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NOTE CHANGES MADE BY COURT

14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

16 WESTERN ENVIRONMENTAL)	Case No.: CV 15-8113-JFW (SSx)
17 LEASING, INC.,)	
18 Plaintiff,)	STIPULATED PROTECTIVE
19 v.)	ORDER
20 HARTFORD FIRE INSURANCE)	[Discovery Document: Referred to
21 COMPANY,)	Magistrate Judge Suzanne H.
22 Defendant.)	Segal]

23 **1.**

24 **A. PURPOSES AND LIMITATIONS**

25 Discovery in this action is likely to involve production of confidential,
 26 proprietary, or private information for which special protection from public
 27 disclosure and from use for any purpose other than prosecuting this litigation may
 28 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
 enter the following Stipulated Protective Order. The parties acknowledge that this
 Order does not confer blanket protections on all disclosures or responses to
 discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles. The parties further acknowledge, as set forth
3 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
4 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
5 procedures that must be followed and the standards that will be applied when a
6 party seeks permission from the court to file material under seal.

7 **B. GOOD CAUSE STATEMENT**

8 This action involves sensitive proprietary, financial, commercial, and
9 personal information and/or trade secrets or other confidential information for
10 which special protection from public disclosure and from use for any purpose other
11 than prosecution of this action is warranted. Such confidential and proprietary
12 materials and information consist of, among other things, confidential business or
13 financial information, information regarding confidential business practices
14 including claim handling practices and directives, information implicating the
15 privacy rights of third parties, information otherwise generally unavailable to the
16 public, or which may be privileged or otherwise protected from disclosure under
17 state or federal statutes, court rules, case decisions, or common law. Accordingly,
18 to expedite the flow of information, to facilitate the prompt resolution of disputes
19 over confidentiality of discovery materials, to adequately protect information the
20 parties are entitled to keep confidential, to ensure that the parties are permitted
21 reasonable necessary uses of such material in preparation for and in the conduct of
22 trial, to address their handling at the end of the litigation, and serve the ends of
23 justice, a protective order for such information is justified in this matter. It is the
24 intent of the parties that information will not be designated as confidential for
25 tactical reasons and that nothing be so designated without a good faith belief that it
26 has been maintained in a confidential, non-public manner, and there is good cause
27 why it should not be part of the public record of this case.

28

1 **2. DEFINITIONS**

2 2.1 Action: *Western Environmental Leasing, Inc. v. Hartford Fire*
3 *Insurance Company*, Case No. CV 15-8113-JFW (SSx) (C.D. Cal.).

4 2.2 Challenging Party: a Party or Non-Party that challenges the
5 designation of information or items under this Order.

6 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
7 how it is generated, stored or maintained) or tangible things that qualify for
8 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
9 the Good Cause Statement.

10 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
11 their support staff).

12 2.5 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 "CONFIDENTIAL."

15 2.6 Disclosure or Discovery Material: all items or information, regardless
16 of the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced
18 or generated in disclosures or responses to discovery in this matter.

19 2.7 Expert: a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve
21 as an expert witness or as a consultant in this Action.

22 2.8 House Counsel: attorneys who are employees of a party to this Action.
23 House Counsel does not include Outside Counsel of Record or any other outside
24 counsel.

25 2.9 Non-Party: any natural person, partnership, corporation, association,
26 or other legal entity not named as a Party to this action.

27 2.10 Outside Counsel of Record: attorneys who are not employees of a
28 party to this Action but are retained to represent or advise a party to this Action

1 and have appeared in this Action on behalf of that party or are affiliated with a law
2 firm which has appeared on behalf of that party, and includes support staff.

3 2.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation
9 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is
13 designated as "CONFIDENTIAL."

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16 **3. SCOPE**

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

24 **4. DURATION**

25 Even after final disposition of the Action, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees
27 otherwise in writing or a court order otherwise directs. Final disposition shall be
28 deemed to be the later of (1) dismissal of all claims and defenses in this Action,

as consistent with LR 79-7. (SAS)

1 with or without prejudice; and (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
3 including the time limits for filing any motions or applications for extension of
4 time pursuant to applicable law.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

14 Mass, indiscriminate, or routinized designations are prohibited.
15 Designations that are shown to be clearly unjustified or that have been made for an
16 improper purpose (e.g., to unnecessarily encumber the case development process
17 or to impose unnecessary expenses and burdens on other parties) may expose the
18 Designating Party to sanctions.

19 If it comes to a Designating Party's attention that information or items that it
20 designated for protection do not qualify for protection, that Designating Party must
21 promptly notify all other Parties that it is withdrawing the inapplicable designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in
23 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
24 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
25 under this Order must be clearly so designated before the material is disclosed or
26 produced.

