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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HY-LOK U.S.A., INC.,
Plaintiff,
vs.
AVF PROCESS CONTROLS, INC.
AND DOES 1-10, Inclusive,
Defendant.

Case No. CV 10-2091-DMG (MANx)
**ORDER RE: STIPULATED
PROTECTIVE ORDER**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties' Stipulated Protective Order, filed on June 29, 2010, the terms of the Stipulated Protective Order are adopted as a protective order of this Court, except to the extent, as set forth below, that those terms have been modified by the Court's amendment of Paragraph 10(f) of the Stipulated Protective Order.

The parties are expressly cautioned that the designation of any information, document, or thing as Confidential Information does not, in and of itself, create any entitlement to file such information, document, or thing, in whole or in part, under

1 seal. Accordingly, reference to this Protective Order or to the partes' designation of
2 any information, document, or thing as Confidential Information is wholly
3 insufficient to warrant a filing under seal.

4 There is a strong presumption that the public has a right of access to judicial
5 proceedings and records in civil cases. In connection with non-dispositive motions,
6 good cause must be shown to support a filing under seal. The parties' mere
7 designation of any information, document, or thing as Confidential Information does
8 not - - without the submission of **competent evidence**, in the form of a declaration
9 or declarations, establishing that the material sought to be filed under seal qualifies
10 as confidential, privileged, or otherwise protectible - - constitute good cause.

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12 Further, if sealing is requested in connection with a dispositive motion or
13 trial, then compelling reasons, as opposed to good cause, for the sealing must be
14 shown, and the relief sought shall be narrowly tailored to serve the specific interest
15 to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th
16 Cir. 2010). For each type of information, document, or thing sought to be filed
17 under seal in connection with a dispositive motion or trial, the party seeking
18 protection must articulate compelling reasons, supported by specific facts and legal
19 justification, for the requested sealing order. Again, **competent evidence**
20 supporting the application to file documents under seal must be provided by
21 declaration.

22
23 Any document that is not confidential, privileged, or otherwise protectible in
24 its entirety will not be filed under seal if the confidential portions can be redacted.
25 If documents can be redacted, then a redacted version for public viewing, omitting
26 only the confidential, privileged, or otherwise protectible portions of the document,
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1 shall be filed. Any application that seeks to file documents under seal in their
2 entirety should include an explanation of why redaction is not feasible.

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TERMS OF STIPULATED PROTECTIVE ORDER

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6 1. This stipulated protective order (the “Stipulated Protective Order”)
7 shall govern documents, materials, and information, whether oral, written, or
8 demonstrative produced or otherwise made available by any party or third-party
9 (“Producing Entity”) to any party (“Receiving Party”) in connection with discovery
10 in this action (“Discovery Material”), which has been designated as confidential by
11 the producing party, and shall continue in effect after the conclusion of this
12 litigation.

13

14 2. Discovery Material may only be used and disclosed for the purposes of
15 this litigation, including appeals, and may not be used for any other purpose.

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17 3. “Confidential Information” refers to Discovery Material that the
18 Producing Entity in good faith regards as confidential or proprietary or financial
19 information that it would not ordinarily disclose, is not known to persons outside the
20 Producing Entity, which the Producing Entity has protected against disclosure, and
21 which the Producing Entity believes in good faith would harm its competitive
22 position if it was disclosed without protections. “Confidential Information” includes
23 any copies or summaries of such information or any materials that reveal the
24 contents of such information.

25

26 4. All or any portion of any Discovery Material may be designated as
27 Confidential Information provided such designation is made in good faith, and, once
28 designated, such material shall be treated as Confidential Information, under the

1 terms of the Stipulated Protective Order until such designation is withdrawn by the
2 Producing Entity or by an Order of this Court.

3 5. Documents may be designated as Confidential Information by placing a
4 stamp on each page that reads “CONFIDENTIAL.” Electronically stored
5 information may be designated as Confidential Information by placing a mark that
6 reads “CONFIDENTIAL” on the information or media containing the information.
7 Electronically stored information may be designated as Attorneys’ Eyes Only
8 Information by placing a mark that, in substance, reads “ATTORNEYS’ EYES
9 ONLY” on the information or media containing the information.

10
11 6. Deposition exhibits or transcripts, or any portion thereof, may be
12 designated as Confidential Information by making such a designation on the record
13 at the deposition or by making such a designation in writing within thirty days of
14 receipt of the deposition transcript by the Producing Entity.

15
16 Until thirty days after receipt by the Producing Entity of the deposition
17 transcript, the entire transcript and all exhibits shall be treated as CONFIDENTIAL.
18 The party conducting the deposition shall bear the burden of ensuring that the cover
19 page and any designated portions of the original transcript or any copies of the
20 transcript bear, in substance, the legend “CONFIDENTIAL - - Subject to Protective
21 Order”.

22
23 7. Responses to interrogatories, responses to requests for production of
24 documents, information or things, and responses to requests for admission, may be
25 designated as Confidential Information by placing, in substance, the legend
26 “CONFIDENTIAL,” on the first page of such document and on any pages that
27 contain Confidential Information.

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1 8. In the event that a Producing Entity inadvertently fails to designate any
2 Discovery Material as Confidential Information, that material shall still be treated as
3 Confidential Information provided that the Producing Entity provides written notice
4 to the Receiving Party, as soon as practicable, designating the material as
5 Confidential Information. Upon receipt of such written notice, the Receiving Party
6 shall treat the designated material as Confidential Information and shall stamp or
7 mark it accordingly, or, if the Producing Entity provides correctly designated copies
8 of the material, destroy the mis-designated material or return it to the Producing
9 Entity. The Receiving Party shall not be responsible for any use or disclosure of the
10 mis-designated material prior to receipt of such written notice, provided such use or
11 disclosure was proper with respect to the material as it was designated at the time.

