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 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA--WESTERN DIVISION**

PLAGER SCHACK LLP
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 Huntington Beach, CA 92647

12 DELQUIN PLASTICS USA, INC., et al, Plaintiff/Counterdefendants, 13 v. 14 OSCAR LARACH, et al. Defendants/Counterclaimants. 15 16 17	CASE NO. 2:16-cv-05518 TJH(AGR x) PROTECTIVE STIPULATION FOR ORDER GOVERNING THE DESIGNATION AND HANDLING OF CONFIDENTIAL MATERIALS NOTE CHANGES MADE BY COURT
18 OSCAR LARACH, et al, Plaintiffs/Counterdefendants, 19 v. 20 DELQUIN PLASTICS USA, INC., et al, Defendants/Counterclaimants 21 22 23	Related Case No. 2:16-cv-05762 TJH(AGR x)

24 **STIPULATION FOR AN ORDER GOVERNING THE**
 25 **DESIGNATION AND HANDLING OF CONFIDENTIAL MATERIALS**

26 Delquin Plastics USA, Inc., EcoRain Systems, Inc., EcoRain Tank Systems
 27 of America, Inc., Manuel Arriagada, and Margarita Arriagada (“Delquin Parties”),
 28 and Oscar Larach and EcoRain America, LLC (“Larach Parties”) , (collectively

1 “the Parties”) hereby enter into this stipulation for an order governing the
2 designation and handling of confidential materials (“Confidentiality Order”).

3 **1. Purposes, Limitations, and Statement of Good Cause**

4 1. The Parties represent that pretrial discovery in this case will
5 necessarily focus on matters that are confidential and proprietary to the ongoing
6 business of the parties or of third parties, and may require the production of
7 material describing the parties’ respective lists of actual and potential customers,
8 employment agreements, schematic diagrams, confidential research, customer
9 invoices, third-party agreements, pricing and sales information, market surveys,
10 confidential costs and manufacturing information, business plans and non-public
11 financial information and projections.

12 2. Such information falls within recognized categories of information
13 which may be protected from public disclosure through confidentiality
14 designations under a Confidentiality Order in keeping with this Stipulation and
15 which may include non-public, proprietary, or confidential information that
16 constitutes or concerns trade secrets as defined by Cal. Civ. Code Secs.3426 et seq.
17 See Cal. Civ. Code § 3426.5 (“a court shall preserve the secrecy of an alleged trade
18 secret by reasonable means”).

19 3. The Parties further represent that unrestricted disclosure of such
20 material poses a substantial risk of great economic harm in that discovery of a
21 party’s trade secrets or other proprietary and confidential commercial information
22 would put the party at a competitive disadvantage and would be a windfall to the
23 discovering (competing) party.

24 4. More specifically, good cause exists for this Court to enter the
25 Confidentiality Order because it allows the parties to disclose documents in the
26 litigation of this matter without suffering from an economic and business detriment
27 that would result from the disclosure of “Confidential” or “Highly Confidential –
28 Attorneys’ Eyes Only” material. The disclosure of any “Confidential” or “Highly

1 Confidential – Attorneys’ Eyes Only” material would harm the parties financially
2 and result in loss of business opportunities because the parties’ competitors would
3 gain an unfair advantage over the parties if they learn the parties’ “Confidential” or
4 “Highly Confidential – Attorneys’ Eyes Only” material. The Parties themselves
5 are competitors. This material should be protected because it may reveal the
6 parties’ current financial status, business strategies, business structure, research
7 and development activities, customer lists and customer information and future
8 opportunities and business plans.

9 5. Moreover, entry of the Confidentiality Order will permit the parties to
10 be more forthcoming in the exchange of confidential information, which may
11 facilitate resolution of this case.

12 6. For the foregoing reasons, good cause exists for entry of a stipulation
13 for an order governing the designation and handling of confidential materials to
14 facilitate pretrial disclosure while assuring the safety of these sensitive disclosures.

15 7. The Parties acknowledge that the Confidentiality Order does not
16 confer blanket protections on all disclosures or responses to discovery and that the
17 protection it affords extends only to the limited information or items that are
18 entitled under the applicable legal principles to treatment as confidential. The
19 Parties further acknowledge, as set forth in Section 10 (Filing Protected Material)
20 below, that the Confidentiality Order creates no entitlement to file confidential
21 information under seal; rather, Civil Local Rule 79-5 sets forth the procedures to
22 be followed and the standards to be applied when a party seeks permission from
23 the Court to file material under seal.