27 Designation in conformity with this Order requires:

- 28 (a) for information in documentary form (e.g., paper or electronic

1 documents, but excluding transcripts of depositions or other pretrial or trial
2 proceedings), that the Producing Party affix at a minimum, the legend
3 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
4 contains protected material. If only a portion or portions of the material on a page
5 qualifies for protection, the Producing Party also must clearly identify the
6 protected portion(s) (e.g., by making appropriate markings in the margins).

7 A Party or Non-Party that makes original documents available for inspection
8 need not designate them for protection until after the inspecting Party has indicated
9 which documents it would like copied and produced. During the inspection and
10 before the designation, all of the material made available for inspection shall be
11 deemed "CONFIDENTIAL." After the inspecting Party has identified the
12 documents it wants copied and produced, the Producing Party must determine
13 which documents, or portions thereof, qualify for protection under this Order.
14 Then, before producing the specified documents, the Producing Party must affix
15 the "CONFIDENTIAL legend" to each page that contains Protected Material. If
16 only a portion or portions of the material on a page qualifies for protection, the
17 Producing Party also must clearly identify the protected portion(s) (e.g., by making
18 appropriate markings in the margins).

19 (b) for testimony given in depositions that the Designating Party
20 identify the Disclosure or Discovery Material on the record, before the close of the
21 deposition all protected testimony.

22 (c) for information produced in some form other than documentary
23 and for any other tangible items, that the Producing Party affix in a prominent
24 place on the exterior of the container or containers in which the information is
25 stored the legend "CONFIDENTIAL." If only a portion or portions of the
26 information warrants protection, the Producing Party, to the extent practicable,
27 shall identify the protected portion(s).

28

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party's right to secure protection under this Order for such
4 material. Upon timely correction of a designation, the Receiving Party must make
5 reasonable efforts to assure that the material is treated in accordance with the
6 provisions of this Order.

7 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality at any time that is consistent with the Court's
10 Scheduling Order.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
12 resolution process under Local Rule 37.1 et seq.

13 6.3 The burden of persuasion in any such challenge proceeding shall be
14 on the Designating Party. Frivolous challenges, and those made for an improper
15 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
16 parties) may expose the Challenging Party to sanctions. Unless the Designating
17 Party has waived or withdrawn the confidentiality designation, all parties shall
18 continue to afford the material in question the level of protection to which it is
19 entitled under the Producing Party's designation until the Court rules on the
20 challenge.

21 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 7.1 Basic Principles. A Receiving Party may use Protected Material that
23 is disclosed or produced by another Party or by a Non-Party in connection with this
24 Action only for prosecuting, defending, or attempting to settle this Action. Such
25 Protected Material may be disclosed only to the categories of persons and under
26 the conditions described in this Order. When the Action has been terminated, a
27 Receiving Party must comply with the provisions of section 13 below (FINAL
28 DISPOSITION).

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

4 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated
7 "CONFIDENTIAL" only to:

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

11 (b) the officers, directors, and employees (including House
12 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
13 this Action;

14 (c) Experts (as defined in this Order) of the Receiving Party to
15 whom disclosure is reasonably necessary for this Action and who have signed the
16 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

17 (d) the court and its personnel;

18 (e) court reporters and their staff;

19 (f) professional jury or trial consultants, mock jurors, and
20 Professional Vendors to whom disclosure is reasonably necessary for this Action
21 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
22 A);

23 (g) the author or recipient of a document containing the
24 information or a custodian or other person who otherwise possessed or knew the
25 information;

26 (h) during their depositions or at trial, evidentiary hearing, or other
27 court proceeding, witnesses, and attorneys for witnesses, in the Action to whom
28 disclosure is reasonably necessary provided: (1) the deposing party requests that

1 the witness sign the form attached as Exhibit A hereto; and (2) they will not be
2 permitted to keep any confidential information unless they sign the
3 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
4 agreed by the Designating Party or ordered by the court. Pages of transcribed
5 deposition testimony or exhibits to depositions that reveal Protected Material may
6 be separately bound by the court reporter and may not be disclosed to anyone
7 except as permitted under this Stipulated Protective Order;

8 (i) any mediator or settlement officer, and their supporting
9 personnel, mutually agreed upon by any of the parties engaged in settlement
10 discussions; and

11 (j) the Parties' insurers, reinsurers, reinsurance intermediaries,
12 retrocessionaires of the Parties' reinsurers, regulators, auditors, and accountants,
13 but only to the extent that any such persons or entities have a legitimate need for
14 access to the Protected Material.

