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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

PATAGONIA, INC.,

Plaintiff,

v.

CHELSEA INTERNATIONAL, INC.,
et al.,

Defendants.

CASE NO. 2:16-cv-08030-JFW (KSx)

**~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER**

DISCOVERY MATTER

District Judge: Hon. John F. Walter
Magistrate: Hon. Karen L. Stevenson

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties' Proposed Stipulated Protective Order ("Stipulation") filed on March 16, 2017, the terms of the protective order to which the parties have agreed are adopted as a protective order of this Court (which generally shall govern the pretrial phase of this action) except to the extent, as set forth below, that those terms have been modified by the Court's amendment of paragraphs G.2.a, G.2.f, and I.1 of the Stipulation.

1 **AGREED TERMS OF THE PROTECTIVE ORDER AS ADOPTED AND**
2 **MODIFIED BY THE COURT**¹
3

4 Plaintiff Patagonia, Inc. (“Patagonia”) and Defendants Chelsea International
5 Inc. (“Chelsea”), CAC International Group (“CAC”), and OTB Brand Worldwide Ltd.
6 (“OTB”) (together, “Defendants”), stipulate and agree between and among
7 themselves, by and through their attorneys, to the entry of this Protective Order to
8 govern the use, dissemination, and disclosure of certain documents and materials
9 described below and obtained by the parties through discovery or otherwise in this
10 action. The parties agree as follows:

11 Discovery in this action is likely to involve production of confidential,
12 proprietary, or private information for which special protection from public disclosure
13 and from use for any purpose other than prosecuting this litigation may be warranted.
14 The parties acknowledge that this Order does not confer blanket protections on all
15 disclosures or responses to discovery and that the protection it affords from public
16 disclosure and use extends only to the limited information or items that are entitled to
17 confidential treatment under the applicable legal principles. The parties further
18 acknowledge, as set forth in Paragraph I, below, that this Stipulated Protective Order
19 does not entitle them to file confidential information under seal; Civil Local Rule 79-5
20 sets forth the procedures that must be followed and the standards that will be applied
21 when a party seeks permission from the court to file material under seal.

22 **A. Good Cause Statement**

23 This action is likely to involve trade secrets, customer and pricing lists and
24 other valuable research, development, commercial, financial, and/or proprietary
25 information for which special protection from public disclosure and from use for any
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27 ¹ The Court’s additions to the agreed terms of the Protective Order are generally indicated in
28 bold typeface, and the Court’s deletions are indicated by lines through the text being deleted.

1 purpose other than prosecution of this action is warranted. Such confidential and
2 proprietary materials and information consist of, among other things, confidential
3 business or financial information, information regarding confidential business
4 practices, or other confidential research, development, or commercial information,
5 information otherwise generally unavailable to the public, or which may be privileged
6 or otherwise protected from disclosure under state or federal statutes, court rules, case
7 decisions, or common law. Accordingly, to expedite the flow of information, to
8 facilitate the prompt resolution of disputes over confidentiality of discovery materials,
9 to adequately protect information the parties are entitled to keep confidential, to
10 ensure that the parties are permitted reasonable necessary uses of such material in
11 preparation for and in the conduct of trial, to address their handling at the end of the
12 litigation, and serve the ends of justice, a protective order for such information is
13 justified in this matter. It is the intent of the parties that information will not be
14 designated as confidential for tactical reasons and that nothing be so designated
15 without a good faith belief that it has been maintained in a confidential, non-public
16 manner, and there is good cause why it should not be part of the public record of this
17 case.

18 **B. Scope of Order**

19 This Protective Order shall apply to all information, premises, documents, and
20 things owned or controlled by the parties or of any parents, subsidiaries, divisions,
21 branches, affiliates, related companies, agents, or licensees of any party, or of any
22 other parties added or substituted in this case, that are subject to discovery in this
23 action, including without limitation, testimony adduced at depositions upon oral
24 examination or upon written questions, answers to interrogatories, documents and
25 things produced or otherwise provided, information obtained from inspection of
26 premises or things, and answers to requests for admission (hereafter “Information and
27 Materials”). Any use of Confidential or Highly Confidential—Attorneys’ Eyes Only
28 Information and Materials at trial shall be governed by the orders of the trial judge.