24 **2. Definitions**

25 2.1 Party. Any party to this action, including all of its officers, directors,
26 employees, consultants, retained experts, and outside counsel (and their support
27 staff).

28 2.2 Disclosure or Discovery Material. All items or information,

1 regardless of the medium or manner generated, stored, or maintained (including,
2 among other things, testimony, transcripts, or tangible things) that are produced or
3 generated in disclosures or responses to discovery in this matter.

4 2.3 “Confidential” Information or Items. Information (regardless of how
5 generated, stored or maintained) or tangible things that qualify for protection under
6 standards developed under by Federal Rule of Civil Procedure 26(c).

7 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items.
8 Extremely sensitive Confidential Information or Items whose disclosure to another
9 Party or non-party would create a substantial risk of serious injury that could not
10 be avoided by less restrictive means.

11 2.5 Receiving Party. A Party that receives Disclosure or Discovery
12 Material from a Producing Party.

13 2.6 Producing Party. A Party or non-party that produces Disclosure or
14 Discovery Material in this action.

15 2.7 Designating Party. A Party or non-party that designates information
16 or items that it produces in disclosures or in responses to discovery as
17 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.”

18 2.8 Protected Material. Any Disclosure or Discovery Material that is
19 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

20 2.9. Outside Counsel. Attorneys who are not employees of a Party but
21 who are retained to represent or advise a Party in this action.

22 2.10 House Counsel. Attorneys who are employees of a Party, and who
23 represent that Party in an in-house counsel capacity.

24 2.11 Counsel (without qualifier). Outside Counsel and House Counsel (as
25 well as their support staffs).

26 2.12 Expert. A person with specialized knowledge or experience in a
27 matter pertinent to the litigation who has been retained by a Party or its counsel to
28 serve as an expert witness or as a consultant in this action and who is not a past or

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1 a current employee of a Party or of a Party's competitor and who, at the time of
2 retention, is not anticipated to become an employee of a Party or a Party's
3 competitor. This definition includes a professional jury or trial consultant retained
4 in connection with this litigation.

5 2.13 Professional Vendors. Persons or entities that provide litigation
6 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
7 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
8 and their employees and subcontractors.

9 **3. Scope**

10 The protections conferred by the Confidentiality Order shall cover not only
11 Protected Material (as defined above), but also any information copied or extracted
12 from Protected Material, as well as all copies, excerpts, summaries, or
13 compilations of Protected Material, plus testimony, conversations, or presentations
14 by parties or counsel in settings that might reveal Protected Material. ~~Any such~~
15 ~~information copied or extracted from Protected Material, as well as all copies,~~
16 ~~excerpts, summaries, or compilations of Protected Material, plus testimony,~~
17 ~~conversations, or presentations by parties or counsel presented at court hearings or~~
18 ~~proceedings can be addressed by the judicial officer conducting the proceeding at~~
19 ~~the appropriate time.~~ The protections conferred by the Confidentiality Order shall
20 cover all Protected Material disclosed or produced in this case, whether disclosed
21 or produced before or after the issuance of the Confidentiality Order by the Court.

22 **4. Duration**

23 Even after the termination of this litigation, the confidentiality obligations imposed
24 by this Stipulation and any Order in keeping with this Stipulation shall remain in
25 effect until a Designating Party agrees otherwise in writing or a court order
26 otherwise directs.

27 **5. Designating Protected Material**

28 5.1 Exercise of Restraint and Care in Designating Material for Protection.

1 Each Party or non-party that designates information or items for protection under
2 the Confidentiality Order must take care to limit any such designation to specific
3 material that qualifies under the appropriate standards. A Designating Party must
4 take care to designate for protection only those parts of material, documents, items,
5 or oral or written communications that qualify – so that other portions of the
6 material, documents, items, or communications for which protection is not
7 warranted are not swept unjustifiably within the ambit of the Confidentiality Order.

8 Indiscriminate designations are prohibited. Designations that are shown to
9 be clearly unjustified, or that have been made for an improper purpose (e.g., to
10 unnecessarily encumber or retard the case development process, or to impose
11 unnecessary expenses and burdens on other parties), expose the Designating Party
12 to sanctions.