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

17 If a Party is served with a subpoena or a court order issued in other litigation
18 that compels disclosure of any information or items designated in this Action as
19 "CONFIDENTIAL," that Party must:

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

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

26 (c) cooperate with respect to all reasonable procedures sought to be
27 pursued by the Designating Party whose Protected Material may be affected.

28

1 If the Designating Party timely seeks a protective order, the Party served
2 with the subpoena or court order shall not produce any information designated in
3 this action as "CONFIDENTIAL" before a determination by the court from which
4 the subpoena or order issued, unless the Party has obtained the Designating Party's
5 permission. The Designating Party shall bear the burden and expense of seeking
6 protection in that court of its confidential material and nothing in these provisions
7 should be construed as authorizing or encouraging a Receiving Party in this Action
8 to disobey a lawful directive from another court.

9 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
10 **PRODUCED IN THIS LITIGATION**

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

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

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

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

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

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

10 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

20 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
21 **OTHERWISE PROTECTED MATERIAL**

22 When a Producing Party gives notice to Receiving Parties that certain
23 inadvertently produced material is subject to a claim of privilege or other
24 protection, the obligations of the Receiving Parties are those set forth in Federal
25 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
26 whatever procedure may be established in an e-discovery order that provides for
27 production without prior privilege review. Pursuant to Federal Rule of Evidence
28 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure

1 of a communication or information covered by the attorney-client privilege or
2 work product protection, the parties may incorporate their agreement in the
3 stipulated protective order submitted to the court.

4 **12. MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of
6 any person to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this
8 Protective Order no Party waives any right it otherwise would have to object to
9 disclosing or producing any information or item on any ground not addressed in
10 this Stipulated Protective Order. Similarly, no Party waives any right to object on
11 any ground to use in evidence of any of the material covered by this Protective
12 Order.

13 12.3 Filing Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material
15 may only be filed under seal pursuant to a court order authorizing the sealing of the
16 specific Protected Material at issue. If a Party's request to file Protected Material
17 under seal is denied by the court, then the Receiving Party may file the information
18 in the public record unless otherwise instructed by the court.

19 **13. FINAL DISPOSITION**

20 After the final disposition of this Action, as defined in paragraph 4, within
21 60 days of a written request by the Designating Party, each Receiving Party must
22 return all Protected Material to the Producing Party or destroy such material. As
23 used in this subdivision, "all Protected Material" includes all copies, abstracts,
24 compilations, summaries, and any other format reproducing or capturing any of the
25 Protected Material. Whether the Protected Material is returned or destroyed, the
26 Receiving Party must submit a written certification to the Producing Party (and, if
27 not the same person or entity, to the Designating Party) by the 60 day deadline that
28 (1) identifies (by category, where appropriate) all the Protected Material that was

1 returned or destroyed and (2) affirms that the Receiving Party has not retained any
2 copies, abstracts, compilations, summaries or any other format reproducing or
3 capturing any of the Protected Material. Notwithstanding this provision, Counsel
4 are entitled to retain an archival copy of all pleadings, motion papers, trial,
5 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
6 and trial exhibits, expert reports, attorney work product, and consultant and expert
7 work product, even if such materials contain Protected Material. Any such
8 archival copies that contain or constitute Protected Material remain subject to this
9 Protective Order as set forth in Section 4 (DURATION).

10 14. Any violation of this Order may be punished by any and all
11 appropriate measures including, without limitation, contempt proceedings and/or
12 monetary sanctions.

13 Attestation pursuant to Local Rule 5-4.3.4(a)(2)(i): The signatory for plaintiff, on
14 whose behalf this filing is also submitted, concurs in this filing's content and has
15 authorized the filing.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 Dated: March 29, 2016 TRESSLER LLP

18
19 By: /s/ Elizabeth L. Musser
20 Paul S. White
21 Elizabeth L. Musser
22 Yvonne M. Schulte
23 Attorneys for Defendant
24 HARTFORD FIRE INSURANCE
25 COMPANY

26 Dated: March 29, 2016 MONTELEONE & McCRORY, LLP

27 By: /s/ Jeffrey S. Hurst
28 Jeffrey S. Hurst
Martha Eager
Attorneys for Plaintiff
WESTERN ENVIRONMENTAL
LEASING, INC.

1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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DATED:

3/31/16

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Suzanne H. Segal
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Central
District of California on [date] in the case of *Western Environmental Leasing, Inc.*
v. Hartford Fire Insurance Company, Case No. CV 15-8113-JFW (SSx) (C.D.
Cal.). I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is
subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action. I hereby appoint _____
[print or type full name] of _____ [print or type full
address and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date: _____

City and State where sworn and signed:

Printed name: _____

Signature: _____