being rendered
12 and in accordance with the vendor's ordinary operating procedure;

13 9. mock jurors, trial consultants, and jury consultants engaged by the
14 parties in preparation for trial, provided that (i) no Party will use any mock juror,
15 trial consultant, or jury consultant who is employed or affiliated with or who
16 knows any person employed by or affiliated with either Party to the Lawsuit; (ii)
17 mock jurors, trial consultants, and jury consultants will not be allowed to retain
18 any tangible materials that contain or disclose any Designated Material; and (iii)
19 any such persons first execute the Confidentiality Undertaking in Exhibit A; and

20 10. persons who have been retained by a Party to provide translation
21 or interpretation from one language to another, provided that such translators
22 execute the Confidentiality Undertaking in Exhibit A.

23 B. Unless otherwise directed by the Court or authorized in writing by the Producing
24 Party, Discovery Material designated as HIGHLY CONFIDENTIAL - ATTORNEYS'
25 EYES ONLY may be disclosed by the Receiving Party only to the following persons:

26 1. counsel of record for the Receiving Party, including their regularly
27 employed support staff (law clerks, paralegals, secretaries, and clerical
28 staff) assisting with the Lawsuit;

1 2. the parties' respective attorneys (irrespective of whether they are
2 counsel of record in the Lawsuit), including their in-house counsel and regularly
3 employed support staff (law clerks, paralegals, secretaries, and clerical staff)
4 assisting with the Lawsuit;

5 3. Judges, Magistrate Judges, law clerks, and clerical personnel of the
6 Court before which the Lawsuit is pending including any appellate Court, and
7 the jury, if any;

8 court reporters and other persons involved in recording or transcribing
9 hearings, trial testimony, or deposition testimony in the Lawsuit;

10 consultants (not including trial and jury consultants), or experts and their
11 staff who are expressly retained or sought to be retained by an attorney
12 described in subparagraph 1 or 2 of Section V.A to provide assistance in
13 the Lawsuit, provided that any such persons first execute the
14 Confidentiality Undertaking in Exhibit A. Disclosures under this sub-
15 paragraph are to be made only to the extent necessary to perform such
16 work;

17 4. any person who authored and/or received the particular HIGHLY
18 CONFIDENTIAL - ATTORNEYS' EYES ONLY information sought to be
19 disclosed to that person, or any witness testifying in a deposition or hearing when
20 the examining attorney has a good faith basis to believe the witness is the author
21 and/or received the particular HIGHLY CONFIDENTIAL - ATTORNEYS'
22 EYES ONLY information sought to be disclosed to that witness. Any witness
23 testifying in a deposition or hearing may be shown HIGHLY CONFIDENTIAL
24 - ATTORNEYS' EYES ONLY information of a Producing Party provided that
25 the witness is: (a) a current employee, attorney, director, officer, or agent of the
26 Producing Party, or a corporate designee of the Producing Party under Rule
27 30(b)(6) of the Federal Rules of Civil Procedure; or (b) a former employee,
28 attorney, director, officer, or agent of the Producing Party if, at the time of the

1 witness' employment, the HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
2 ONLY information was in existence and the witness had access to such
3 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY information;

4 5. litigation support vendors retained by outside counsel for such
5 functions as photocopying, scanning, stenography, videography, imaging, or
6 preparation of graphics, demonstratives, and audio and/or video productions or
7 other exhibits for deposition, trial, or other court proceedings in the Lawsuit, but
8 only if they execute the Confidentiality Undertaking in Exhibit A, and only to
9 the extent necessary for the particular litigation support services being rendered
10 and in accordance with the vendor's ordinary operating procedure;

11 6. mock jurors, trial consultants, and jury consultants engaged by the
12 parties in preparation for trial, provided that (i) no Party will use any mock juror,
13 trial consultant, or jury consultant who is employed or affiliated with or who
14 knows any person employed by or affiliated with either Party to the Lawsuit; (ii)
15 mock jurors, trial consultants, and jury consultants will not be allowed to retain
16 any tangible materials that contain or disclose any Designated Material; and (iii)
17 any such persons first execute the Confidentiality Undertaking in Exhibit A; and

18 7. persons who have been retained by a Party to provide translation or
19 interpretation from one language to another, provided that such translators
20 execute the Confidentiality Undertaking in Exhibit A.

