

Case 2:12-cv-00160-RSWL-FFM

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 CENTRAL DISTRICT OF CALIFORNIA
 DEPUTY

6 Attorneys for Plaintiffs

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8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

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11 NEXON AMERICA INC., a
 Delaware corporation, and NEXON
 12 KOREA CORPORATION, a Korean
 corporation,

CASE NO. 2:12-cv-00160-RSWL-FFM

~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER

13

Plaintiffs,

14

v.

15 RYAN MICHAEL CORNWALL
 a/k/a "Riu Kuzaki" and "Alexandria
 16 Cornwall"; YANGYU ZHOU a/k/a
 "Yang Yu," "W8baby," and
 17 "Gamersoul"; DOUGLAS CRANE
 a/k/a "DJ" and "Lonerboy";
 18 WILLIAM "BILLY" KEISTER a/k/a
 "ThePhoneGuy"; AMARJOT GILL
 19 a/k/a "Alphaamar"; DEREK
 OSGOOD a/k/a "Jayce"; COLIN
 20 JOHNSON a/k/a "Colin_"; LINDA
 LIU a/k/a "linnyda942"; JEREMY
 21 SIMPSON; V.H. a/k/a "Vince"; DOE
 1 a/ka/ "Bizarro" and "Andrew"; DOE
 22 2 a/k/a "Cam1596"; and DOES 3
 through 10, inclusive,

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Defendants.

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Mitchell
 Silberberg &
 Knupp LLP

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Stipulated Protective Order

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STIPULATED PROTECTIVE ORDER

Pursuant to agreement between Plaintiffs Nexon America Inc. and NEXON Korea Corporation (collectively, "Nexon") and Defendants Ryan Michael Cornwall and Douglas Crane (collectively, "Defendants") and approval of the Court, this Protective Order, as modified, shall govern the production of Confidential documents, deposition testimony and information in this action.

I. GOOD CAUSE STATEMENT

Good cause exists for entry of this Protective Order because the parties to this action: (1) have sought and expect to seek in the future the discovery of certain information in this action that is sensitive, private, and confidential, or that third parties required to get involved in discovery in this action might believe is sensitive, private, and confidential, including, but not limited to, information concerning the source code underlying the parties' proprietary software, amounts paid under and other terms in confidential contracts entered into by the parties with third parties, and the financial and other terms of contracts entered into by the parties that are competitively sensitive and that would harm the parties if such terms were disclosed to their competitors; (2) believe that unrestricted disclosure or dissemination of such confidential information will cause them some business, commercial, and privacy injury; (3) desire an efficient and practicable means to designate such information as "Confidential" and thereby help ensure continued protection against unwarranted disclosure or dissemination; and (4) have agreed to such means as set forth herein.

1 **II. PURPOSE OF THE PROTECTIVE ORDER**

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3 The purpose of this Protective Order is to provide a means for limiting
4 access to, and the use and disclosure of, Confidential documents, deposition
5 testimony and information produced in this action.

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7 **III. DESIGNATION OF CONFIDENTIAL DOCUMENTS, DEPOSITION**
8 **TESTIMONY AND INFORMATION**

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10 Any party or non-party who either produces documents or information,
11 provides written discovery responses or gives deposition testimony in this action
12 may designate such documents, responses, deposition testimony or information as
13 "Confidential" in accordance with the provisions of this Paragraph:

14 The parties and any non-party shall limit to whatever extent possible
15 designating information as "Confidential."

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17 **A. Criteria For Classification**

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19 A party or non-party may designate documents, deposition testimony or
20 information as "Confidential" if the party or non-party making such designation
21 reasonably believes that the documents, deposition testimony or information
22 contains or discloses trade secrets or other confidential technical or commercial
23 information that has not been made public.