13 If it comes to a Party's or a non-party's attention that information or items
14 that it designated for protection do not qualify for protection at all, or do not
15 qualify for the level of protection initially asserted, that Party or non-party must
16 promptly notify all other parties that it is withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in
18 this Stipulation (see, e.g., second paragraph of Section 5.2(a), below), or as
19 otherwise stipulated or ordered, material that qualifies for protection under this
20 Stipulation must be clearly so designated before or at the time that the material is
21 disclosed or produced.

22 Designation in conformity with this Stipulation requires:

23 (a) for information in documentary form (apart from transcripts of
24 depositions or other pretrial or trial proceedings), that the Producing Party affix the
25 legend "Confidential" or "Highly Confidential – Attorneys' Eyes Only" at the top
26 of each page that contains protected material. The abbreviated designation
27 "Attorneys' Eyes Only" is also permitted as a substitute for "Highly Confidential-
28 Attorneys' Eyes Only". If only a portion or portions of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the
2 protected portion(s) (e.g., by making appropriate markings in the margins) and
3 must specify, for each portion, the level of protection being asserted (either
4 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”).

5 A Party that makes documents or materials available for inspection need not
6 designate them for protection until after the inspecting Party has indicated which
7 material it would like copied and produced. During the inspection and before the
8 designation, all of the material made available for inspection shall be deemed
9 “Highly Confidential – Attorneys’ Eyes Only.” After the inspecting Party has
10 identified the documents it wants copied and produced, the Producing Party must
11 determine which documents, or portions thereof, qualify for protection under the
12 Confidentiality Order, then, before producing the specified documents, the
13 Producing Party must affix the appropriate legend (“Confidential” or “Highly
14 Confidential – Attorneys’ Eyes Only”) at the top of each page that contains
15 Protected Material. If only a portion or portions of the material on a page qualifies
16 for protection, the Producing Party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
18 for each portion, the level of protection being asserted (either “Confidential” or
19 “Highly Confidential – Attorneys’ Eyes Only”).

20 (b) for information produced by non-parties. Should the parties in
21 this case issue any subpoenas to non-parties, the parties agree that any non-parties
22 served with a subpoena may designate as Protected Material any appropriate
23 materials responsive to such a subpoena, and further, the parties may notify any
24 other non-party served with a subpoena in this case of a stipulation for an order
25 governing the designation and handling of confidential materials.

26 Additionally, in the event a Party seeks information via subpoena from a
27 non-party, and another Party to this action (the “Non-Discovering Party”) believes
28 that such subpoena may compel disclosure of documents and things of or

1 concerning that Non-Discovering Party that ought to be designated as Protected
2 Material, the Non-Discovering Party promptly shall notify in writing the Party
3 serving such subpoena. In a circumstance where such written notice is received,
4 the Party serving the subpoena shall advise the Non-Discovering Party in writing
5 upon its receipt of documents or things from the subpoenaed third party, and make
6 such documents or things available for inspection by the Non-Discovering Party.
7 The Non-Discovering Party shall then have ten (10) days to inspect and designate
8 such documents for protection in accordance with the Confidentiality Order.
9 Pending such designation, or the expiration of the ten (10) day period allowed
10 herein for such designation (whichever first occurs), the Party receiving documents
11 and things shall treat all of them as “Highly Confidential – Attorneys’ Eyes Only.”
12 The provisions of Section 5.2(a) shall otherwise apply to documents produced by
13 non-parties.

14 (c) for testimony given in deposition, that the Party or non-party
15 offering or sponsoring the testimony identify on the record, before the close of the
16 deposition, all protected testimony, and further specify any portions of the
17 testimony that qualify as “Confidential” or “Highly Confidential – Attorneys’ Eyes
18 Only.” When it is impractical to identify separately each portion of testimony that
19 is entitled to protection, and when it appears that substantial portions of the
20 testimony may qualify for protection, the Party or non-party that sponsors, offers,
21 or gives the testimony may invoke on the record (before the deposition is
22 concluded) a right to have up to thirty days after the transcript of the deposition
23 becomes available to identify the specific portions of the testimony as to which
24 protection is sought and to specify the level of protection being asserted
25 (“Confidential” or “Highly Confidential – Attorneys’ Eyes Only”). Only those
26 portions of the testimony that are appropriately designated for protection within the
27 thirty days shall be covered by the provisions of the Confidentiality Order. Any
28 such testimony that qualifies as “Confidential” or “Highly Confidential –

1 Attorneys' Eyes Only" given in a court hearing or proceeding shall be addressed
2 by the judicial officer conducting the proceeding at the appropriate time.

