

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JOHN D. THOMSON, an individual  
Plaintiff,

vs.

HMC GROUP, a California  
Corporation, TORRANCE  
MEMORIAL MEDICAL CENTER, a  
California Corporation, and DOES 1  
through 20, inclusive.

Defendants.

Case No: CV 13-03273 DMG (VBKx)

*[Assigned to District Judge Dolly M. Gee]*

~~**STIPULATION FOR ENTRY OF  
PROTECTIVE ORDER**~~

Complaint filed: May 8, 2013

1                   **1. PURPOSES AND LIMITATIONS**

2                   THE DISCOVERY, PRE-TRIAL AND TRIAL PHASES of this action will  
3 involve disclosure of trade secrets and other confidential and proprietary business,  
4 technical, and financial information for which special protection from public  
5 disclosure and from use for any purpose other than prosecuting this matter would  
6 be warranted. The parties hereby stipulate to and petition the Court to enter the  
7 following order under Federal Rule of Civil Procedure 26(c). The parties  
8 acknowledge that this Order does not confer blanket protections on all disclosures  
9 or responses to discovery and that the protection it affords extends only to the  
10 limited information or items that are entitled under the applicable legal principles  
11 to treatment as confidential. The parties have agreed that the terms of this  
12 Protective Order shall also apply to any future voluntary disclosures of  
13 confidential, proprietary, or private information. The parties reserve their rights to  
14 object to or withhold any information, including confidential, proprietary, or  
15 private information, on any other applicable grounds permitted by law, including  
16 third-party rights and relevancy.

17                   **2. DEFINITIONS**

18                   2.1. Document: shall be defined to mean any printed, typewritten,  
19 electronic, handwritten, digitally recorded or otherwise recorded material,  
20 including but not limited to, interrogatory answers, responses to requests for  
21 admission, pleadings, motions, briefs, affidavits, declarations, testimony, including  
22 deposition testimony, agreements, contracts, letters, memoranda, notes, agenda,  
23 minutes, records, resolutions, calendars, ledgers, reports, analysis, presentations,  
24 articles, photographs, spreadsheets, lists, manuals, electronic mail messages,  
25 databases, software, audiotape, videotape and film.

26                   2.2. Confidential Information: information (regardless of how  
27 generated, stored, or maintained) or tangible things that qualify for protection  
28 under standards developed under Fed. R. Civ. P. 26(c).

1           2.3 Attorney Eyes' Only: discovery material or such portion of  
2 such material as consists of:

3           (a) any commercially sensitive and/or confidential business  
4 or financial information (including without limitation confidential nonpublic  
5 contracts, profitability reports or estimates, sales reports, and sales margins) which  
6 could reasonably create a competitive disadvantage if disclosed to the parties in  
7 this action;

8           (b) any business or financial information that is confidential,  
9 proprietary, or commercially sensitive to third parties who have had business  
10 dealings with parties to this action; or

11           (c) any other category of material or information hereinafter  
12 given CONFIDENTIAL status by the Court, to the extent said material could  
13 reasonably create a competitive disadvantage if disclosed to the parties in this  
14 action or to third parties.

15           2.4 Receiving Party: a Party that receives disclosure or discovery  
16 material from a Producing Party.

17           2.5 Producing Party: a Party or non-party that produces disclosure  
18 or discovery material in this action.

19           2.6 Designating Party: a Party or non-party that designates  
20 information or items that it produces in disclosures or in responses to discovery as  
21 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

22           2.7 Protected Material: any disclosure or discovery material that is  
23 designated as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

24           **3. DESIGNATING PROTECTED MATERIAL**

25           3.1 Protected Material. Any party, non-party or witness may  
26 designate as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES  
27 ONLY" according to the procedures described in paragraphs 3, any Documents,  
28 information or testimony that contains, or which could lead to the disclosure of,

1 sensitive proprietary information, confidential business information, or confidential  
2 commercial information. All Confidential Information designated as  
3 “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS’ EYES ONLY” shall be  
4 subject to the provisions of this Protective Order.

