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 14 LEGGETT & PLATT, INCORPORATED AND  
 SIMMONS BEDDING COMPANY

15 UNITED STATES DISTRICT COURT  
 16 CENTRAL DISTRICT OF CALIFORNIA  
 17 WESTERN DIVISION

18 IMAGINAL SYSTEMATIC, LLC,

19  
 20 Plaintiff,

21 v.

22 LEGGETT & PLATT, INC.;  
 23 SIMMONS BEDDING COMPANY;  
 and DOES 1 through 10, inclusive,

24  
 25 Defendants.

Case No. CV10-07416 RGK (SSx)

~~PROPOSED~~ STIPULATED  
 PROTECTIVE ORDER

[Discovery Document: Referred to  
 Magistrate Judge Suzanne H. Segal]

1 GOOD CAUSE STATEMENT

2 On July 6, 2011, the Court conducted a discovery hearing to determine,  
3 *inter alia*, whether Leggett & Platt, Inc. ("Leggett") should be required to produce  
4 the following documents:

5 DOCUMENTS sufficient to establish revenues and profits from the  
6 sale of SEMIFLEX BOX SPRING MODULES, staples, foundations  
7 or other box spring components which are compatible with the  
8 TOPOFF MACHINES OR METHODS, including without limitation  
documents sufficient to establish gross and net sales price and cost of  
goods sold.

9 ("RFP 33 Information").  
10

11 Leggett asserts that its profits figures and any other figures that might allow  
12 its competitors, clients, or others to determine its profits from the sale of such  
13 components are some of its most sensitive confidential business information, and  
14 that release of this information would severely harm Leggett's business interests and  
15 put Leggett at a competitive disadvantage. Leggett presented to this Court the  
16 Declaration of Perry Davis (Docket No. 68-5) to support its claims of the sensitive  
17 nature of the documents. The Court ruled as follows:

18 [T]he Court finds that the requested information is relevant under  
19 Rule 26's broad definition of relevance and that Leggett's  
20 confidentiality concerns can be addressed through an appropriate  
21 protective order. Accordingly, the parties are directed to meet and  
22 confer within two business days of the date of this order with the  
23 purpose of drafting a stipulated protective order designed to provide  
24 heightened protection to these extremely sensitive documents.

25 (Docket No. 94, p. 9.)

26 The parties agree and the Court finds that adoption of and adherence to this  
27 Protective Order will facilitate an orderly and cost-effective discovery process and  
28

1 preparation for trial or settlement and that the Confidential Information addressed  
2 herein will not be used for any purpose that is not directly related to this litigation.  
3 Accordingly, good cause exists for the entry of this protective order, and it is hereby  
4 entered by the Court.

5  
6 IT IS HEREBY ORDERED that:  
7

8 1. Based on a good faith belief that the information is highly confidential,  
9 and responsive to RFP 33, Leggett may designate an exhibit; pleading; interrogatory  
10 answer; or admission (collectively "discovery response"); document or thing; or a  
11 deposition transcript; other transcript of testimony; or declaration or affidavit  
12 (collectively "testimony") "Highly Confidential – RFP 33".

13 2. Notwithstanding the foregoing, this Order shall not apply to  
14 information that, before such disclosure, is properly in the possession or knowledge  
15 of the party to whom such disclosure is made, or is public knowledge other than by  
16 an act or omission of the party to whom such disclosure is made, or that is legally  
17 acquired from a source not subject to this Order.

18 3. In connection with an exhibit, pleading, discovery response, document;  
19 or thing, testimony or other court submission, the legend "Highly Confidential –  
20 RFP 33" shall be affixed before the production or service upon a party.

21 4. "Highly Confidential – RFP 33 Information" disclosed or discussed at a  
22 deposition or other testimony, including exhibits, may be designated as "Highly  
23 Confidential – RFP 33" at the time of the testimony or deposition and shall be  
24 subject to the provisions of this Order. Whenever any Highly Confidential – RFP  
25 33 Information is to be discussed or disclosed in a deposition, any party claiming  
26 such confidentiality may exclude from the room any person not entitled to receive  
27 such confidential information pursuant to the terms of this Order. If Highly

1 Confidential – RFP 33 Information is disclosed or discussed at a deposition, the  
2 following legend shall be placed on the front of any deposition transcript (and, if  
3 videotaped, any copies of the videotape):

4           Contains HIGHLY CONFIDENTIAL – RFP 33  
5 INFORMATION. Designated parts not to be used, copied or  
6 disclosed except as authorized by Court Order or by the party  
7 or parties whose HIGHLY CONFIDENTIAL – RFP 33  
8 INFORMATION is included.