12
13 9. Any party may dispute the designation of Discovery Material as
14 Confidential Information, by setting forth the grounds for such dispute in writing to
15 the Producing Entity. If the dispute cannot be resolved informally among counsel, it
16 may be submitted to the Court by written motion for resolution. The Producing
17 Entity shall bear the burden of proof as to the propriety of any designation. Pending
18 informal resolution by the parties or order of this Court, any disputed information
19 shall be treated in accordance with its designation by the Producing Entity.

20
21 10. Counsel for the Receiving Party shall not disclose or permit disclosure
22 of Confidential Information to any other person or entity, except:

- 23 a. the Receiving Party;
- 24 b. counsel for the Receiving Party and employees of such counsel;
- 25 c. consultants or experts employed or retained by the Receiving
26 Party to assist counsel in this litigation, and their employees or support staff, to the
27 extent reasonably necessary to provide such assistance, provided that such
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1 consultant or expert, or any of their employees or support staff, is not a present or
2 former employee, officer, or director of a party to this litigation;

3 d. any person called to testify under oath by the Receiving Party in
4 connection with this litigation, during their testimony, provided they do not retain
5 copies of such documents;

6 e. a court reporter at a deposition; or

7 f. the Court and court employees.

8
9 11. No information may be disclosed to any person in accordance with
10 subsections (c), (d), or (e) of Paragraph 10 of the Stipulated Protective Order unless
11 such person has agreed to be bound by the terms of the Stipulated Protective order
12 by signing the Confidentiality Agreement attached hereto as Exhibit A.

13
14 12. If a Receiving Party proposes to file Confidential Information with the
15 Court (including pleadings, memoranda, or other documents that quote or
16 summarize such information) if any papers to be filed with the Court contain
17 protected information, the proposed filing shall be accompanied by an application to
18 file the papers or the portion thereof containing the protected information (if such
19 portion is segregable) under seal; and the application shall be directed to the judge to
20 whom the papers are directed. The Receiving Party shall also file a redacted version
21 of the motion and supporting papers. All papers that refer to or rely upon such
22 evidence shall designate the particular aspects that are confidential, so that the
23 Court, in drafting Orders, to determine whether there is evidence that should not be
24 specifically identified in the Order(s).

25
26 13. If any Confidential Information is disclosed to any person other than as
27 permitted by Paragraph 10 of the Stipulated Protective Order, the party responsible
28 for the disclosure shall, upon discovery of the disclosure, immediately inform the

1 Producing Entity whose information is disclosed of all facts pertinent to the
2 disclosure, including the name, address, and employer of the person to whom the
3 disclosure was made. The party responsible for the disclosure shall take all
4 reasonable steps to prevent any further disclosure of the Confidential Information.

5
6 16. [sic]¹ Within thirty days of the conclusion of this litigation, including any
7 appeals, each party shall, through its counsel, provide written confirmation to the
8 Producing Entity that the party has destroyed or returned any and all Confidential
9 Information, provided that counsel of record for each party may keep a copy of all
10 pleadings and correspondence in this litigation and any attorney work-product, and
11 further provided that all retained Confidential Information or shall be treated in
12 accordance with the terms of the Stipulated Protective Order.

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14 17. Nothing in this Order shall be construed to limit a Producing Entity's
15 use or disclosure of its own materials.

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17 18. If Discovery Material is inadvertently produced that is subject to a
18 claim of privilege or of protection as attorney work product or trial-preparation
19 material and the Producing Entity notifies the Receiving Party of the claim and the
20 basis for it, then: (a) such disclosure shall be without prejudice to any claim of
21 privilege or protection, (b) the Receiving Party shall not argue that such production
22 constitutes waiver of any claim or privilege or protection, (c) the Receiving Party
23 shall promptly return or destroy the material in question and any copies. If the
24 Receiving Party in good faith disputes the claim of privilege or protection, the
25 Receiving Party may maintain one copy of the disputed material, provided it
26 promptly presents the information to the Court under seal for a determination of the

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¹ The Stipulated Protective Order does not include either a Paragraph 14 or 15.

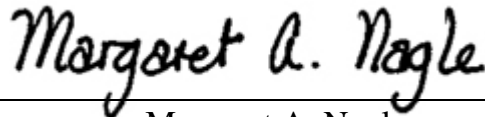
1 claim. If the Receiving Party disclosed the information before being notified, it must
2 take reasonable steps to retrieve it. The Producing Entity must preserve the
3 information until the claim is resolved.

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5 19. Nothing in this Order shall be construed as authorizing a party to
6 disobey a lawful subpoena issued in another action.

7
8 20. Nothing in this Stipulation and Order purports to control or govern the
9 handling of Confidential Information at the trial of this matter or at other hearings,
10 which shall be determined by the Court.

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12 **IT IS SO ORDERED.**

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14 Dated: October 6, 2010



Margaret A. Nagle
United States Magistrate Judge

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EXHIBIT A

I have reviewed the Stipulated Protective Order, dated _____, 2010 (the “Stipulated Protective Order”) in the matter of *Hy-Lok U.S.A., Inc. v. AVF Process Controls, Inc.* I understand that pursuant to the Stipulated Protective Order, information disclosed in this matter through discovery shall be held confidential pursuant to the terms of the Protective Order. I hereby agree to be bound by the terms of the Stipulated Protective Order, including all provisions relating to the treatment of confidential information.

Dated at _____, this _____ day of _____, 201__

Signature: _____

Printed Name: _____

Address: _____