3 (d) for information produced in some form other than documentary,
4 and for any other tangible items, that the Producing Party affix in a prominent
5 place on the exterior of the container or containers in which the information or
6 item is stored the legend "Confidential" or "Highly Confidential – Attorneys' Eyes
7 Only." If only portions of the information or item warrant protection, the
8 Producing Party, to the extent practicable, shall identify the protected portions,
9 specifying whether they qualify as "Confidential" or as "Highly Confidential –
10 Attorneys' Eyes Only."

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
12 failure to designate qualified information or items as "Confidential" or "Highly
13 Confidential – Attorneys' Eyes Only" does not, standing alone, waive the
14 Designating Party's right to secure protection under the Confidentiality Order for
15 such material. If material is appropriately designated as "Confidential" or "Highly
16 Confidential – Attorneys' Eyes Only" after the material was initially produced, the
17 Receiving Party, on timely notification of the designation, must make reasonable
18 efforts to assure that the material is treated in accordance with the provisions of
19 this Order.

20 **6. Challenging Confidentiality Designations**

21 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
22 Party's confidentiality designation is necessary to avoid foreseeable substantial
23 unfairness, unnecessary economic burdens, or a later significant disruption or delay
24 of the litigation, a Party does not waive its right to challenge a confidentiality
25 designation by electing not to mount a challenge promptly after the original
26 designation is disclosed.

27 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
28 Designating Party's confidentiality designation must do so in good faith and must

1 comply with the meet and confer requirements and procedures set forth in Civil
2 Local Rule 37-1 and 37-2. The burden of persuasion in any such challenge
3 proceeding shall be on the Designating Party in a manner consistent with Federal
4 Rule of Civil Procedure 26(c). Until the Court rules on the challenge, all parties
5 shall continue to afford the material in question the level of protection designated
6 by the Producing Party.

7 **7. Access to and Use of Protected Material**

8 7.1 Basic Principles. A Receiving Party may use Protected Material that
9 is disclosed or produced by another Party or by a non-party in connection with this
10 case only for prosecuting, defending, or attempting to settle this litigation. Such
11 Protected Material may be disclosed only to the categories of persons and under
12 the conditions described in this Order. When the litigation has been terminated, a
13 Receiving Party must comply with the provisions of Section 11 (Final
14 Disposition), below.

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

18 7.2 Disclosure of "Confidential" Information or Items. Unless otherwise
19 ordered by the Court or permitted in writing by the Designating Party, a Receiving
20 Party may disclose any information or item designated Confidential only to:

21 (a) the Receiving Party's Outside Counsel of record in this action,
22 as well as employees of Outside Counsel to whom it is reasonably necessary to
23 disclose the information for this litigation and who have signed the "Agreement to
24 Be Bound by Confidentiality Order" that is attached hereto as Exhibit A;

25 (b) the officers, directors, and employees (including House
26 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
27 this litigation and who have signed the "Agreement to Be Bound by
28 Confidentiality Order" (Exhibit A);

1 (c) Experts (as defined in this Order) of the Receiving Party to
2 whom disclosure is reasonably necessary for this litigation and who have signed
3 the “Agreement to Be Bound by Confidentiality Order” (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters, their staffs, and professional vendors to whom
6 disclosure is reasonably necessary for this litigation and who have signed the
7 “Agreement to Be Bound by Confidentiality Order” (Exhibit A);

8 (f) during their depositions, witnesses in the action to whom
9 disclosure is reasonably necessary and who have signed the “Agreement to Be
10 Bound by Confidentiality Order” (Exhibit A). Pages of transcribed deposition
11 testimony or exhibits to depositions that reveal Protected Material must be
12 separately bound by the court reporter and may not be disclosed to anyone except
13 as permitted under the Confidentiality Order;

14 (g) the author of the document or the original source of the
15 information.

16 7.3 Disclosure of “Highly Confidential – Attorneys’ Eyes Only”
17 Information or Items. Unless otherwise ordered by the Court or permitted in
18 writing by the Designating Party, a Receiving Party may disclose any information
19 or item designated “Highly Confidential – Attorneys’ Eyes Only” only to:

20 (a) the Receiving Party’s Outside Counsel of record in this action,
21 as well as employees of Outside Counsel to whom it is reasonably necessary to
22 disclose the information for this litigation and who have signed the “Agreement to
23 Be Bound by Confidentiality Order” that is attached hereto as Exhibit A;

24 (b) Experts (as defined in the Confidentiality Order) to whom
25 disclosure is reasonably necessary for this litigation and who have signed the
26 “Agreement to Be Bound by Confidentiality Order” (Exhibit A);

27 (c) the Court and its personnel;

28 (d) court reporters, their staffs, and professional vendors to whom

1 disclosure is reasonably necessary for this litigation and, with respect to
2 professional vendors, who have signed the “Agreement to Be Bound by
3 Confidentiality Order” (Exhibit A); and

4 (f) the author of the document or the original source of the
5 information.