9           5. Material designated as “Highly Confidential – RFP 33” shall be treated  
10 as Highly Confidential Information pursuant to the Protective Order entered in this  
11 action on March 31, 2011 (Dkt. 61), except that the following additional restrictions  
12 on use of such information shall apply:

- 13           a. Such material may be disclosed or made available to Trial  
14 Counsel (*see* Dkt. 61 ¶ 9); independent experts or consultants  
15 retained by Trial Counsel (*see* Dkt. 61 ¶¶ 11.b, 13); agents of  
16 Trial Counsel (Dkt. 61 ¶ 11.d); court reporters or videographers  
17 conducting a deposition; and any other person as to whom the  
18 parties agree in writing only.
- 19           b. Such material may not be disclosed or made available to any  
20 other individuals including Plaintiff’s designated officer or in-  
21 house counsel (Dkt. 61 ¶ 11.a) absent further order of the Court.

22  
23           6. Any independent expert or consultant retained by Trial Counsel, agents  
24 of Trial Counsel, or any other person to whom the parties agree in writing having  
25 access to Highly Confidential – RFP 33 Information shall be given a copy of this  
26 Order before being shown such information, and its provisions shall be explained to  
27 them by an attorney. Each person, before having access to such information, shall

1 acknowledge in writing his or her obligation to be bound by the terms of this Order  
2 by signing a document in the form of Exhibit A attached hereto.

3 7. The Court hereby orders that, absent further order of the Court,  
4 documents designated as containing Highly Confidential – RFP 33 Information shall  
5 not be filed in the public records of the Court, and if filed, shall only be filed under  
6 seal.

7 8. If Plaintiff intends to file Highly Confidential – RFP 33 Information  
8 with the Court based on a good faith belief that such information is relevant to an  
9 issue to be decided by the Court, it shall give Leggett written notice of the  
10 information it intends to file three business days in advance of such filing. Within  
11 two business days of such notice, Leggett shall provide to plaintiff an appropriate ex  
12 parte application in accordance with Local rule 79-5 and other applicable authority  
13 requesting that documents containing Highly Confidential – RFP 33 Information be  
14 filed under seal. Plaintiff shall include in such ex parte application its position  
15 regarding the filing of such information under seal, and shall consent to such filing  
16 under seal unless counsel for Plaintiff has a good faith belief that the filing of such  
17 information under seal would promote an injustice or be contrary to law. The ex  
18 parte application shall reference the following order of the Court:

19 Pursuant to the Court's order dated 8/2/11 ~~date of this~~  
20 ~~order~~, and absent further order of the Court, documents designated by  
21 the parties to contain Highly Confidential – RFP 33 Information shall  
22 not be filed in the public records of the Court, and if filed, shall only be  
23 filed under seal. Pending the ruling on the application, the papers or  
24 portions thereof subject to the sealing application shall be lodged under  
25 seal.

25 9. The parties agree that breach or violation of this Stipulated Protective  
26 Order, such as through misuse or disclosure of confidential information, could not  
27 be adequately remedied by monetary damages alone. Therefore, the parties agree  
28 that injunctive relief (temporary, preliminary, and permanent) to specifically enforce

1 the provisions of this Stipulated Protective Order would be necessary and  
2 appropriate in the event of an actual or threatened breach or violation. This remedy  
3 will not prejudice Leggett's right to seek any additional remedy whether in the form  
4 of monetary damages or other injunctive relief such as justice may require.

5 10. This Stipulated Protective Order is without prejudice to the right of a  
6 party hereto to seek relief from the Court pursuant to the Local Rules of this district,  
7 upon good cause shown, from any of the provisions or restrictions provided herein.

8 11. By the signature of their attorneys below, the parties agree as between  
9 themselves to be immediately and mutually bound by all of the obligations and  
10 restrictions applicable to them as set forth herein. The parties agree to be bound by  
11 the Stipulated Protective Order whether or not the Court enters the Order and, in the  
12 event that the Court enters a modified version of this Stipulated Protective Order,  
13 the parties agree to bound by the modified version.

14  
15 Dated: July \_\_, 2011

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

16  
17  
18 By \_\_\_\_\_  
19 STEVEN M. HANLE  
20 Attorneys for Plaintiff  
IMAGINAL SYSTEMATICS, LLC

21 Dated: July \_\_, 2011

22 HAYNES AND BOONE, LLP

23  
24  
25 By \_\_\_\_\_  
26 KENNETH G. PARKER  
27 Attorneys for Defendants  
LEGGETT & PLATT, INCORPORATED and  
SIMMONS BEDDING COMPANY

1 IT IS SO ORDERED

2 DATED: 8/2/11

*Suzanne H. Segal*

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Suzanne H. Segal  
UNITED STATES MAGISTRATE JUDGE

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