



1           **WHEREAS**, in the course of this litigation disclosure may be sought of  
2 information which a party considers to be confidential, sensitive, trade secret  
3 and/or proprietary; and

4           **WHEREAS**, the parties desire to establish a mechanism to permit the  
5 production of such information in the course of litigation without dilution or  
6 diminution of its protectible character;

7           **IT IS HEREBY STIPULATED**, by and between the parties hereto through  
8 their respective counsel of record, that to preserve the protectible character of  
9 claimed proprietary information in the pending action, the following shall govern  
10 the disclosure of information regarded as confidential:

11 **A. LIMITATIONS ON USE OF CONFIDENTIAL INFORMATION**

12           1.    **“Confidential Information”** as used herein means any type of  
13 information which is designated as confidential by the supplying party, whether it  
14 be a document or thing, information contained in a document or thing, information  
15 revealed during a deposition, information revealed in an interrogatory answer or  
16 otherwise. Documents so designated shall be accessible only to the following  
17 persons:

- 18                   (a) Parties to this action;
- 19                   (b) Attorneys of record in this litigation and any associated counsel,  
20 and employees of such attorneys and counsel to whom it is  
21 necessary that the information be disclosed for purposes of this  
22 litigation, as well as in house general counsel for the corporate  
23 parties;
- 24                   (c) Any person employed by a party or its/his attorneys of record  
25 in this litigation or jointly by the parties as an independent  
26 expert who agrees in writing to be bound by the terms of this  
27 Protective Order; and
- 28                   (d) The Court, arbitrators and/or mediators.

1           2. Any information designated as **Confidential Information** shall not be  
2 made available by the party receiving it to any persons or entities other than those  
3 persons identified hereinabove in paragraph 1, except when disclosure is required  
4 by law or is disclosed by a third party who has a lawful right to so disclose.

5           3. Any information designated as **Confidential Information** shall not be  
6 used by the other party *for any purpose other than in connection with this*  
7 *litigation.*

8 **B. LIMITATIONS ON THE USE OF CONFIDENTIAL INFORMATION**  
9 **--COUNSELS' EYES ONLY**

10           4. "**Confidential Information -- Counsels' Eyes Only**" as used herein  
11 means any type of information which is designed as confidential -- counsels' eyes  
12 only by the supplying party, whether it be a document or thing, information  
13 contained in a document or thing, information revealed during a deposition,  
14 information revealed in an interrogatory answer or otherwise. Documents so  
15 designated shall be accessible only to the following persons:

16           (a) Attorneys of record in this litigation and any associated counsel,  
17 and employees of such attorneys and counsel to whom it is necessary that the  
18 information be disclosed for purposes of this litigation as well as in house general  
19 counsel for the corporate parties; and

20           (b) Any person employed by a party or its/his attorneys of record  
21 in this litigation or jointly by the parties as an independent expert who agrees in  
22 writing to be bound by the terms of this Protective Order; and

23           (c) The Court, during trial, arbitration and/or  
24 mediation.

25           5. Any information designated as **Confidential Information -- Counsels'**  
26 **Eyes Only** shall not be made available by the party receiving it to any persons or  
27 entities other than those persons identified hereinabove in paragraph 4, except when

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1 disclosure is required by law or is disclosed by a third party who has a lawful right  
2 to so disclose.

3 6. Any information designated as **Confidential Information -- Counsels'**  
4 **Eyes Only** shall not be used by the other party *for any purpose other than in*  
5 *connection with this litigation.*

6 **C. PROCEDURE FOR DESIGNATION OF CONFIDENTIAL**  
7 **INFORMATION**

8 7. Documents and things produced which contain **Confidential**  
9 **Information** may be designated as such by marking each page of the document or  
10 thing substantially as follows:

11 "CONFIDENTIAL" or "CONFIDENTIAL  
12 PURSUANT TO PROTECTIVE ORDER"

13 In lieu of marking the original of documents, the party may mark the copies  
14 that are produced or exchanged. If documents are produced for inspection pursuant  
15 to the Protective Order, marking of the documents as **Confidential Information**  
16 may be delayed until after the selection of the documents for copying by the  
17 receiving party, but before copying.

