

NOTE: CHANGES MADE BY THE COURT

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES SCOTT LOWE, et al.

Plaintiffs,

vs.

INTERNATIONAL ALLIANCE
OF THEATRICAL STAGE
EMPLOYEES LOCAL 33, et al.,

Defendants.

Case No. 2:15-CV-04650-RGK
(JPRx)

Assigned for all purposes to Honorable
R. Gary Klausner

**STIPULATED PROTECTIVE
ORDER**

1 WHERAS, this action is likely to involve production of confidential,
2 proprietary and private information, including but not limited to financial
3 information, proprietary contracts and business information, and other
4 commercial information, for which special protection from public disclosure
5 is warranted;

6 WHEREAS, the parties, without waiving the privacy, confidentiality,
7 sensitivity or proprietary nature of such information, wish to have access to
8 such material for the sole purpose of prosecuting, defending and attempting
9 to resolve this action;

10 WHERAS, such confidential and proprietary materials and
11 information consist of, among other things, confidential business or
12 financial information, information regarding confidential business practices,
13 or other confidential commercial information (including information
14 implicating privacy rights of third parties), information otherwise generally
15 unavailable to the public, or which may be privileged or otherwise protected
16 from disclosure under state or federal statutes, court rules, case decisions, or
17 common law, the disclosure of which could result in irreparable harm to the
18 parties;

19 WHEREAS, the parties wish to expedite the flow of information, to
20 facilitate the prompt resolution of disputes over confidentiality of discovery
21 materials, to adequately protect information the parties are entitled to keep
22 confidential, to ensure that the parties are permitted reasonable necessary
23 uses of such material in preparation for and in conduct of trial, to address
24 their handling at the end of the litigation, and serve the ends of justice;

25 WHEREAS, the parties hereby acknowledge that the proposed
26 Stipulated Protective Order does not confer blanket protections on all
27 disclosures or responses to discovery and that the protection it affords from
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1 public disclosure and use extends only to the limited information or items
2 that are entitled to confidential treatment under the applicable legal
3 principles; and

4 WHEREAS, the parties acknowledge that the proposed Stipulated
5 Protective Order does not entitle them to file confidential information under
6 seal; rather, Civil Local Rule 79-5 sets forth the procedures that must be
7 followed and the standards that will be applied when a Party seeks
8 permission from the court to file material under seal.

9 NOW, THEREFORE, the parties hereby stipulate as follows:

10 **1. DEFINITIONS**

11 1.1. Action: Shall refer to and mean the above-captioned action,
12 including any subsequent counterclaims or cross-claims.

13 1.2. Challenging Party: Shall refer to and mean a Party or Non-Party
14 that challenges the designation of information or items under this
15 Order.

16 1.3. "CONFIDENTIAL" Information or Items: Shall refer to and
17 mean information (regardless of how it is generated, stored or
18 maintained) or tangible things that qualify for protection under
19 Federal Rule of Civil Procedure 26(c).

20 1.4. Counsel: Shall refer to and mean Outside Counsel of Record
21 and House Counsel (as well as their support staff).

22 1.5. Designating Party: Shall refer to and mean a Party or Non-Party
23 that designates information or items that it produces in disclosures
24 or in responses to discovery as "CONFIDENTIAL."

25 1.6. Disclosure or Discovery Material: Shall refer to and mean all
26 items or information, regardless of the medium or manner in which
27 it is generated, stored, or maintained (including, among other
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1 things, testimony, transcripts, documents, electronic data, and
2 tangible things), that are produced, generated or uncovered during
3 depositions, in responses to discovery requests propounded in this
4 matter, or any other proceedings in this Action.

5 1.7. Expert: Shall refer to and mean a person with specialized
6 knowledge or expertise in a matter pertinent to the Action who has
7 been retained by a Party or its counsel to serve as an expert
8 witness or as a consultant in this Action.

9 1.8. House Counsel: Shall refer to and mean attorneys who are
10 employees or a Party to this Action; House Counsel shall not
11 include Outside Counsel of Record or any other outside counsel.

12 1.9. Non-Party: Shall refer to and mean any natural person,
13 partnership, corporation, association, or other legal entity not
14 named as a Party to this Action.