5           3.2 Designation. If the Designating Party claims that any  
6 Confidential Information is confidential or contains confidential information, then  
7 the Designating Party shall mark the document with a stamp, notation or other  
8 appropriate means identifying it as: “CONFIDENTIAL – SUBJECT TO  
9 PROTECTIVE ORDER” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY –  
10 SUBJECT TO PROTECTIVE ORDER.”

11           3.3 Designating Deposition Testimony. A Designating Party may  
12 designate all or any portion of a deposition as confidential during or within ten (10)  
13 business days following delivery of a draft or final deposition transcript. If the  
14 designation is made during the deposition, the court reporter of the deposition  
15 containing such designated material shall transcribe separately testimony so  
16 designated and shall stamp or mark that testimony “CONFIDENTIAL – SUBJECT  
17 TO PROTECTIVE ORDER” or “CONFIDENTIAL – ATTORNEYS’ EYES  
18 ONLY – SUBJECT TO PROTECTIVE ORDER.” It shall not be necessary to  
19 designate specific testimony as confidential during the course of the deposition. All  
20 deposition transcripts, draft or final, shall be maintained as Confidential-Attorneys’  
21 Eyes Only for ten (10) business days following delivery of a draft or final  
22 deposition transcript by the stenographic reporter, to permit the parties to make any  
23 Confidential or Confidential-Attorneys’ Eyes only designations. During this  
24 period, the Designating Party shall designate specific portions of the transcript and  
25 any exhibits as confidential and shall give written notice to opposing counsel of the  
26 specific portions of transcripts and specific exhibits which have been designated as  
27 confidential. Only such designated portions and exhibits shall be Confidential or  
28 Confidential-Attorneys’ Eyes Only. During and after the deposition, until the

1 expiration of the above-described 10-day period, the entire transcript and any  
2 information derived therefrom may be disclosed only pursuant to the terms of this  
3 Protective Order.

#### 4 **4. SCOPE**

5 The Protected Material subject to this Protective Order, and any and all  
6 knowledge or information derived therefrom, shall not be used by any party,  
7 expert, consultant, deponent or other non-Designating Party person or entity to  
8 whom such documents or materials are disclosed, for any business, commercial,  
9 media, or competitive purpose or for any other purpose whatsoever, other than  
10 preparation for trial, trial, and/or settlement of this action. The protections  
11 conferred by this Stipulation and Order cover not only Protected Material  
12 referenced above, but also any information copied or extracted therefrom, as well  
13 as all copies, excerpts, summaries, or compilations thereof, plus testimony,  
14 conversations, or presentations by parties or counsel to or in litigation or in other  
15 settings that might reveal Protected Material.

#### 16 **5. FILING CONFIDENTIAL INFORMATION**

17 If Protected Material is filed with the Court, it shall be filed under seal in  
18 accordance with L.R. 79-5.1 and marked substantially as follows:

19 CONFIDENTIAL AND SUBJECT TO PROTECTIVE ORDER. IN  
20 ACCORDANCE WITH THE PROTECTIVE ORDER, THE  
21 ENCLOSURE(S) SHALL BE TREATED AS CONFIDENTIAL  
22 AND SHALL NOT BE SHOWN TO ANY PERSON OTHER  
23 THAN THOSE PERSONS DESIGNATED IN PARAGRAPH 8 OF  
24 THE PROTECTIVE ORDER.  
25

26 Such Protected Material shall be opened only by the Court or by personnel  
27 authorized to do so by the Court. Any pleading, motion, brief, memorandum, or  
28 other filing with the Court that includes any discussion or analysis of, quotation

1 from, or substantive reference to any Protected Material shall be filed, together  
2 with an application for filing under seal in accordance with L.R. 79-5.1, and  
3 marked with the language specified in paragraph 6, above.