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B. Time Of Designation

Unless otherwise agreed between counsel for the parties, the designation of “Confidential” documents, deposition testimony and information shall be made at the following times:

- 1. For documents or things, prior to providing the receiving party with a copy of any requested document or thing;
- 2. For declarations, written discovery responses, and pleadings, at the time of the service or filing, whichever occurs first; and
- 3. For deposition testimony, at the time such deposition testimony is given, by a statement designating the deposition testimony as “Confidential” made on the record or as set forth in Paragraph III(C)(4) below.
- 4. To the extent a party or non-party does not timely designate documents, deposition testimony or information as “Confidential,” such party or non-party may so designate documents, deposition testimony or information as provided under Paragraph III(D), below.

C. Manner Of Designation

The designation of “Confidential” documents, deposition testimony or information shall be made in the following manner:

- 1. For documents, placing the notation “Confidential” on each page of such document containing such “Confidential” information;
- 2. For tangible items, by placing the notation “Confidential” on the object or container thereof or if impracticable, as otherwise agreed by the parties;
- 3. For declarations, written discovery responses, court filings or pleadings, by placing the notation “Confidential” both on the face of such document and on any particular designated pages of such document; and

1 4. For deposition testimony, by orally designating such deposition
 2 testimony as being “Confidential” at the time the deposition testimony is given.
 3 Thereafter, the original and all copies of the “Confidential” portions of the
 4 transcript of any such deposition testimony shall be separately bound and marked
 5 by the Court Reporter with the legend “CONFIDENTIAL” Such transcript and
 6 deposition testimony shall be disclosed and used only in accordance with the
 7 provisions of this Protective Order. At the request of Counsel for the designating
 8 party supplying the “Confidential” documents, deposition testimony or
 9 information, only persons entitled under Paragraph IV(A) hereinafter as to
 10 “Confidential” shall be permitted to attend that portion of a deposition wherever or
 11 whenever any such “Confidential” documents, deposition testimony or information
 12 of such designating party is used or elicited from the deponent.

13 In addition to the above, counsel for any party or non-party may designate a
 14 deposition as “Confidential” by serving upon counsel for each party a written list
 15 of the specific portions as to which such status is claimed. Such written list must be
 16 served within ten (10) business days after transmittal to counsel of the transcript of
 17 such testimony.

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19 **D. Subsequent Designation**

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21 Failure to designate and/or mark any document, deposition testimony or
 22 information as “Confidential” shall not preclude the designating party from
 23 thereafter in good faith making such a designation and requesting the receiving
 24 party to so mark and treat such documents, deposition testimony, or information so
 25 designated. Such designation and request shall be made in writing. Once notified
 26 of the designation, the receiving party, must make reasonable efforts to assure that
 27 the document, deposition testimony or information is thereafter treated in
 28 accordance with the provisions of this Order, including making reasonable efforts

1 to recover and return to the designating party all non-designated versions of any
 2 document, deposition testimony, or information that contains "Confidential"
 3 information, and to notify all receivers of the non-designated versions of
 4 document, deposition testimony, or information of the designation. After such
 5 designation, such documents, deposition testimony or information shall be fully
 6 subject to this Protective Order. Provided the receiving party and its counsel act in
 7 good faith to secure compliance with the terms of this Protective Order with
 8 respect to such "Confidential" information following its designation, the receiving
 9 party and its counsel, shall incur no liability for disclosures made prior to notice of
 10 such designation. The designating party may request in writing, and the receiving
 11 party shall within 10 day of such a request provide, an identification in writing of
 12 all persons not qualified under this Protective Order who have received the
 13 "Confidential" information prior to the time it was so designated.

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 15 **E. Resolution Of Disputes Regarding Designation**

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 17 The acceptance by a party of "Confidential" documents, deposition
 18 testimony or information shall not constitute an admission or concession or permit
 19 an inference that such "Confidential" documents, deposition testimony or
 20 information are, in fact, "Confidential." However, the documents, deposition
 21 testimony or information will be treated as designated unless the receiving party
 22 follows the procedures to remove, change or otherwise declassify the designation
 23 as set forth in this Paragraph.

