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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN CALIFORNIA
REGIONAL RAIL AUTHORITY, a
joint powers authority,

Plaintiffs,

vs.

HYUNDAI ROTEM COMPANY, a
South Korean corporation, RAUL V.
BRAVO + ASSOCIATES, INC., a
Virginia corporation, and DOES 1
through 10,

Defendants.

CASE NO.: 2:16-cv-08042-JAK
(JEMx)

DISCOVERY MATTER

PROTECTIVE ORDER

AND ALL RELATED COUNTER-
CLAIMS.

The Court has reviewed the Stipulation and [Proposed] Protective Order (“Stipulation”) submitted jointly by Plaintiff and Counter-Defendant Southern California Regional Rail Authority (“Metrolink”), Defendant and Counter-Claimant Hyundai Rotem Company (“Hyundai”) and Defendant Raul V. Bravo + Associates, Inc. (“Raul Bravo”) (individually, each a “Party” and collectively, the “Parties”))

1 and, for good cause, the Court approves the Stipulation and enters the following
2 Order:

3 **PROTECTIVE ORDER**

4 **1. PURPOSES, LIMITATIONS AND GOOD CAUSE**

5 **A. Purposes and Limitations**

6 Disclosure and discovery activity in this action are likely to involve
7 production of confidential, proprietary, or private information for which special
8 protection from public disclosure and from use for any purpose other than
9 prosecuting this litigation may be warranted. Accordingly, the Parties hereby
10 stipulate to and petition the Court to enter the following Stipulated Protective Order.
11 The Parties acknowledge that this Order does not confer blanket protections on all
12 disclosures or responses to discovery and that the protection it affords from public
13 disclosure and use extends only to the limited information or items that are entitled
14 to confidential treatment under the applicable legal principles. The Parties further
15 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
16 Order does not entitle them to file confidential information under seal. Civil Local
17 Rule 79-5 sets forth the procedures that must be followed and the standards that will
18 be applied when a Party seeks permission from the court to file material under seal.

19 **B. Good Cause Statement**

20 This action is likely to involve non-public commercial, financial, and/or
21 proprietary information for which special protection from public disclosure and
22 from use for any purpose other than prosecution of this action is warranted. Such
23 confidential and proprietary materials and information consist of, among other
24 things, nonpublic and/or proprietary information regarding the technical aspects of
25 railcars manufactured by Hyundai Rotem Company and owned by Southern
26 California Regional Rail Authority, such as specifications and testing information,
27 non-public testing formulas and methods, and security information pertaining to
28 Raul V. Bravo + Associates, Inc., and other information that is confidential to the

1 Parties; nonpublic and/or proprietary financial information; and nonpublic and/or
2 proprietary operational reports and similar business information. The Parties
3 operate in a competitive environment with respect to railcars, and the Parties may
4 have information and materials that contain confidential or proprietary information.
5 If disclosed to third parties, that information could place the Parties at a competitive
6 disadvantage.

7 Accordingly, to expedite the flow of information, to facilitate the prompt
8 resolution of disputes over confidentiality of discovery materials, to adequately
9 protect information the Parties are entitled to keep confidential, to ensure that the
10 parties are permitted reasonable necessary uses of such material in preparation for
11 trial, to address their handling at the end of the litigation, and serve the ends of
12 justice, a protective order for such information is justified in this matter. It is the
13 intent of the Parties that information will not be designated as confidential for
14 tactical reasons and that nothing will be so designated without a good faith belief
15 that it has been maintained in a confidential, non-public manner, and there is good
16 cause why it should not be part of the public record of this case.

17 **2. DEFINITIONS**

18 2.1 Action: This pending lawsuit, captioned as Southern California
19 Regional Rail Authority v. Hyundai Rotem Company, C.D. Cal. Case No. 2:16-cv-
20 08042-JAK (JEMx), including all related counterclaims.

21 2.2 Challenging Party: a Party or Non-Party that challenges the designation
22 of information or items under this Order.

23 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
24 how it is generated, stored or maintained) or tangible things that qualify for
25 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
26 the Good Cause Statement.

27 2.4 Counsel: Outside Counsel of Record and House Counsel, as well as
28 their support staff.

1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced or
7 generated in disclosures or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as
10 an expert witness or as a consultant in this action.

11 2.8 House Counsel: attorneys who are employees of a Party to this action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.9 Non-Party: any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys who are not employees of a Party
17 to this action but are retained to represent or advise a Party to this action and have
18 appeared in this action on behalf of that Party or are affiliated with a law firm which
19 has appeared on behalf of that Party.

20 2.11 Party: any Party to this action, including all of its officers, directors,
21 employees, agents, consultants, retained experts, and Outside Counsel of Record
22 (and their support staffs).

23 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this action.

25 2.13 Professional Vendors: persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium)
28 and their employees and subcontractors.

1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL,” including Confidential Health Information.