21 **VI. COURT PROCEDURES**

22 Designated Material may be included with, or referred to in, papers filed with the
23 Court in the Lawsuit only in accordance with the following procedures:

24 Any documents (including briefs), tangible things, or information designated as (or
25 including information designated as) CONFIDENTIAL or HIGHLY CONFIDENTIAL –
26 ATTORNEY'S EYES ONLY that are submitted to the Court in support of or in opposition
27 to a motion or introduced at a hearing or during trial may retain their protected confidential
28 status only by order of the Court in accordance with the procedures outlined in section II.c.

1 of the Court's Standing Order Regarding Civil Litigation.

2 **VII. PROCEDURE FOR DISCLOSURES TO OTHER PERSONS**

3 At the written request of the Receiving Party, the Producing Party may agree in
4 writing to allow the Receiving Party to disclose to a specified third party any of the
5 Producing Party's Designated Material identified in the written request.

6 **VIII. UNINTENTIONAL FAILURE TO DESIGNATE**

7 If any Producing Party discovers that it has inadvertently failed to designate and
8 mark any Discovery Material as either CONFIDENTIAL or HIGHLY CONFIDENTIAL
9 - ATTORNEYS' EYES ONLY, the Producing Party may subsequently inform the
10 Receiving Party of the confidential nature of the disclosed Designated Material, and the
11 Receiving Party shall treat the disclosed Discovery Material as either CONFIDENTIAL or
12 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY upon receipt of written notice
13 from the Producing Party. Disclosure of such Discovery Material to persons not authorized
14 to receive that material prior to receipt of the confidentiality designation shall not be
15 deemed a violation of this Order.

16 However, in the event the material has been distributed in a manner inconsistent
17 with the later-applied designation, the Receiving Party will take the steps necessary to
18 conform distribution to the categorical designation, *i.e.*, by retrieving all copies of the
19 Discovery Material, or notes or extracts thereof, in the possession of the persons not
20 authorized under this Order to possess such Discovery Material and advising the persons
21 to whom disclosure was made that the Producing Party has designated the material as
22 confidential and that such material must be treated as provided in the Order unless
23 otherwise agreed by the parties or ordered by the Court.

24 **IX. UNINTENTIONAL DISCLOSURE OF ATTORNEY-CLIENT OR WORK**
25 **PRODUCT MATERIAL**

26 Pursuant to Federal Rule of Evidence 502(d) and (e), the production of any discovery
27 material by any Party, whether inadvertent or not, shall be without prejudice to any
28 subsequent claim by the Producing Party that such discovery material is privileged or

1 attorney-work product, and shall not be deemed a waiver of any such privilege or protection
2 in either the litigation pending before the court, or any other federal or state proceeding.

3 The Producing Party may give written notice to the Receiving Party that the
4 document is subject to a claim of attorney-client privilege or work product immunity and
5 request that the document be destroyed or returned to the Producing Party. Unless the
6 Producing Party claims that the entire document is subject to a claim of attorney-client
7 privilege or work product immunity, the Producing Party shall, together with its written
8 notice, produce a copy of the document with the claimed privileged material redacted.

9 Within five (5) business days of receiving written notice and a copy of the document
10 with claimed privileged material redacted, the Receiving Party shall return or destroy all
11 copies of such document, along with any notes or other work product reflecting the contents
12 of such document, and shall destroy all excerpts thereof. Upon request of the Producing
13 Party, the Receiving Party of the inadvertent production shall provide an affidavit to the
14 Producing Party that all copies and excerpts, along with any notes or other work product
15 reflecting the contents of such document, and were returned or destroyed. In any event, all
16 material shall be deleted from any litigation-support or other database. No use shall be made
17 of such materials during depositions or at trial, nor shall they be disclosed to anyone who
18 was not given access to them before the request to return or destroy.

19 Return or destruction of the document by the Receiving Party shall not constitute an
20 admission or concession, or permit any inference, that the returned document is, in fact,
21 properly subject to a claim of attorney-client privilege or work product immunity. If the
22 Receiving Party believes that the document is not subject to the protections of the attorney-
23 client privilege or work product immunity, the Receiving Party will contact counsel for the
24 Producing Party within five (5) business days of receiving written notice from the
25 Producing Party that the document is subject to a claim of attorney-client privilege or work
26 product immunity so that the parties' counsel may meet and confer on the matter. If the
27 parties cannot resolve the dispute, the parties shall follow the discovery dispute protocol
28 outlined in the Court's Rule 16 Scheduling Order. (Doc. 19 at ¶ 10).