24 If a receiving party, at any time, wishes to have the "Confidential"
 25 designation of any particular documents, deposition testimony or information
 26 removed or changed, that party shall comply with Local Rule 37, and first request
 27 in writing that the designating party or non-party remove its designation and state
 28 the reason therefor. Within ten (10) business days of the service of such request,

1 counsel for the party or nonparty seeking confidential treatment shall serve its
 2 response in writing to any such notification by either: (i) withdrawing such
 3 designation, or (ii) sending a Local Rule 37-1 meet and confer letter, explaining
 4 why the party or non-party designating the particular documents, deposition
 5 testimony or information believes it is entitled to the designation. If after the Local
 6 Rule 37-1 meet and confer conference the parties do not otherwise resolve the
 7 dispute, counsel for the party or nonparty seeking confidential treatment may either
 8 comply with Local Rule 37-2 (Joint Stipulation) to seek permission of the Court to
 9 so designate the particular documents, deposition testimony or information.
 10 Unless otherwise extended by consent of the parties, the designating party or
 11 nonparty shall file its joint stipulation and notice of motion within 14 days of the
 12 Local Rule 37-1 meet and confer conference. The designating party or nonparty
 13 shall have the burden of proving that such particular documents, deposition
 14 testimony or information are properly designated as "Confidential" pursuant to
 15 Article III. If such application or motion is timely made, the parties shall treat the
 16 document, deposition testimony or information as originally designated until the
 17 motion is decided by the Court.

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 19 **IV. PERSONS TO WHOM CONFIDENTIAL DOCUMENTS,**
 20 **DEPOSITION TESTIMONY AND INFORMATION MAY BE**
 21 **DISCLOSED**

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 23 **A. Disclosure Of Documents, Deposition Testimony And Information**
 24 **Designated As "Confidential"**

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 26 Documents, deposition testimony or information designated by a party as
 27 "Confidential" may be disclosed and copies may be provided by the receiving
 28 party only to:

1 1. The receiving party’s in house counsel and outside counsel, their
2 associate counsel within their law firms, and such counsels’ support staff, legal
3 assistants and clerical personnel;

4 2. Any non-party support services including, but not limited to, outside
5 copying services, and document imaging and database services, graphics or design
6 services, jury or trial consulting services, outside court reporting services and court
7 reporters as may be reasonably necessary in connection with the preparation or
8 conduct of this action;

9 3. Expert witnesses or consultants retained by the receiving party or its
10 respective attorneys in connection with this action who have complied with
11 Paragraph IV(E), below, and the employees of such experts or consultants who are
12 assisting them, only to the extent the information disclosed is pertinent to the
13 expert witness’ or consultant’s opinions;

14 4. The Court, its clerks, assistants, and secretaries, and any court reporter
15 retained to record proceedings before the Court; and

16 5. Up to five (5) party representatives (and such party representatives’
17 support and clerical staff), to be designated by each party by written notice prior to
18 the disclosure of “Confidential” information to such representative and provided
19 that any such party representative has signed an Undertaking, as provided in
20 Paragraph IV(B), below.

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22 **B. Undertaking Required By Party Receiving “Confidential”**
23 **Documents, Deposition Testimony And Information**

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25 Any recipient of another party’s Confidential documents, deposition
26 testimony and information subject to this Protective Order, except persons entitled
27 to receive “Confidential” documents, deposition testimony and information
28 pursuant to Paragraphs IV(A)(1),(2) or (4), prior to accepting receipt thereof, shall

1 be furnished with a copy of this Protective Order. Any recipient of another party's
 2 documents, deposition testimony or information subject to this Protective Order,
 3 except persons entitled to receive "Confidential" documents, deposition testimony
 4 and information pursuant to Paragraph IV(A)(1), (2) and (4), shall agree to be
 5 bound thereby by executing an agreement, in the form attached hereto, certifying
 6 that the recipient is familiar with the terms of this Protective Order and agrees to be
 7 bound by its terms and, specifically, that the recipient will not disclose any
 8 "Confidential" documents, deposition testimony and information except as
 9 provided in this Protective Order, and will not use any "Confidential" documents,
 10 deposition testimony and information except for the purpose of this litigation. A
 11 copy of such signed agreement shall be provided by the receiving party's counsel
 12 of record to the designating party counsel of record prior to providing the recipient
 13 with any "Confidential" documents, deposition testimony or information.