1 This Order does not govern the use of Confidential or Highly Confidential—
2 Attorneys’ Eyes Only Information and Materials at trial.

3 **C. Definitions**

4 1. As used in this Order, “Confidential” Information and Materials shall
5 include all Information and Materials that have not been made public, the disclosure
6 of which the disclosing party contends could cause harm to its business operations or
7 provide improper advantage to others. “Confidential” Information and Materials shall
8 include, but shall not be limited to information that concerns or relates to (1) sales,
9 marketing, manufacturing, or research and development; (2) financial performance;
10 (3) manufacturing or other costs of doing business; (4) licenses or other confidential
11 agreements; and/or (5) technical product details or methods of doing business.

12 2. As used in this Order, “Highly Confidential—Attorneys’ Eyes Only”
13 Information and Materials shall include trade secrets within the meaning of the
14 Uniform Trade Secrets Act and all Information and Materials that the disclosing party
15 has reasonable grounds to believe would, if known to any officer, director, employee,
16 or agent of a receiving party, another third party, or to the public, lead to a significant
17 harm or injury to the reputation and/or business of the disclosing party or provide
18 improper advantage to others.

19 **D. Marking Requirements**

20 1. All Information and Materials deemed *Confidential* or *Highly*
21 *Confidential—Attorneys’ Eyes Only* will be so identified and labeled by the producing
22 party.

23 2. If qualified Information and Materials cannot be labeled, they shall be
24 designated as *Confidential* or *Highly Confidential—Attorneys’ Eyes Only* in a manner
25 to be agreed upon by the parties.

26 3. In lieu of marking the original of a document or thing, if the original is
27 not produced, the designating party may mark the copies that are produced or
28 exchanged, but the other party, by its counsel, shall have the right to examine the

1 original, to be provided with a full and complete copy, and to call for production of
2 the original at the trial in this action. However, nothing in this Stipulated Protective
3 Order requires the production of privileged or work-product Information and
4 Materials, or any Information and Materials that are otherwise not subject to
5 discovery. If a producing party inadvertently discloses to a receiving party
6 information that is privileged, said producing party shall promptly upon discovery of
7 such disclosure so advise the receiving party in writing and request that the item(s) of
8 information be returned, and no party to this action shall thereafter assert that such
9 disclosure waived any privilege. It is further agreed that the receiving party will
10 return such inadvertently produced item(s) of information and all copies thereof
11 within three (3) business days of receiving a written request for the return of such
12 item(s) of information.

13 4. The identification and labeling specified in Paragraphs D.1, D.2, and D.3
14 of this Order shall be made at the time when the answer to the interrogatory or the
15 answer to the request for admission is served, and when a copy of the document or
16 thing is provided to each party. In the case of hearing and deposition transcript pages,
17 the designating party shall advise opposing counsel of the specific pages to be
18 maintained in confidence within forty-five (45) days after the receipt of the transcript
19 or as otherwise agreed by counsel. During this period, the entire transcript shall be
20 deemed to be *Highly Confidential—Attorneys’ Eyes Only*.

21 5. In the event that a disclosing party discovers a failure to mark qualified
22 Information or Materials as *Confidential* or *Highly Confidential—Attorneys’ Eyes*
23 *Only*, the other party shall be notified immediately and the following corrective action
24 shall be taken:

25 a. The receiving party shall notify all persons who have received the
26 Information and Materials that the Information and Materials are designated
27 *Confidential* or *Highly Confidential—Attorneys’ Eyes Only* and must be treated as
28 designated in this Order;

1 b. The receiving party shall take all reasonable steps to place the
2 applicable *Confidential* or *Highly Confidential—Attorneys’ Eyes Only* label on the
3 designated Information and Materials; and

4 c. The receiving party shall treat the newly marked Information and
5 Materials as set out in Paragraphs G and I of this Order.