15 1.10. Outside Counsel of Record: Shall refer to and mean attorneys
16 who are not employees of a Party to this Action but are retained to
17 represent or advise a Party to this Action and have appeared in this
18 Action on behalf of that Party or are affiliated with or cooperating
19 with a law firm which has appeared on behalf of that Party, and
20 includes support staff.

21 1.11. Party: Shall refer to and mean any Party to this Action,
22 including all of its officers, directors, employees, consultants,
23 retained experts, House Counsel (and their support staffs) and
24 Outside Counsel of Record (and their support staffs).

25 1.12. Producing Party: Shall refer to and mean a Party or Non-Party
26 that produces Disclosure or Discovery Material in this Action.
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1 1.13. Professional Vendors: Shall refer to and mean persons or
2 entities that provide litigation support services (e.g.,
3 photocopying, videotaping, translating, preparing exhibits or
4 demonstrations, and organizing, storing or retrieving data in any
5 form or medium) and their employees and subcontractors.

6 1.14. Protected Material: Shall refer to and mean any Disclosure or
7 Discovery Material that is designated as “CONFIDENTIAL.”

8 1.15. Receiving Party: Shall refer to and mean a Party that receives
9 Disclosure or Discovery Material from a Producing Party.

10 **2. SCOPE**

11 The protections conferred by this Stipulated Protective Order cover
12 not only Protected Material (as defined above), but also (1) any information
13 copied or extracted from Protected Material; (2) all copies, excerpts,
14 summaries, or compilations of Protected Material; and (3) any testimony,
15 conversations or presentations by the Parties or their Counsel that might
16 reveal Protected Material. Any use of Protected Material at trial shall be
17 governed by the orders of the trial judge. This Order does not govern the
18 use of Protected Material at trial.

19 **3. DURATION**

20 Even after final disposition of this litigation, the confidentiality
21 obligations imposed by this Order shall remain in effect until a Designating
22 Party agrees otherwise in writing or a court order otherwise directs. Final
23 disposition shall be deemed to be the later of (1) dismissal of all claims and
24 defenses in this Action, with or without prejudice; and (2) final judgment
25 herein after the completion and exhaustion of all appeals, rehearings,
26 remands, trials, or reviews of this Action, including the time limits for filing
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1 any motions or applications for extension of time pursuant to applicable
2 law.

3 **4. DESIGNATING PROTECTED MATERIAL**

4 4.1. Exercise of Restraint and Care in Designating Material for
5 Protection. Each Party or Non-Party that designates information
6 or items for protection under this Order must take care to limit any
7 such designation to specific material that qualifies under the
8 appropriate standards. The Designating Party must designate for
9 protection only those parts of material, documents, items, or oral
10 or written communications that qualify so that other portions of
11 the material, documents, items, or communications for which
12 protection is not warranted are not swept unjustifiably within the
13 ambit of this Order.

14 4.2. Mass, indiscriminate, or routinized designations are prohibited.
15 Designations that are shown to be clearly unjustified or that have
16 been made for an improper purpose (e.g., to unnecessarily
17 encumber the case development process or to impose unnecessary
18 expenses and burdens on other parties) may expose the
19 Designating Party to sanctions. If it comes to a Designating
20 Party's attention that information or items that it designated for
21 protection do not qualify for protection, that Designating Party
22 must promptly notify all other Parties that it is withdrawing the
23 inapplicable designation.

24 4.3. Manner and Timing of Designations. Except as otherwise
25 provided in this Order (e.g., see second paragraph of section 4.3(a)
26 below), or as otherwise stipulated or ordered, Disclosure or
27 Discovery Material that qualifies for protection under this Order
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1 must be clearly so designated before the material is disclosed or
2 produced. Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or
4 electronic documents, but excluding transcripts or depositions or
5 other pretrial or trial proceedings), that the Producing Party
6 affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
7 “CONFIDENTIAL legend”), to each page that contains
8 protected material. If only a portion or portions of the material
9 on a page qualifies for protection, the Producing Party also must
10 clearly identify the protected portion(s) (e.g., by making
11 appropriate markings in the margins). A Party or Non-Party that
12 makes original documents available for inspection need not
13 designate them for protection until after the inspecting Party has
14 indicated which documents it would like copied and produced.
15 During the inspection and before the designation, all of the
16 material made available for inspection shall be deemed
17 “CONFIDENTIAL.” After the inspecting Party has identified
18 the documents it wants copied and produced, the Producing
19 Party must determine which documents, or portions thereof,
20 qualify for protection under this Order. Then, before producing
21 the specified documents, the Producing Party must affix the
22 CONFIDENTIAL legend to each page that contains Protected
23 Material. If only a portion or portions of the material on a page
24 qualifies for protection, the Producing Party also must clearly
25 identify the protected portion(s) (e.g., by making appropriate
26 markings in the margins).