14
 15 **C. Additional Authorized Disclosure Of Documents, Deposition**
 16 **Testimony Or Information Designated As "Confidential"**
 17

18 Notwithstanding anything to the contrary in Paragraphs IV(A) above,
 19 particular documents, deposition testimony and information that have been
 20 designated as "Confidential" may be disclosed and copies may be provided:

- 21 1. To persons who can be shown from the face of the document to have
 22 authored, prepared, reviewed, or received the document or for whom, at deposition
 23 testimony, a proper foundation has been laid establishing that the witness was a
 24 recipient of the document or the information contained within it;
- 25 2. To any other persons with the prior written consent of the party or
 26 non-party that designated such particular document, deposition testimony and
 27 information as "Confidential," and
- 28 3. To any other persons with the prior authorization of the Court.

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D. Disclosure To Expert Witnesses Or Consultants

Prior to disclosing or providing copies of any “Confidential” documents, deposition testimony and information to any expert witness or consultant pursuant to Paragraph IV(A), the person or party making such disclosure shall first obtain the agreement of the expert witness or consultant to whom such disclosure will be made to be bound by the terms of this Protective Order as set forth in the attached form agreement.

V. USE OF “CONFIDENTIAL” DOCUMENTS, DEPOSITION TESTIMONY AND INFORMATION

A. Use Of Designated Documents and Information

1. “Confidential” documents, deposition testimony and information shall be used by the receiving parties, their respective agents, and any other persons to whom such documents, deposition testimony and information may be disclosed pursuant to the Protective Order, for no purpose other than: (a) the prosecution or defense of this action; or (b) as otherwise compelled by lawful process (provided the designating other party is given reasonable notice to object); (c) as otherwise required by law; or (d) as permitted by the Court.

2. Notwithstanding the parties’ designation of “Confidential” documents, deposition testimony or information, any Court hearing that refers to or describes “Confidential” documents, deposition testimony or information may be held in open court with records unsealed, provided the designating party is afforded reasonable notice of the receiving party’s intent to disclose such “Confidential” documents, deposition testimony and information in open court, so

1 that the designating party has a reasonable opportunity to seek to maintain the
 2 confidentiality of the "Confidential" documents, deposition testimony or
 3 information. However, any party may request that the proceedings be conducted in
 4 camera out of the presence of any unqualified persons, and any transcript relating
 5 thereto be designated as "Confidential" and prepared in accordance with the
 6 provisions of Paragraph III(C) above.

7 3. In the event a party wishes to use any "Confidential" documents,
 8 deposition testimony or information of the other party in any affidavits, briefs,
 9 memoranda of law, or other papers to be filed in Court in this litigation, the party
 10 shall comply with Local Rule 79-5. Any such application pursuant to Local Rule
 11 79-5 must show good cause for the under seal filing. The application shall be
 12 directed to the judge to whom the papers to be filed are directed. Pending the
 13 ruling on the application, the papers or portions thereof subject to the sealing
 14 application shall be lodged under seal.

15 4. The parties shall provide each other with a list of "Confidential"
 16 documents, deposition testimony or information to be used at trial at such time as
 17 the list of exhibits is ordered by the court to be exchanged among the parties to
 18 enable the designating party sufficient opportunity to seek a protective order. Any
 19 such "Confidential" documents, deposition testimony or information which is
 20 designated by any party to be introduced at trial may be offered into evidence in
 21 open court unless the opposing party obtains an appropriate protective order from
 22 the Court before its introduction. Should a party at trial determine that reference to
 23 previously unlisted "Confidential" documents, deposition testimony or information
 24 is necessary for impeachment or due to surprise, the provisions of Paragraph
 25 V(A)(2) shall be applied.