6 **8. Protected Material Subpoenaed or Ordered Produced in Other**
7 **Litigation**

8 If a Receiving Party is served with a subpoena or an order issued in other
9 litigation that would compel disclosure of any information or items designated in
10 this action as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only,” the
11 Receiving Party must so notify the Designating Party, in writing (by fax, if
12 possible) immediately and in no event more than three court days after receiving
13 the subpoena or order. Such notification must include a copy of the subpoena or
14 court order.

15 The Receiving Party also must immediately inform in writing the Party who
16 caused the subpoena or order to issue in the other litigation that some or all the
17 material covered by the subpoena or order is the subject of the Confidentiality
18 Order. In addition, the Receiving Party must deliver a copy of the Confidentiality
19 Order promptly to the Party in the other action that caused the subpoena or order to
20 issue.

21 The purpose of imposing these duties is to alert the interested parties to the
22 existence of the Confidentiality Order and to afford the Designating Party in this
23 case an opportunity to try to protect its confidentiality interests in the Court from
24 which the subpoena or order issued. The Designating Party shall bear the burdens
25 and the expenses of seeking protection in that court of its confidential material.
26 Nothing in these provisions is intended or should be construed as authorizing a
27 Receiving Party to disobey a lawful subpoena issued in another action.

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1 **9. Unauthorized Disclosure of Protected Material**

2 If a Receiving Party learns that, by inadvertence or otherwise, it disclosed
3 Protected Material to any person or in any circumstance not authorized under the
4 Confidentiality Order, the Receiving Party must immediately (a) notify in writing
5 the Designating Party of the unauthorized disclosures, (b) use its best efforts to
6 retrieve all copies of the Protected Material, (c) inform the person or persons to
7 whom unauthorized disclosures were made of all the terms of the Confidentiality
8 Order, and (d) request such person or persons to execute the “Agreement to be
9 Bound by Confidentiality Order” that is attached hereto as Exhibit A.

10 **10. Filing Protected Material**

11 In accordance with Local Rule 79-5.2.2(a), if any papers to be filed with the
12 Court contain information and/or documents that have been designated as
13 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only,” the proposed
14 filing shall be accompanied by an application to file the papers or the portion
15 thereof containing the designated information or documents (if such portion is
16 segregable) under seal; and the application shall be directed to the judge to whom
17 the papers are directed. For motions, the parties shall publicly file a redacted
18 version of the motion and supporting papers.

19 **11. Final Disposition**

20 Unless otherwise ordered or agreed in writing by the Producing Party, within
21 sixty days after the final termination of this action, each Receiving Party must
22 return all Protected Material to the Producing Party or provide a written
23 certification within the sixty day period that the all of the Protected Material has
24 been destroyed. Each Receiving Party, however, is entitled to maintain one
25 archival copy of the Protected Material. Any such archival copies that contain or
26 constitute Protected Material remain subject to the Confidentiality Order as set
27 forth in Section 4 (Duration), above. As used in this subdivision, “all Protected
28 Material” includes all copies, abstracts, compilations, summaries or any other form

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1 of reproducing or capturing any of the Protected Material.

2 **12. Miscellaneous**

3 12.1 Right to Further Relief. Nothing in the Confidentiality Order abridges
4 the right of any person to seek its modification by the Court in the future.

5 12.2 Right to Assert Other Objections. By stipulating to the entry of this
6 Order governing the designation and handling of confidential materials, no Party
7 waives any right it otherwise would have to object to disclosing or producing any
8 information or item on any ground not addressed in this Stipulation for an Order
9 governing the designation and handling of confidential materials. Similarly, no
10 Party waives any right to object on any ground to use in evidence of any of the
11 material covered by this Order.

12 **IT IS SO STIPULATED.**

13 DATED this 26th day of January 2017.

14 DARROW LAW OFFICE

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26 IT IS SO ORDERED.
27 DATED: 1/31/2017
28 Alicia G. Rosenberg
UNITED STATES MAGISTRATE