6 **E. Designating Information and Documents**

7 1. In designating Information and Materials as *Confidential* or *Highly*
8 *Confidential—Attorneys’ Eyes Only*, a party will make such designation only as to that
9 information that it in good faith believes to be *Confidential* or *Highly Confidential—*
10 *Attorneys’ Eyes Only* as defined in Paragraph C of this Order.

11 2. If counsel for a party believes that questions put to a witness being
12 examined during a deposition will disclose *Confidential* or *Highly Confidential—*
13 *Attorneys’ Eyes Only* Information and Materials of his or her client, or that the answer
14 to any question or questions requires such disclosure, or if documents to be used as
15 exhibits during the examination contain such information, counsel shall so notify
16 opposing counsel and the deposition of such witness, or portions thereof, shall be
17 taken only in the presence of appropriate persons as defined in Paragraph G, counsel
18 for the witness, if any, the stenographic reporter, and the officers or employees of the
19 party whose *Confidential* or *Highly Confidential—Attorneys’ Eyes Only* information is
20 being disclosed.

21 **F. Redaction**

22 Redacted versions of *Confidential* or *Highly Confidential—Attorneys’ Eyes*
23 *Only* materials that no longer contain *Confidential* or *Highly Confidential—Attorneys’*
24 *Eyes Only* information, and that are not subject to this Order, may be used for any
25 proper purpose for this case.

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1 **G. Access to Confidential or Highly Confidential—Attorneys’ Eyes Only**
2 **Information and Materials**

3 1. It is the general intent of the parties to limit disclosure to the smallest
4 number of persons, consistent with the needs of litigation.

5 2. All access, possession, use, testing, inspection, study, or copying of any
6 Information or Materials designated as *Confidential* under this Order is governed by
7 this Order and is limited to the following persons:

8 a. **Counsel of Record in this Action, as well as the employees and**
9 **law clerks of Counsel of Record** ~~The law firms Finnegan, Henderson,~~
10 ~~Farabow, Garrett & Dunner, LLP and Law Offices of Fei Pang, including~~
11 ~~attorneys, law clerks, stenographic, clerical, and paralegal employees~~
12 whose functions require access to such *Confidential* Information and
13 Materials.

14 b. Independent experts, consultants, or translators for each party and
15 their clerical personnel, who are not employees of the parties (or their
16 parents, subsidiaries, divisions, branches, affiliates, or agents), and whose
17 advice and consultation will be used by such party in connection with
18 preparation of this case for trial. Disclosures to such persons, however,
19 will be allowed only after the conditions set forth in Paragraph G.4 of this
20 Order are satisfied.

21 c. Court stenographers, court reporters and their staff, outside
22 deposition video services and their staff, outside copy services, and
23 graphics or design services retained or engaged by such outside counsel
24 in connection with their preparation of this action, and only to the extent
25 necessary for such persons to carry out their duties in connection with
26 this action. Disclosures to such persons, however, will be allowed only
27 after the conditions set forth in Paragraph G.4 of this Order are satisfied.

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1 d. Mock jurors, and jury or trial consulting services, retained or
2 engaged by such outside counsel in connection with their preparation of
3 this action, and only to the extent necessary for such persons to carry out
4 their duties in connection with this action. Disclosures to such persons,
5 however, will be allowed only after the conditions set forth in Paragraph
6 G.4 of this Order are satisfied.

7 e. Mediators who attempt to mediate this action (if any), together
8 with their staff. Disclosures to such persons, however, will be allowed
9 only after the conditions set forth in Paragraph G.4 of this Order are
10 satisfied.

11 f. The Court and any person employed by the Court ~~whose duties~~
12 ~~require access to such Confidential Information and Materials.~~

13 g. The parties (including officers, directors, and employees as
14 representatives of the parties) to this lawsuit.

15 3. All access, possession, use, testing, inspection, study, or copying of any
16 Information or Materials designated as *Highly Confidential—Attorneys’ Eyes Only*
17 under this Order is governed by this Order and is limited to in-house legal counsel for
18 each party, only after the conditions set forth in Paragraph G.4 are satisfied, and the
19 individuals identified above in Paragraphs G.2.a-f.