26 5. Nothing in this Protective Order shall affect the admissibility of
 27 "Confidential" documents, deposition testimony or information, or abridge the
 28 rights of any person to seek judicial review through the procedure set forth in

1 Local Rule 37 with respect to any ruling made by the Court concerning the issue of
 2 the status of "Confidential" documents, deposition testimony or information. This
 3 Protective Order is without prejudice to any party seeking an Order from this
 4 Court, through the procedure set forth in Local Rule 37, imposing further
 5 restrictions on the dissemination of "Confidential" documents, deposition
 6 testimony or information, or seeking to rescind, modify, alter, or amend this
 7 Protective Order with respect to specific information.

8 6. In the event any person in receipt of "Confidential" documents,
 9 deposition testimony or information shall receive a written request, subpoena, or
 10 Court Order seeking disclosure of another party's "Confidential" documents,
 11 deposition testimony or information, such person shall immediately upon receipt of
 12 such request, subpoena, or Court Order, notify counsel for the designating party of
 13 the request, subpoena, or Court Order, and shall provide counsel for the
 14 designating party with a copy of the same, unless prohibited by law.

15 7. A party producing any document or thing for inspection may retain
 16 the original of such document or thing which is subject to this Protective Order, but
 17 the receiving party, by its counsel of record, shall have the right to examine the
 18 original, to be provided with a full and complete copy thereof at its expense, and to
 19 call for production of the original at the trial of this action, if reasonably necessary.
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21 **VI. DOCUMENTS, DEPOSITION TESTIMONY AND INFORMATION**
 22 **EXCLUDED FROM PROTECTIVE ORDER**
 23

24 The obligations relating to any document, deposition testimony or
 25 information subject to this Protective Order shall not apply to any document,
 26 deposition testimony or information designated as being subject to this Protective
 27 Order which: (a) was lawfully in the receiving party's possession prior to the
 28 receipt from the supplying party; (b) became public knowledge by means not in

1 violation of the provisions of this Protective Order; (c) was, or is hereafter,
 2 obtained from a source or sources not under an obligation of secrecy to the other
 3 party; (d) is discovered independently by the receiving party; or (e) is exempted
 4 from the provisions of this Protective Order by written consent of the party
 5 producing such "Confidential" documents, deposition testimony or information.

6 Notwithstanding the provisions of Article III above, nothing herein shall
 7 prevent any producing party from using or disclosing its own "Confidential"
 8 documents, deposition testimony or information as it deems appropriate. Nothing
 9 in this Order shall preclude any party from showing an employee of a designating
 10 party at a deposition of that employee any "Confidential" documents, deposition
 11 testimony or information of the designating party.

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 13 **VII. RETURN OF DOCUMENTS, DEPOSITION TESTIMONY OR**
 14 **INFORMATION**

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 16 Within sixty (60) days after conclusion of litigation, outside counsel for each
 17 receiving party or other individual subject to this Protective Order (which does not
 18 include the Court and Court personnel) shall be under an obligation to assemble
 19 and return to the designating party, or to destroy (and certify the destruction)
 20 should the designating party so permit, any document, deposition testimony and
 21 information subject to this Protective Order and all copies thereof. Any copy of
 22 any document, deposition testimony or information designated by the opposing
 23 party as "Confidential" containing notes of outside counsel may be destroyed
 24 rather than returned. Notice of the return or destruction of any "Confidential"
 25 document, deposition testimony or information shall be made in writing, and notice
 26 of receipt thereof shall be acknowledged in writing. Notwithstanding the foregoing
 27 provisions of this Paragraph, outside counsel shall be entitled to retain all
 28 memoranda or reports prepared by them or any expert witness or consultant which

1 contain "Confidential" documents, deposition testimony or information and
 2 litigation documents containing "Confidential" documents, deposition testimony or
 3 information which become part of the record of this action, including pleadings,
 4 briefs, deposition transcripts and exhibits, but such litigation documents shall be
 5 used only for the purpose of preserving a record of the action, and shall not,
 6 without the written permission of the opposing party or an order of this Court, be
 7 disclosed to anyone other than those to whom such information was actually
 8 disclosed, in accordance with this Protective Order, during the course of this
 9 action.