1 (b) for testimony given in deposition, that the Designating
2 Party identify and designate Protected Material as such on the
3 record and before the close of the deposition or promptly
4 afterwards.

5 (c) for information produced in some form other than
6 documentary and for any other tangible items, that the
7 Producing Party affix in a prominent place on the exterior of the
8 container or containers in which the information is stored the
9 CONFIDENTIAL legend. If only a portion or portions of the
10 information warrants protection, the Producing Party, to the
11 extent practicable, shall identify the protected portion(s).

12 4.4. Inadvertent Failures to Designate. If timely corrected, an
13 inadvertent failure to designate qualified information or items does
14 not, standing alone, waive the Designating Party's right to secure
15 protection under this Order for such material. Upon timely
16 correction of a designation, the Receiving Party must make
17 reasonable efforts to ensure that the material is treated in
18 accordance with the provisions of this Order.

19 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 5.1. Timing of Challenges. Any Party or Non-Party may challenge a
21 designation of confidentiality at any time that is consistent with the Court's
22 Scheduling Order.

23 5.2. Meet and Confer. The Challenging Party shall initiate the
24 dispute resolution process under Local Rule 37.1 et seq.

25 5.3. The Burden of Persuasion in Any Such Challenge Proceeding
26 Shall Be on the Designating Party. Frivolous challenges, and
27 those made for an improper purpose (e.g., to harass or impose
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1 unnecessary expenses and burdens on a Designating Party) may
2 expose the Challenging Party to sanctions. Unless the Designating
3 Party has waived or withdrawn the confidentiality designation, all
4 parties shall continue to afford the material in question the level of
5 protection to which it is entitled under the Designating Party's
6 designation until the Court rules on the challenge.

7 **6. ACCESS AND USE OF PROTECTED MATERIAL**

8 6.1. Basic Principles. A Receiving Party may use Protected Material
9 that is disclosed or produced by another Party or by a Non-Party in
10 connection with this Action only for purposes of prosecuting,
11 defending, or attempting to settle this Action. Such Protected
12 Material may be disclosed only to the categories of persons and
13 under the conditions described in this Order. When the Action has
14 been terminated, a Receiving Party must comply with the
15 provisions of section 12 below (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving
17 Party at a location and in a secure manner that ensures that access
18 is limited to the persons authorized under this Order.

19 6.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the
21 Designating Party, a Receiving Party may disclose any information
22 or item designated "CONFIDENTIAL" only to:

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24 (a) the Receiving Party's Outside Counsel of Record in
25 this Action, as well as employees of said Outside Counsel of
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1 Record to whom it is reasonably necessary to disclose the
2 information for this Action;

3 (b) the officers, directors, and employees (including House
4 Counsel) of the Receiving Party to whom disclosure is deemed
5 reasonably necessary for prosecution and defense of this Action;

6 (c) Experts (as defined in this Order) of the Receiving
7 Party to whom disclosure is reasonably necessary for this Action
8 and who have signed the “Acknowledgment and Agreement to
9 Be Bound” (Exhibit A);

10 (d) the court and its personnel, in camera or under seal;

11 (e) court reporters and their staff;

12 (f) professional jury or trial consultants, mock jurors, and
13 Professional Vendors to whom disclosure is reasonably
14 necessary for this Action and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (g) the author or recipient of a document containing the
17 information or a custodian or other person who otherwise
18 possessed or knew the information;