1 The parties agree that employing electronic keyword searching to identify and
2 prevent disclosure of privileged material constitutes “reasonable steps to prevent
3 disclosure” under Federal Rule of Evidence 502(b)(2).

4 Unless previously waived, the inadvertent disclosure of any documents subject to a
5 privilege or immunity shall not be deemed a waiver of that privilege or immunity as to any
6 other documents, testimony, or evidence.

7 **X. RESERVATION OF RIGHTS AND MISCELLANEOUS PROVISIONS**

8 **C. No Limitation of Other Rights**

9 This Order shall be without prejudice to the right of any party to oppose production
10 of any information on any and all grounds other than confidentiality.

11 **D. Release From or Modification of This Order**

12 This Order is entered without prejudice to the right of any party to apply to the Court
13 at any time for additional protection, or to release, rescind, or modify the restrictions of
14 this Order, to determine whether a particular person shall be entitled to receive any
15 particular information or to seek relief from inadvertent disclosure of privileged or work-
16 product information. This Order does not preclude all of the parties to this Order from
17 entering into any stipulation (in writing or on the record) constituting a modification of this
18 Order subject to the Court’s review.

19 **E. Admissibility and No Admissions**

20 Nothing herein shall be construed to affect in any way the evidentiary admissibility
21 or relevance of any document, testimony, or other matter at any court proceeding related
22 to this matter. Neither designation or lack of designation of documents or information as
23 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” nor
24 agreeing to treat documents produced under those designations pursuant to this Agreement
25 constitutes any admission or acknowledgement that any such documents or information do
26 or do not constitute trade secrets or proprietary information or do or do not enjoy any other
27 legal status, and is inadmissible for any such purpose.

28 **F. Non-Party Request/Subpoena of Designated Material**

1 If a Receiving Party receives a subpoena or other compulsory process from a non-
2 Party to this Order seeking production or other disclosure of a Producing Party's
3 Designated Material, that Receiving Party shall give written notice to outside counsel of
4 record for the Producing Party (or, if the Producing Party is not represented by counsel in
5 this Lawsuit, to the Producing Party itself) within ten (10) business days after receipt of the
6 subpoena or other compulsory process identifying the specific Designated Material sought
7 and enclosing a copy of the subpoena or other compulsory process. If the Producing Party
8 timely seeks a protective order, the Receiving Party to whom the subpoena or other
9 compulsory process was issued or served shall not produce the Designated Material
10 requested prior to receiving a Court order or consent of the Producing Party. In the event
11 that Designated Material is produced to the non-party, such material shall be treated as
12 Designated Material pursuant to this Order.

13 **G. Counsel's Right to Provide Advice**

14 Nothing in this Order shall bar or otherwise restrict any counsel herein from
15 rendering advice to the counsel's party-client with respect to the Lawsuit, and in the course
16 thereof, relying upon an examination of Designated Material, provided, however, that in
17 rendering such advice and in otherwise communicating with the party-client, the counsel
18 shall not disclose any Designated Material, nor the source of any Designated Material, to
19 anyone not authorized to receive such Designated Material pursuant to the terms of this
20 Order.

21 **H. Privileged and Irrelevant Materials**

22 Nothing in this Order shall be construed as requiring disclosure of privileged
23 materials, materials subject to protection under the work product doctrine, or materials
24 which are otherwise beyond the scope of permissible discovery.

25 **I. Notice**

26 Transmission by overnight courier, facsimile or electronic mail is acceptable for all
27 notification purposes, provided that, with regard to electronic mail, all counsel of record
28 are included on the notification.

1 **XI. FINAL DISPOSITION**

2 The ultimate disposition of Designated Materials will be subject to a final order of
3 the Court upon completion of the Lawsuit.


4 **XII. TERMINATION**

5 The termination of the Lawsuit shall not automatically terminate the effectiveness
6 of this Order, and persons subject to this Order shall be bound by the confidentiality
7 obligations of this Order until the Producing Party agrees otherwise in writing or this Court
8 (or any other court or competent jurisdiction) orders otherwise.

9 **XIII. USE AT TRIAL**

10 This Order is not intended to govern the use of Designated Material at the trial of
11 the Lawsuit. Procedures governing the use of Designated Material at trial, if necessary,
12 will be established by separate order, pursuant to application by one or more of the parties
13 to the Court, or *sua sponte* pursuant to the Court's own procedures, and may be addressed
14 at the pre-trial conference.

15 Dated this 15th day of September, 2021.

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20 Honorable Diane J. Humetewa
21 United States District Judge
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