20 4. Prior to any disclosure of *Confidential* Information and Materials to those
21 persons named in Paragraph G.2.b-e of this Order, disclosing counsel shall obtain
22 from each such person a copy of a signed undertaking as set forth in Exhibit A,
23 including any information requested by Exhibit A. Prior to any disclosure of
24 *Confidential* or *Highly Confidential—Attorneys’ Eyes Only* Information and Materials
25 to those persons named in Paragraph G.3 of this Order, disclosing counsel shall obtain
26 from each such person a copy of a signed undertaking as set forth in Exhibit B,
27 including any information requested by Exhibit B.

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1 **H. Challenging Designation of Information and Materials**

2 1. Timing of Challenges. Unless a prompt challenge to a designating
3 party’s confidentiality designation is necessary to avoid foreseeable substantial
4 unfairness, unnecessary economic burdens, or a later significant disruption or delay of
5 the litigation, a party does not waive its right to challenge a confidentiality designation
6 by electing not to mount a challenge promptly after the original designation is
7 disclosed. A party may challenge a designation of confidentiality at any time that is
8 consistent with the Court’s scheduling order.

9 2. Meet and Confer. A party that elects to initiate a challenge to a
10 designating party’s confidentiality designation must do so in good faith and must
11 begin the dispute resolution process under Local Rule 37-1 *et seq.* In conferring, the
12 challenging party must explain the basis for its belief that the confidentiality
13 designation was not proper and must give the designating party an opportunity to
14 review the designated material, to reconsider the circumstances, and, if no change in
15 designation is offered, to explain the basis for the chosen designation. A challenging
16 party may proceed to the next stage of the challenge process only if it has engaged in
17 this meet and confer process first.

18 3. Judicial Intervention. A party that elects to press a challenge to a
19 confidentiality designation after considering the justification offered by the parties
20 may file and serve a joint stipulation under Civil Local Rule 37-2 and 37-3 (and in
21 compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged
22 material and sets forth in detail the basis for the challenge. Each such motion must be
23 accompanied by a competent declaration that affirms that the movant has complied
24 with the meet and confer requirements imposed in the preceding paragraph and that
25 sets forth with specificity the justification for the confidentiality designation that was
26 given by the designating party in the meet and confer dialogue.

27 The burden of persuasion in any such challenge proceeding shall be on the
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1 designating party. Until the court rules on the challenge, all parties shall continue to
2 afford the material in question the level of protection to which it is entitled under the
3 designating party's designation.

4 **I. Handling Confidential or Highly Confidential—Attorneys' Eyes**
5 **Only Information and Materials**

6 1. Copies of *Confidential* or *Highly Confidential—Attorneys' Eyes Only*
7 Information and Materials shall not be made public by the party to whom they are
8 disclosed unless they become a part of the public record in this action by agreement of
9 the parties or by order or action of the Court. **If any party seeks to file or lodge with**
10 **the Court any portion of any *Confidential* or *Highly Confidential—Attorneys'***
11 ***Eyes Only* Information or Materials, such material shall be submitted to the**
12 **Court with: (1) an application to file under seal in accordance with this Court's**
13 **Local Rule 79-5; and (2) a request to present the portion of the *Confidential* or**
14 ***Highly Confidential—Attorneys' Eyes Only* Information or Materials at issue for**
15 **review *in camera* pursuant to Local Rule 79-6. ~~*Confidential* or *Highly*~~**
16 **~~*Confidential—Attorneys' Eyes Only* Information and Materials may be included in~~**
17 **~~whole or in part in pleadings, motions, or briefs only if such Information and~~**
18 **~~Materials are filed with the Court under seal and in accordance with Local Rule 79-5.~~**
19 **~~The parties stipulate that Information and Materials identified and labeled in~~**
20 **~~accordance with this paragraph shall be received in camera as directed by the Court.~~**

21 2. Within sixty (60) days after the final judgment and the exhaustion of any
22 appeals in this action or the settlement of this action, all Information and Materials
23 covered by this Order, except those in possession of the Court, shall be destroyed,
24 except that outside counsel may maintain one copy of all correspondence and
25 pleadings. Any such copies that contain or constitute Protected Material remain
26 subject to this Protective Order. Subject to this exception, outside counsel shall
27 certify to counsel for the producing party the destruction of all additional copies of
28 Information and Materials so designated in their possession, custody or control.