19 (h) during their depositions, witnesses, and attorneys for
20 witnesses, in the Action to whom disclosure is reasonably
21 necessary provided: (1) the deposing Party requests that the
22 witness sign the form attached as Exhibit A hereto; and (2) they
23 will not be permitted to keep any confidential information
24 unless they sign the “Acknowledgement and Agreement to Be
25 Bound” (Exhibit A), unless otherwise agreed by the Designating
26 Party or ordered by the court. Pages of transcribed deposition
27 testimony or exhibits to depositions that reveal Protected
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1 Material may be separately bound by the court reporter and may
2 not be disclosed to anyone except as permitted under this
3 Stipulated Protected Order; and

4 (i) any mediator or settlement officer, and their supporting
5 personnel, mutually agreed upon by any of the Parties engaged
6 in settlement discussions.

7 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
8 **PRODUCED IN OTHER LITIGATION**

9 If a Party is served with a subpoena or a court order issued in other
10 litigation that compels disclosure of any information or items designated in
11 this Action as “CONFIDENTIAL,” that Party must:

12 (a) promptly notify in writing the Designating Party. Such
13 notification shall include a copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the
15 subpoena or order to issue in the other litigation that some or all
16 of the material covered by the subpoena or order is subject to
17 this Stipulated Protective Order. Such notification shall include
18 a copy of this Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought
20 to be pursued by the Designating Party whose Protected Material
21 may be affected. If the Designating Party timely seeks a
22 protective order, the Party served with the subpoena or court
23 order shall not produce any information designated in this action
24 as “CONFIDENTIAL” before a determination by the court from
25 which the subpoena or order issued, unless the Party has
26 obtained the Designating Party’s permission or the Court so
27 orders. The Designating Party shall bear the burden and
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1 expense of seeking protection in that court of its confidential
2 material and nothing in these provisions should be construed as
3 authorizing or encouraging a Receiving Party in this Action to
4 disobey a lawful directive from another court.

5 **8. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
6 **PRODUCED IN THIS LITIGATION**

7 (a) The terms of this Stipulated Protective Order are
8 applicable to information produced by a Non-Party in this
9 Action and designated as "CONFIDENTIAL." Such
10 information produced by Non-Parties in connection with this
11 litigation is protected by the remedies and relief provided by this
12 Stipulated Protective Order. Nothing in these provisions should
13 be construed as prohibiting a Non-Party from seeking additional
14 protections.

15 (b) In the event that a Party is required, by a valid discovery
16 request, to produce a Non-Party's confidential information in its
17 possession, and the Party is subject to an agreement with the
18 Non-Party not to produce the Non-Party's confidential
19 information, then the Party shall:

20 (1) promptly notify in writing the Requesting Party and the Non-Party
21 that some or all of the information requested is subject to a confidentiality
22 agreement with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the Stipulated
24 Protective Order in this Action, the relevant discovery request(s), and a
25 reasonably specific description of the information requested; and

26 (3) make the information requested available for inspection by the
27 Non-Party, if requested.

1 (c) If the Non-Party fails to seek a protective order from this
2 Court within 14 days of receiving the notice and accompanying
3 information, the Receiving Party may produce the Non-Party's
4 confidential information responsive to the discovery request. If
5 the Non-Party timely seeks a protective order, the Receiving
6 Party shall not produce any information in its possession or
7 control that is subject to the confidentiality agreement with the
8 Non-Party before a determination by the court. Absent a court
9 order to the contrary, the Non-Party shall bear the burden and
10 expense of seeking protection in this Court of its Protected
11 Material.

12 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED**
13 **MATERIAL**

14 If a Receiving Party learns that, by inadvertence or otherwise, it has
15 disclosed Protected Material to any person or in any circumstance not
16 authorized under this Stipulated Protective Order, the Receiving Party must
17 immediately (a) notify in writing the Designating Party of the unauthorized
18 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
19 Protected Material, (c) inform the person or persons to whom unauthorized
20 disclosures were made of all the terms of the this Order, and, if appropriate,
21 (d) request such person or persons to execute the "Acknowledgment and
22 Agreement to Be Bound" that is attached hereto as Exhibit A.