18 8. Information disclosed at the deposition of a party or one of its/her  
19 present or former officers, directors, employees, agents, or independent experts  
20 retained by a party for purposes of this litigation may be designated as **Confidential**  
21 **Information** by indicating on the record at the deposition that the testimony is  
22 **Confidential Information** and subject to the provisions of this Order.

23 9. The designating party shall have the right to have all persons, except  
24 the witness, and those persons identified hereinabove in paragraph 1, and court  
25 personnel excluded from the deposition room before the taking of testimony or any  
26 part thereof which the designating party designates as **Confidential Information.**

27 10. Responses to particular interrogatories and requests for admission  
28 which contain **Confidential Information** shall contain a statement to the effect that

1 “This Response Contains Confidential Information.” Each portion of the response  
2 to a particular interrogatory which contains **Confidential Information** shall be  
3 contained in brackets. The “**Confidential Information**” legend shall be placed on  
4 the first page of any set of responses which contain responses containing  
5 **Confidential Information**.

6 **D. PROCEDURE FOR DESIGNATION OF CONFIDENTIAL**  
7 **INFORMATION -- COUNSELS’ EYES ONLY**

8 11. Documents and things produced which contain **Confidential**  
9 **Information -- Counsels’ Eyes Only** may be designated as such by marking each  
10 page of the document or things substantially as follows:

11 **“CONFIDENTIAL -- COUNSELS’ EYES ONLY”**

12 In lieu of marking the original of documents, the party may make the copies  
13 that are produced or exchanged. If documents are produced for inspection  
14 pursuant to the Protective Order, marking of the documents as **Confidential**  
15 **Information -- Counsels’ Eyes Only** may be delayed until after the selection of the  
16 documents for copying by the receiving party, but before copying.

17 12. Information disclosed at the deposition of a party or one of its/her  
18 present or former officers, directors, employees, agents, or independent experts  
19 retained by a party for purposes of this litigation may be designated as **Confidential**  
20 **Information -- Counsels’ Eyes Only** by indicating on the record at the deposition  
21 that the testimony is **Confidential Information -- Counsels’ Eyes Only** and  
22 subject to the provisions of this Order.

23 13. The designating party shall have the right to have all persons, except  
24 the witness, and those persons identified hereinabove in paragraph 4, and court  
25 personnel excluded from the deposition room before the taking of testimony or any  
26 part thereof which the designating party designates as **Confidential Information**.

27 14. Responses to particular interrogatories and requests for admission  
28 which contain **Confidential Information -- Counsels’ Eyes Only** shall contain a

1 statement to the effect that "This Response contains Confidential Information --  
2 Counsels' Eyes Only." Each portion of the response to a particular interrogatory  
3 which contains **Confidential Information -- Counsels' Eyes Only** shall be  
4 contained in brackets. The "**Confidential Information -- Counsels' Eyes Only**"  
5 legend shall be placed on the first page of any set of responses which contain  
6 responses containing **Confidential Information -- Counsels' Eyes Only.**"

7 **E. RETURN OF CONFIDENTIAL INFORMATION AT THE**  
8 **CONCLUSION OF ACTION**

9 15. Within sixty (60) days after the conclusion of this litigation, any  
10 originals or reproductions of any documents referring to or containing **Confidential**  
11 **Information** and/or **Confidential Information -- Counsels' Eyes Only** shall be  
12 returned to the producing party, except that work-product copies may be destroyed.  
13 Legal memoranda or briefs referring to **Confidential Information** and/or  
14 **Confidential Information -- Counsels' Eyes Only** may be retained by counsel.  
15 Insofar as the provisions of any Protective Orders entered in this action restrict the  
16 communication and use of the documents produced hereunder, such Orders shall  
17 continue to be binding after the conclusion of this litigation, except (a) that there  
18 shall be no restriction on documents that are used as exhibits (unless the exhibits  
19 were filed under seal by permission of the Court); and (b) that a party may seek the  
20 written permission of the producing party or further Order of the Court with  
21 respect to dissolution or modification of this Protective Order.