1 **J. Protected Material Subpoenaed or Ordered Produced in Other**
2 **Litigation**

3 1. If a receiving party is served with a subpoena or an order issued in other
4 litigation that would compel disclosure of any information or items designated in this
5 action as *Confidential* or *Highly Confidential – Attorneys’ Eyes Only*, the receiving
6 party must so notify the designating party, in writing immediately and in no event
7 more than three court days after receiving the subpoena or order. Such notification
8 must include a copy of the subpoena or court order.

9 The receiving party also must immediately inform in writing the party who
10 caused the subpoena or order to issue in the other litigation that some or all of the
11 material covered by the subpoena or order is the subject of this Protective Order. In
12 addition, the receiving party must deliver a copy of this Stipulated Protective Order
13 promptly to the party in the other action that caused the subpoena or order to issue.

14 The purpose of imposing these duties is to alert the interested parties to the
15 existence of this Protective Order and to afford the designating party in this case an
16 opportunity to try to protect its confidentiality interests in the court from which the
17 subpoena or order issued. The designating party shall bear the burdens and the
18 expenses of seeking protection in that court of its confidential material – and nothing
19 in these provisions should be construed as authorizing or encouraging a receiving
20 party in this action to disobey a lawful directive from another court.

21 **K. Unauthorized Disclosure of Protected Material**

22 1. If a receiving party learns that, by inadvertence or otherwise, it has
23 disclosed any Information or Materials designated *Confidential* or *Highly*
24 *Confidential—Attorneys’ Eyes Only* to any person or in any circumstance not
25 authorized under this Stipulated Protective Order, the receiving party must
26 immediately:

27 a. Notify the designating party in writing of the unauthorized
28 disclosures,

1 b. Use its best efforts to retrieve all unauthorized copies of the
2 Information or Materials designated *Confidential* or *Highly*
3 *Confidential—Attorneys’ Eyes Only*,

4 c. Inform the person or persons to whom unauthorized disclosures
5 were made of all the terms of this Order, and

6 d. Request such person or persons to execute a copy of the
7 undertakings attached as Exhibits A and B, as necessary.

8 **L. Miscellaneous**

9 1. This Order shall not prevent a party from applying to the Court for relief
10 from the Order or any part thereof, or for relief from its application in any particular
11 circumstance, or from applying to the Court for further or additional protective
12 agreements or orders.

13 2. This Order shall survive the final termination of this or related
14 proceedings to the extent that the *Confidential* or *Highly Confidential—Attorneys’*
15 *Eyes Only* Information and Materials have not or do not become known to the public.

16 3. No copy of any transcript of any deposition taken by any party that is
17 designated in part or in whole as *Confidential* or *Highly Confidential—Attorneys’*
18 *Eyes Only* shall be furnished by the reporter to any person other than to counsel for the
19 parties. Neither the original nor any copy of any transcript of any deposition taken in
20 this proceeding shall be filed with the Court or used during the trial in this action until
21 the parties’ outside counsel have had the opportunity to designate those portions, if
22 any, of the transcript that are to be regarded as *Confidential* or *Highly Confidential—*
23 *Attorneys’ Eyes Only* as provided in Paragraph D.4. Upon such a designation, the
24 designated portions of the transcript to be filed with the Court or used during the trial
25 shall be filed under seal in accordance with Paragraph I of this Order, unless otherwise
26 agreed by the parties or ordered by the Court.

1 4. Each person having access to *Confidential* or *Highly Confidential*—
2 *Attorneys’ Eyes Only* Information and Materials under this Order shall take all
3 reasonable steps to comply with this Order.

