

1 “Parties,” and each of them a “Party”) designates as “Confidential Material” in the
2 manner described below.

3 2. Parties may designate documents as confidential if the document
4 contains trade secrets or information that is commercially sensitive, private, or
5 personal. Such designations are limited to documents and information that the
6 designating Party believes in good faith to be confidential. Confidentiality
7 designations should to the extent feasible not obscure the underlying text and
8 should be located on the bottom of the page if possible. Designation of a
9 document as confidential shall not restrict the use outside of this Action of similar
10 or identical documents or information contained therein, if the documents or
11 information was obtained or received from sources other than the designating
12 Party’s production in this Action.

13 3. To the extent that matter stored or recorded in the form of electronic
14 or magnetic media (including information, databases, or programs stored on
15 computers, discs, networks, tapes, personal digital assistants, etc.) (collectively,
16 “Electronic Material”) is produced by a Party in such form, that Party may
17 designate such matter as Confidential Material by cover letter referring generally to
18 such matter. If reasonably feasible, however, the designating Party shall include in
19 the Electronic Material the legend provided for in paragraph 4.

20 4. “Confidential Material” may be so designated by a Party (the
21 “Designating Party”) by marking “Confidential” or “Confidential Information” on
22 the face of the document(s) and on each page(s) containing confidential
23 information.

24 5. Except by agreement of the Parties or as provided herein or required
25 by law, Confidential Material may be disclosed only to the following persons:

- 26 a. The Parties;
- 27 b. Counsel for any Party, and their associates, paralegal, clerical, or
28 service support staff;

- 1 c. Experts or consultants (including their employees and/or support
- 2 staff) retained or consulted by any Party to this Action;
- 3 d. Mediators retained by the Parties to the Action;
- 4 e. The Court and its staff;
- 5 f. Trial witnesses;
- 6 g. Persons who a Party in good faith anticipates may be witnesses;
- 7 h. Persons who a Party in good faith believes already have
- 8 knowledge of the Confidential Material (other than by disclosure
- 9 pursuant to this Stipulation), including any persons who, on the
- 10 face of the Confidential Material are indicated to be authors,
- 11 addressees, or recipients of copies of the Confidential Material;
- 12 i. Stenographers, court reporters, copy services, employees of
- 13 document or data management firms, and similar personnel
- 14 rendering transcription, copying, recording, audiovisual, or
- 15 document or data management services in connection with this
- 16 Action;

17 Confidential Material shall not be disclosed to any person referred to in
18 subparagraphs 5 (c), (f) and (g) unless and until such person has read and agreed to
19 be bound by the terms and conditions of this Stipulation.

20 6. If any Party to the Action disputes the designation of any document as
21 Confidential Material (the “Challenging Party”), or otherwise seeks a removal or
22 alteration of the protections of this Stipulation for any reason, the Challenging
23 Party shall initiate the dispute resolution process by providing written notice of the
24 designations it is challenging and describing the basis for the challenge. The
25 Parties shall attempt to resolve each challenge in good faith and must begin the
26 process by conferring within 14 days of the date of service of notice. If the Parties
27 cannot resolve a challenge without court intervention, the Designating Party shall
28 file and serve a motion to retain confidentiality within 21 days of the parties

1 agreeing that the meet and confer process will not resolve their dispute. Failure by
2 the Designating Party to make such a motion within 21 days shall automatically
3 waive the confidentiality designation for each challenged designation. Unless the
4 Designating Party has waived the confidentiality designation by failing to file a
5 motion to retain confidentiality as described above, all parties shall continue to
6 afford the material in question protection as Confidential Material until the court
7 rules on the challenge.

8 7. In addition to the relief provided by paragraph 6, the Parties do not
9 waive, and expressly retain, the rights to seek from the Court relief from any
10 provisions of this Stipulation or additional or different provisions or exceptions
11 with respect to particular documents or information.

12 8. Without written permission from the Designating Party or a court
13 order secured after appropriate notice to all interested persons, a Party may not file
14 in the public record in this action any Confidential Material. A Party that seeks to
15 file under seal any Confidential Material must comply with Civil Local Rule 79-5.
16 If a Party's request to file Confidential Material under seal is denied by the court,
17 then the Party may file the information in the public record unless otherwise
18 instructed by the court.

19 9. Nothing in this Stipulation shall prevent any Party from using or
20 disclosing the Party's own documents or information.

21 10. Nothing in this Stipulation shall operate to require the production of
22 information or documents that are subject to a good faith assertion of attorney-
23 client privilege, work product immunity, or other applicable privilege or immunity
24 from disclosure.

25 11. A person's compliance with the terms of this Stipulation shall not
26 operate as an admission that any particular document is or is not (i) confidential,
27 (ii) privileged, or (iii) admissible in evidence at trial.

28 12. This Stipulation shall survive the termination of this Action and shall

1 continue in full force and effect thereafter. Upon written request, documents
2 designated as Confidential Material shall be returned to the appropriate Party or
3 destroyed within ninety (90) days after the termination of the Action. Upon
4 written request, the Party who received Confidential Material in this Action shall
5 provide the designating Party with a declaration certifying that all documents
6 required to be returned or destroyed pursuant to the provisions of this paragraph
7 have been returned or destroyed. "Termination of this Action" will occur upon the
8 rendering of a non-appealable, final order or decision by the Court. If the Parties
9 hereto resolve this case by settlement or compromise and no award is ever
10 rendered, then "Termination of this Action" shall occur on the date that the Action
11 is dismissed by the filing of a written dismissal.

12 13. Any person in possession of Confidential Material who (i) receives a
13 subpoena (or other process) from any person (including natural persons,
14 corporations, partnerships, firms, governmental agencies, departments or bodies,
15 boards, or associations) who is not a Party to this Stipulation seeking production or
16 other disclosure of such Confidential Material or (ii) receives a request by a
17 governmental agency, regulatory agency, or a court seeking production or other
18 disclosure of such Confidential Material, shall promptly give notice by email
19 and/or facsimile to counsel for the Parties, enclosing a copy of the subpoena or
20 other process or request where possible at least ten (10) business days before
21 production or other disclosure, unless such Party is prohibited from disclosing the
22 request seeking the materials, by lawful order of a governmental entity or
23 otherwise by law, which prohibits such disclosure or delay. In no event shall
24 production or other disclosure be made before the latest of (i) the date on which
25 notice is given; or (ii) the return date of the subpoena or request. Nothing in this
26 paragraph shall be deemed to require a recipient of confidential information to
27 resist production, but no voluntary surrender may be made without compliance
28 with the notice requirement, which is intended to permit the Parties to assert any

1 rights against production which they would have had had the documents remained
2 exclusively in the possession or control of the Parties under this Stipulation. If
3 production is required by lawful process prior to providing the above required
4 notice, the producing Party shall nonetheless provide written notice of such
5 production, unless lawfully forbidden by the person to whom the documents are
6 provided.

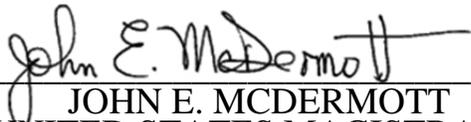
7 14. This Stipulation shall not apply to the use of Confidential Material at
8 the trial in the Action, unless otherwise ordered by the Court.

9 **ORDER**

10 The Court, having reviewed the Stipulated Protective Order and
11 Confidentiality Agreement between Plaintiff and Defendant requesting the entry of
12 the Stipulation, hereby approves of the Stipulation.

13 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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15 Dated: March 30, 2017

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18 JOHN E. MCDERMOTT
19 UNITED STATES MAGISTRATE JUDGE
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