22 **F. EFFECT OF PROTECTIVE ORDER**

23 16. The designation of any material in accordance with this Order as  
24 constituting or containing **Confidential Information** and/or **Confidential**  
25 **Information -- Counsels' Eyes Only** is intended solely to facilitate the preparation  
26 and trial of this action, and treatment of such material by counsel of record for  
27 named parties in conformity with such designation will not be construed in any way

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1 as an admission or agreement by any party that the designated material constitutes  
2 or contains any confidential or proprietary information.

3 **G. OTHER PROVISIONS**

4 17. Nothing shall prevent disclosure beyond the terms of this Order if the  
5 party designating the information as **Confidential Information** and/or **Confidential**  
6 **Information -- Counsels' Eyes Only** consents, in writing, to such disclosure, or  
7 if the Court, after notice to all parties, orders such disclosure.

8 18. No party shall be responsible to another party for any use made of  
9 information produced and not designated as **Confidential Information** and/or  
10 **Confidential Information -- Counsels' Eyes Only**.

11 19. A party shall not be obligated to challenge the propriety of a  
12 **Confidential Information** and/or **Confidential Information -- Counsels' Eyes**  
13 **Only** designation at the time made, and a failure to do so shall not preclude a  
14 subsequent challenge thereto. In the event that any party to this litigation disagrees  
15 at any stage of these proceedings with the designation of any information as  
16 **Confidential Information** and/or **Confidential Information -- Counsels' Eyes**  
17 **Only**, the parties shall try first to dispose of such dispute in good faith on an  
18 informal basis. If the dispute cannot be resolved, the party disputing the protected  
19 status may seek appropriate relief from the Court, and the party asserting  
20 confidentiality shall have the burden of proof.

21 20. No party shall file any document, discovery, testimony, exhibits or  
22 other material with the Court, including, *inter alia*, transcripts of depositions,  
23 exhibits, briefs and memoranda, which comprise or contain **Confidential**  
24 **Information** and/or **Confidential Information -- Counsels' Eyes Only**, unless that  
25 party follows the following procedure: The subject document shall be filed and  
26 kept by the Court in sealed envelopes or other appropriately sealed containers on  
27 which shall be endorsed the title of this action, an indication of the nature of the  
28 contents of such sealed envelopes or other containers, the identity of the party filing

1 the materials, the legend “**CONFIDENTIAL -- PURSUANT TO PROTECTIVE**  
2 **ORDER**” and/or “**CONFIDENTIAL -- COUNSELS’ EYES ONLY**” and a  
3 statement substantially in the following form:

4 This envelope [container] contains documents [objects]  
5 subject to the Protective Order entered in this action. It  
6 is not to be opened nor the contents thereof displayed,  
7 revealed or made public, except by Order of the United  
8 States District Court. Nothing herein shall prevent Court  
9 personnel access to the files to perform their duties.

10 21. The Clerk of the Court is directed to maintain under seal all documents  
11 and transcripts of deposition testimony filed in this litigation which have been  
12 designated, in whole or in part, as **Confidential Information** and/or **Confidential**  
13 **Information -- Counsels’ Eyes Only** by a party to this action.

14 22. This Order shall be without prejudice to the right of any person to  
15 object to the production of any discovery material on the basis that such material  
16 is protected as a privileged communication or work product.

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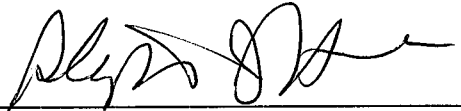


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23. This Order shall be without prejudice to the right of any person to apply to the Court for such further Protective Orders under the provision of the *Federal Rules of Civil Procedure* as justice may require.

**IT IS SO ORDERED.**

DATED: 9-23-13



**The Honorable ~~Fernando M. Olguin~~**

STEPHEN J. HILLMAN  
UNITED STATES MAGISTRATE JUDGE