23 **10. INADVERTENT PRODUCTION OF PRIVILEGED OR**
24 **OTHERWISE PROTECTED MATERIAL**

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other
27 protection, the obligations of the Receiving Parties are those set forth in
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1 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended
2 to modify whatever procedure may be established in an e-discovery order
3 that provides for production without prior privilege review. Pursuant to
4 Federal Rule of Evidence 502(d) and (e), the parties agree that the attorney-
5 client privilege or work product protection is not waived by inadvertent
6 disclosure connected with the Action, and that the provisions of Federal
7 Rule of Evidence 502 apply in this Action and in all proceedings in any
8 other federal or state court.

9 **11. MISCELLANEOUS**

10 11.1 Right to Further Relief. Nothing in this Stipulated Protective
11 Order abridges the right of any person to seek its modification by the Court
12 in the future.

13 11.2 Right to Assert Other Objections. By stipulating to the entry of
14 this Stipulated Protective Order, no Party waives any right it otherwise
15 would have to object to disclosing or producing any information or item on
16 any ground not addressed in this Stipulated Protective Order. Similarly, no
17 Party waives any right to object on any ground to use in evidence of any of
18 the material covered by this Stipulated Protective Order.

19 11.3 The use, disclosure, or production by the Parties of Protected
20 Material pursuant to this Stipulated Protective Order shall not be deemed to
21 concede the relevancy, competency or admissibility of any document or of
22 any matter set forth therein, and is not intended to be a waiver of any
23 privilege.

24 11.4 Filing Protected Material. A Party that seeks to file under seal
25 any Protected Material must comply with Civil Local Rule 79-5. Protected
26 Material may only be filed under seal pursuant to a court order authorizing
27 the sealing of the specific Protected Material at issue. If a Party's request to
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1 file Protected Material under seal is denied by the court, then the Receiving
2 Party may file the information in the public record unless otherwise
3 instructed by the court. If any Party hereto files with the Court any
4 Protected Material or any document that contains, incorporates, reproduces,
5 excerpts or discloses the contents of Protected Material, or the substance
6 thereof, its confidential nature shall be disclosed on the first page of such
7 document and it shall be filed with the Court under seal for in camera
8 review.

9 11.5 The protections conferred by this Stipulated Protective Order
10 cover not only Protected Material, but also any information copied or
11 extracted therefrom, as well as copies, excerpts, summaries, or compilations
12 thereof, plus testimony, conversations, or presentations by parties or counsel
13 to or in Court or in other settings that might reveal Protected Material and
14 the information contained therein.

15 11.6 The protections of this Stipulated Protective Order shall apply
16 retroactively to Protected Material produced by any Party prior to its entry.

17 11.7 Without written permission from the Designating Party or a
18 court order secured after appropriate notice to all interested persons, a Party
19 may not file in the public record in this Action any Protected Material.

20 11.8 By stipulating to the entry of this Stipulated Protective Order,
21 no Party waives any right it otherwise would have to object to disclosing or
22 producing any information or item on any ground not addressed in this
23 Stipulated Protective Order. Similarly, no Party waives any right to assert
24 evidentiary objections to the materials covered by this Stipulated Protective
25 Order.

1 EXHIBIT A

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3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare
6 under penalty of perjury that I have read in its entirety and understand the
7 Stipulated Protective Order that was issued by the United States District Court for
8 the Central District of California and entered in the case of *Lowe, et al. v.*
9 *International Alliance of Theatrical Stage Employees Local 33, et al.*, Case No.
10 2:15-CV-04650-RGK (JPRx). I agree to comply with and to be bound by all the
11 terms of the Stipulated Protective Order and I understand and acknowledge that
12 failure to so comply could expose me to sanctions and punishment in the nature of
13 contempt. I solemnly promise that I will not disclose in any manner any
14 information or item that is subject to the Stipulated Protective Order to any person
15 or entity except in strict compliance with the provisions of the Stipulated
16 Protective Order.

17 I further agree to submit to the jurisdiction of the United States District Court for
18 the Central District of California for the purpose of enforcing the terms of the
19 Stipulated Protective Order, even if such enforcement proceedings occur after
20 termination of the Action.

21
22 Date: _____

23 City and State where sworn and signed:
24 _____

25 Printed Name: _____

26 Signature: _____
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