4 5. Nothing in this Order shall bar or otherwise restrict any attorney from
5 rendering advice to his or her client with respect to this proceeding and, in the course
6 of the proceeding, referring to or relying upon his or her examination of *Confidential*
7 or *Highly Confidential—Attorneys’ Eyes Only* Information and Materials; provided,
8 that in rendering such advice and in otherwise communicating with clients, the
9 attorney shall not make specific disclosure to any person of any *Confidential* or
10 *Highly Confidential—Attorneys’ Eyes Only* Information and Materials.

11 6. Any person bound by this Order may rely on a waiver or consent that is
12 made by an attorney for a party as if that waiver or consent was made by that party or
13 person, provided that such waiver or consent shall be either in writing or on record in
14 a hearing, trial, or deposition transcript.


15 7. A person or an entity that is not a party to this litigation may take
16 advantage of the protection of *Confidential* or *Highly Confidential—Attorneys’ Eyes*
17 *Only* Information and Materials provided by this Order, and such person or entity shall
18 be entitled to all rights and protections afforded the disclosing party under this Order.

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1 8. This Order shall not be construed: (a) to prevent any party or its
2 attorneys from making use of information that is lawfully in its possession prior to its
3 disclosure by the Producing Party; (b) to apply to information that appears in public
4 records, printed publications, or otherwise becomes publicly known; or (c) to apply to
5 information that any party or its attorneys have, after disclosure by the producing
6 party, lawfully obtained from a third party having the right to disclose such
7 information.

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9 For good cause shown, IT IS SO ORDERED.

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11 Dated: March 21, 2017



KAREN L. STEVENSON
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

Patagonia, Inc. v. Chelsea International Inc. et al.
2:16-cv-08030-JFW (KSx)
United States District Court for the Central District of California

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

UNDER TAKING OF _____
STATE OF _____
COUNTRY OF _____

I, _____, being duly sworn, state that:

- 1. My address is:
- 2. My employer is:
- 3. My present occupation or job description is:
- 4. I have received a copy of the Stipulated Protective Order in this case.
- 5. I have carefully read and understand the provisions of the Stipulated

Protective Order.

6. I will comply with all of the provisions of the Stipulated Protective Order and understand that a violation of the Stipulated Protective Order or this Agreement could result in sanctions against me.

7. I will hold in confidence and not disclose to anyone not qualified under the Stipulated Protective Order any “Confidential” Information or Materials disclosed to me.

8. I will return all Information and Materials containing or disclosing “Confidential” Information and Materials which come into my possession, and Information and Materials that I have prepared relating thereto, to counsel for the party that provided me with the “Confidential” Information and Materials.

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9. I submit to the jurisdiction of this Court for the purpose of enforcement of the Stipulated Protective Order in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Date: _____ By: _____

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EXHIBIT B

Patagonia, Inc. v. Chelsea International Inc. et al.
2:16-cv-08030-JFW (KSx)
United States District Court for the Central District of California

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

UNDER TAKING OF _____
STATE OF _____
COUNTRY OF _____

I, _____, being duly sworn, state that:

1. My address is:
2. My employer is:
3. My present occupation or job description is:
4. I have never been employed and am not currently employed by any of the parties in this case, or by any parents, subsidiaries, divisions, branches, affiliates, or competitors of any of the parties in any capacity other than as an expert, consultant, or translator in this proceeding.
5. I have received a copy of the Stipulated Protective Order in this case.
6. I have carefully read and understand the provisions of the Stipulated Protective Order.
7. I will comply with all of the provisions of the Stipulated Protective Order and understand that a violation of the Stipulated Protective Order or this Agreement could result in sanctions against me.
8. I will hold in confidence and not disclose to anyone not qualified under the Stipulated Protective Order any “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” Information or Materials disclosed to me.

1 9. I will return all Information and Materials containing or disclosing
2 “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” Information and
3 Materials which come into my possession, and Information and Materials that I have
4 prepared relating thereto, to counsel for the party that provided me with the
5 “Confidential” “Highly Confidential—Attorneys’ Eyes Only” Information and
6 Materials.

7 10. I submit to the jurisdiction of this Court for the purpose of enforcement
8 of the Stipulated Protective Order in this case.

9 I declare under penalty of perjury that the foregoing is true and correct.

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12 Date: _____ By: _____

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