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11 **VIII. SURVIVAL**

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13 All obligations and duties arising under this Protective Order shall survive as
 14 stated herein until the commencement of trial in this action. In advance of trial,
 15 any party to this Protective Order may move the Court to maintain the
 16 confidentiality of any document or information governed by this Protective Order,
 17 upon a showing of good cause to the district judge. In the event this action
 18 terminates prior to the commencement of trial, this Protective Order shall survive
 19 the termination of this action. The Court retains jurisdiction over the parties hereto
 20 indefinitely with respect to any dispute regarding the improper use of
 21 "Confidential" documents, deposition testimony or information disclosed under
 22 protection of this Protective Order.

23

24 **IX. INADVERTENT PRODUCTION**

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26 The inadvertent or mistaken disclosure of any "Confidential" documents,
 27 deposition testimony or information by a producing party, without the designation
 28 required under Article II, above, shall not constitute a waiver of any claim that the

1 inadvertently disclosed material is entitled to protection under this Order, if such
 2 inadvertent or mistaken disclosure is brought to the attention of the receiving party
 3 promptly after the producing party's discovery of such disclosure. Along with
 4 notice of inadvertent or mistaken disclosure, the producing party shall provide
 5 properly marked documents to each party to whom "Confidential" documents,
 6 deposition testimony or information was inadvertently disclosed; and upon receipt
 7 of these properly marked documents, the receiving party shall return to the
 8 producing party, or destroy, the improperly marked documents that were initially
 9 produced, along with any copies or duplicates thereof.

10 If a party through inadvertence produces or provides discovery which it
 11 believes is subject to a claim of attorney-client privilege or work product
 12 immunity, the producing party may give written notice to the receiving party or
 13 parties that the document or thing is subject to a claim of attorney-client privilege
 14 or work product immunity and request that the document or thing be returned to
 15 the producing party. The receiving party or parties shall promptly return to the
 16 producing party such document or thing, including all copies of such document or
 17 thing, and portions thereof, and shall not retain any copies thereof. Return of the
 18 document by the receiving party shall not constitute an admission or concession, or
 19 permit any inference, that the returned document or thing is, in fact, properly
 20 subject to a claim of attorney-client privilege or work product immunity nor shall it
 21 foreclose any party from moving the Court for any order that such document or
 22 thing has been improperly designated or should be producible for reasons other
 23 than a waiver caused by the inadvertent production.

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X. NO IMPLIED WAIVER OR ADMISSION

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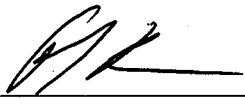
No party shall be obligated to challenge the propriety of any designation of
 "Confidential" documents, deposition testimony or information by another party or

1 non-party, and the failure to do so shall not constitute a waiver or otherwise
2 preclude a subsequent challenge to the designation.

3 **XI. NOTICE AND SERVICE**
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5 For purposes of any provisions in this Protective Order requiring or
6 permitting service of a notice, objections, requests, responses, designations or the
7 like, service shall be accomplished either by email or by overnight delivery via a
8 commercial delivery service to all counsel of record. When served via email,
9 service shall be deemed complete on the date of transmission if the electronic
10 transmission occurs before 5:00 p.m. Pacific time; otherwise, service shall be
11 deemed complete the next business day. Service via overnight delivery shall be
12 deemed complete upon delivery.
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15 IT IS SO ORDERED this 25th day of June, 2012.
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19 **FREDERICK F. MUMM**
20 **U.S. Magistrate Judge**

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AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I have read the Stipulated Protective Order governing the production of "Confidential" documents, deposition testimony and other information in the above-captioned matter ("Order"). I understand the terms of the Order and agree to be fully bound by them, specifically, that I will not disclose any "Confidential" documents, deposition testimony and information except as provided in the Order, and will not use any "Confidential" documents, deposition testimony and information except for the purpose of this litigation. I hereby submit to the jurisdiction of the U.S. District Court, Central District of California, for purposes of enforcement of the Order. I understand that any violation of the terms of the Order may be punishable by money damages, interim or final injunctive or other equitable relief, sanctions, contempt of court citation, or such other or additional relief as deemed appropriate by the Court.

Date: _____ Signature: _____