4 **6. DISCLOSURE OF CONFIDENTIAL INFORMATION**

5 Unless otherwise ordered by the Court, Confidential Information, including  
6 all information derived therefrom, but excluding documents marked “Confidential-  
7 Attorneys’ Eyes Only – Subject to Protective Order” and all information derived  
8 therefrom, shall be restricted solely to the following persons, who are bound by the  
9 terms of this Protective Order, unless additional persons are agreed upon and  
10 stipulated to in writing by counsel or authorized by the Court:

11 a. Outside or in-house counsel for any party to the above-  
12 captioned litigation, including all employees of said counsel’s law department or  
13 law firm involved in the prosecution or defense of the above-entitled case, such as  
14 (without limitation) permanent and temporary attorneys, contract attorneys,  
15 paralegal assistants, stenographic, and clerical employees;

16 b. Those persons retained by any party herein for the purpose of  
17 furnishing consulting services (such as non-retained experts) and/or for giving  
18 expert testimony in this matter. Before disclosing any Confidential Information of  
19 another Designating Party to any expert or consultant retained by any party herein  
20 (the “Retaining Party”), the Retaining Party’s attorney shall show any such expert  
21 or consultant a copy of this Protective Order. The expert or consultant shall sign  
22 the declaration, attached hereto as Appendix A (the “Declaration”), agreeing to be  
23 bound by and to its terms. The Retaining Party shall maintain all signed, original  
24 declarations.

25 c. Party employees or officers whose job responsibilities relate  
26 directly to the matters at issue in the above-entitled action and whose review of the  
27 Confidential Information is necessary and proper to assist the party in preparation  
28 for trial, trial, and/or settlement of this action and who are bound by internal

1 confidentiality obligations as party of their employment or who have signed the  
2 declaration, attached hereto as Appendix A; and

3 d. This Court and its personnel including, but not limited to,  
4 stenographic reporters regularly employed by the Court and stenographic reporters  
5 not regularly employed by the Court who are engaged by the Court during this  
6 litigation.

7 e. The author and recipients of the document or the original source  
8 of the information.

9 **7. DISCLOSURE OF ATTORNEYS' EYES ONLY**  
10 **INFORMATION**

11 Confidential Information that contains highly sensitive proprietary,  
12 financial, or trade secret information, such as technical data, future marketing  
13 plans, customer lists, customer information, costs, future products, and profit  
14 information, or other such material that would cause competitive damage if it were  
15 to be disclosed to another party, may be marked as “CONFIDENTIAL –  
16 ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER.” Unless  
17 otherwise ordered by the court or permitted in writing by the Designating Party, a  
18 receiving party may disclose any information or item designated  
19 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SUBJECT TO  
20 PROTECTIVE ORDER” only to the persons identified in sections 6(a), (b), (d)  
21 and (e) above, subject to the requirements and conditions in those sections. An  
22 expert shall not attach any Confidential Information designated under this section  
23 to any report nor reproduce the Confidential Information in whole or in part within  
24 any report unless such report is submitted under seal.

25 **8. STORAGE OF PROTECTED MATERIALS**

26 Each party shall take reasonable measures in storing Protected Materials to  
27 limit access to those persons who are authorized under the terms of this Protective  
28 Order to inspect, review, or receive such Protected Material and any documents

1 containing said Protected Material.

2 **9. EXCLUSIONS**

3 Whenever Protected Material is to be disclosed in a deposition or other  
4 hearing or proceeding, any party claiming that the information is confidential may  
5 exclude from the room any person, other than persons designated in paragraphs 6  
6 and 7 of this Protective Order, and in the case of Confidential-Attorneys' Eyes  
7 Only information, any person other than counsel, the deponent, and court and  
8 video reporters may be excluded, for that portion of said deposition, hearing or  
9 proceeding. The failure of the person to comply with a request of exclusion shall  
10 constitute substantial justification for counsel to instruct the witness not to answer  
11 the question. Nothing in this Protective Order shall limit any party from  
12 introducing Protected Material into evidence at trial, subject to the introducing  
13 party informing the Designating Party of its intent to do so and subject to the  
14 Designating Party's right to seek further protection from the Court.

15 **10. MODIFICATION**

16 Any party may apply to the Court, for good cause, at any time for an order  
17 modifying the terms of this Protective Order. Conversely, any party may apply to  
18 the Court for a supplementary protective order.

19 **11. RETURN OF PROTECTED MATERIAL**

20 Upon request, within thirty (30) business days after (1) the entry of a final  
21 judgment no longer subject to appeal on the merits of this case or (2) settlement of  
22 the claims between the parties, each party herein shall return to the producing party  
23 all produced Documents, and copies thereof, that have been designated  
24 confidential, or shall certify that all such Documents and copies have been  
25 destroyed, or such other procedure agreed upon by the party's counsel.

26 **12. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

27 Each party herein reserves the right to dispute the confidential status claimed  
28 by any other party in accordance with this Protective Order, and a failure to do so

1 shall not preclude a subsequent challenge to such designation, which may be made  
2 at any stage of this proceeding. An untimely designation of Confidential  
3 Information by a Designating Party shall not require any other party to take any  
4 special action, including, without limitation, recalling the information from third  
5 parties. Nor shall the possession of untimely designated Confidential Information  
6 or Attorneys' Eyes Only information by third parties constitute a violation of this  
7 Protective Order, provided the information was already in the possession of those  
8 third parties before it was designated Confidential Information or Attorneys' Eyes  
9 Only information. If any party believes that any Confidential or Attorneys' Eyes  
10 Only information has been designated inappropriately by another party or witness,  
11 the party shall, in writing, inform counsel for the party claiming confidentiality. If  
12 the party claiming confidentiality does not agree to re-designate the Confidential  
13 Information or Attorneys' Eyes Only information as non-confidential within ten  
14 (10) business days of receipt of the writing from opposing counsel, the party  
15 challenging the designation may file an appropriate motion before the Court that  
16 complies with L.R. 37. This Protective Order shall apply to the disputed  
17 Confidential Information until the motion is decided.

### 18 **13. INADVERTENT DISCLOSURES**

19 The inadvertent production of any Confidential Information lacking the  
20 physical designation "CONFIDENTIAL – SUBJECT TO PROTECTIVE  
21 ORDER" or "CONFIDENTIAL – ATTORNEY'S EYES ONLY – SUBJECT TO  
22 PROTECTIVE ORDER" shall be without prejudice to any subsequent claim that  
23 such material is confidential, and no party shall be held to have waived any rights  
24 by such inadvertent production, including the party's rights under Rule 26(c) of the  
25 Federal Rules of Civil Procedure. Upon written demand of the producing party or  
26 non-party, all copies of any Confidential Information lacking the physical  
27 designation "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or  
28 "CONFIDENTIAL – ATTORNEY'S EYES ONLY – SUBJECT TO

1 PROTECTIVE ORDER” shall be returned immediately to the producing party.  
2 The producing party then will supply to each of the other parties a copy of the  
3 Confidential Information properly designated “CONFIDENTIAL – SUBJECT TO  
4 PROTECTIVE ORDER” or “CONFIDENTIAL – ATTORNEY’S EYES ONLY –  
5 SUBJECT TO PROTECTIVE ORDER.”

6 **14. INADVERTENT PRODUCTION OF PRIVILEGED**  
7 **DOCUMENTS**

8 The inadvertent production of any privileged Document or any Document  
9 protected from discovery by the work product doctrine shall be without prejudice  
10 to any subsequent claim that such Document is privileged or protected from  
11 discovery by the work product doctrine, and no party shall be held to have waived  
12 any rights by such inadvertent production. Upon written demand of the producing  
13 party or non-party, all copies of the inadvertently produced Document shall be  
14 returned to the producing party.

15 **15. MISCELLANEOUS**

16 15.1 Disclosure of Party’s Own Protected Material. Nothing in this  
17 Protective Order restricts any party from using or disclosing its own Confidential  
18 Information for any purpose. This Protective Order also does not apply to  
19 information that was lawfully in the possession of a third party or in the public  
20 domain before the date of entry of this Protective Order.

21 15.1 Subpoena. In the event any person or party having possession,  
22 custody, or control or knowledge of any materials designated under this Protective  
23 Order receives a subpoena or other process or order directed to such materials,  
24 such person or party shall promptly notify, by email, counsel for the party who  
25 produced the confidential information sought by such subpoena or other process or  
26 order; shall furnish that counsel with a copy of the subpoena or other process or  
27 order; and shall cooperate reasonably with respect to any procedure sought to be  
28 pursued by the producing party whose interests may be affected. The person or

1 party receiving the subpoena or other process or order shall be entitled to comply  
2 with it, except to the extent the Designating Party is successful in obtaining from a  
3 court of competent jurisdiction an order modifying or quashing it.

4           15.2 Duration. This Order shall govern the production and  
5 disclosure of all Protected Material produced or disclosed in this case, both before  
6 and after the entry of this Order. The provisions of this Protective Order shall  
7 continue to be binding after the conclusion of this litigation, except that any party  
8 may seek the written permission of the Designating Party or further order of the  
9 Court with respect to dissolution or modification of the Protective Order.

10           15.3 Jurisdiction. This Court shall have continuing jurisdiction to  
11 enforce the provisions of this Protective Order. The parties agree that disclosure or  
12 use inconsistent with the terms of this Protective Order of any Protected Material  
13 would give rise to irreparable injury to the disclosing party.

14 SO STIPULATED AND AGREED.

15  
16 Dated: March 2, 2015

**FOLEY BEZEK BEHLE & CURTIS, LLP**

17  
18 By: */s/ Roger N. Behle, Jr.*

Roger N. Behle, Jr.

Justin P. Karczag

Kevin D Gamarnik

Attorneys for Plaintiff John D. Thomson

19  
20  
21  
22 Dated: March 2, 2015

**GORDON & REES LLP**

23 By: */s/ Richard P. Sybert*

Richard P. Sybert

Holly L.K. Heffner

Justin H. Aida

Attorneys for Defendant Torrance Memorial  
Medical Center

1 Dated: March 2, 2015

**COLLINS COLLINS MUIR + STEWART LLP**

2  
3 By: */s/ James C. Jardin*

4 Michele L. Gamble

5 James C. Jardin

6 Attorneys for Defendant HMC Architects

7 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
8  
9

10 DATED: March 5, 2015

*/s/*

11 Hon. Victor B. Kenton  
12 United States Magistrates Judg

**APPENDIX A**

I, \_\_\_\_\_ state that:

1. My address is \_\_\_\_\_  
\_\_\_\_\_.

2. I have received a copy of the Protective Order in THOMSON v. HMC GROUP, et al., CV 13-03273 DMG (VBKx), before the United States District Court for the Central District of California.

3. I have carefully read and understand the provisions of the Protective Order. My staff and I will comply with all of its provisions, including (a) holding in confidence and not disclosing to anyone not qualified under the Protective Order, any information designated “Confidential Information” or “Confidential Information — Attorney’s Eyes Only,” or any words, substances, summaries, abstracts, or indices of such information, or copies thereof, or knowledge deriving therefrom, which come into my possession and documents or things which I have prepared relating thereto, except to counsel for the party by whom I am retained, and (b) using the foregoing solely for purposes of this proceeding, and not for any present or future business, competitive, or governmental purpose or function. I agree to return all copies of Confidential Information to the attorney from whom I received it, within ten business days of receipt.

4. I hereby consent to be subject to personal jurisdiction of the United States District Court for the Central District of California and any appellate court involved in this proceeding in respect to any proceeding relating to the enforcement of the Protective Order, including any proceedings relating to contempt of Court.

Date \_\_\_\_\_ By \_\_\_\_\_