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5 **3. SCOPE**

6 The protections conferred by this Stipulation and Order cover not only
7 Protected Material (as defined above), but also (1) any information copied or
8 extracted from Protected Material; (2) all copies, excerpts, summaries, or
9 compilations of Protected Material; and (3) any testimony, conversations, or
10 presentations by Parties or their Counsel that might reveal Protected Material.
11 Any use of Protected Material at trial shall be governed by a separate agreement or
12 order. This Order does not govern the use of Protected Material at trial.

13 **4. DURATION**

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

22 **5. DESIGNATING PROTECTED MATERIAL**

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.
24 Each Party or Non-Party that designates information or items for protection under
25 this Order must take care to limit any such designation to specific material that
26 qualifies under the appropriate standards. The Designating Party must designate for
27 protection only those parts of material, documents, items, or oral or written
28 communications that qualify so that other portions of the material, documents,

1 items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this Order.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in
4 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
5 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
6 under this Order must be clearly so designated before the material is disclosed or
7 produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic
10 documents, but excluding transcripts of depositions or other pretrial or trial
11 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
12 page that contains protected material. For documents produced electronically in
13 native format, the Producing Party may designate the documents by including
14 “CONFIDENTIAL” in the file name, marking the media on which the documents
15 are produced as “CONFIDENTIAL,” or through other reasonable means identifying
16 the documents as “CONFIDENTIAL.”

17 A Party or Non-Party that makes original documents (including electronic
18 documents) or materials available for inspection need not designate them for
19 protection until after the inspecting Party has indicated which documents or material
20 it would like copied and produced. During the inspection and before the designation,
21 all of the documents or material made available for inspection shall be deemed
22 “CONFIDENTIAL.” After the inspecting Party has identified the documents or
23 materials it wants copied and produced, the Producing Party must determine which
24 documents, or portions thereof, qualify for protection under this Order. Then,
25 before producing the specified documents or materials, the Producing Party must
26 affix the “CONFIDENTIAL” legend to each page that contains Protected Material.

27 (b) for testimony given in deposition or in other pretrial or trial
28 proceedings, that the Designating Party either (i) identify on the record, before the

1 close of the deposition, hearing, or other proceeding, all protected testimony, or (ii)
2 within 20 days of receiving the transcript, identify the specific portions of the
3 testimony as to which protection is sought. Only those portions of the testimony that
4 are appropriately designated for protection within the 20 days shall be covered by
5 the provisions of this Stipulated Protective Order. Transcript pages containing
6 Protected Material must be separately bound by the court reporter, who must affix to
7 the top of each such page the legend “CONFIDENTIAL” as instructed by the
8 Designating Party.

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

15 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate
16 qualified information or items does not waive the Designating Party’s right to secure
17 protection under this Order for such material. Upon correction of a designation, the
18 Receiving Party must make reasonable efforts to assure that the material is treated in
19 accordance with the provisions of this Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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1 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
2 Designating Party's confidentiality designation must do so in good faith and must
3 begin the process by conferring with counsel for the Designating Party. In
4 conferring, the challenging Party must explain the basis for its belief that the
5 confidentiality designation was not proper and must give the Designating Party an
6 opportunity to review the designated material, to reconsider the circumstances, and,
7 if no change in designation is offered, to explain the basis for the chosen
8 designation. A challenging Party may proceed to the next stage of the challenge
9 process only if it has engaged in this meet-and-confer process first.

10 6.3 Court Intervention. A Party that elects to press a challenge to a
11 confidentiality designation after considering the justification offered by the
12 designating Party may file and serve a motion that identifies the challenged material
13 and sets forth in detail the basis for the challenge. Each such motion must be
14 accompanied by a competent declaration that affirms that the movant has complied
15 with the meet-and confer requirements imposed in the preceding paragraph and that
16 sets forth with specificity the justification for the confidentiality designation that
17 was given by the Designating Party in the meet-and-confer dialogue. The Parties
18 agree that a confidentiality designation shall not create a presumption in favor of
19 such confidentiality designation. Designating Party shall bear the burden of
20 establishing that the designation is justified. Until the Court rules on the challenge,
21 all Parties shall continue to afford the material in question the level of protection to
22 which it is entitled under the Producing Party's designation. Frivolous challenges
23 and those made for an improper purpose (e.g., to harass or impose unnecessary
24 expenses and burdens on other Parties) may expose the challenging Party to
25 sanctions.

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

27 7.1 Basic Principles. A Receiving Party may use Protected Material that is
28 disclosed or produced by another Party or by a Non-Party in connection with this

1 action only for prosecuting, defending, or attempting to settle this action. Such
2 Protected Material may be disclosed only to the categories of persons and under the
3 conditions described in this Order. When the action has been terminated, a
4 Receiving Party must comply with the provisions of section 13 below (FINAL
5 DISPOSITION). Protected Material must be stored and maintained by a Receiving
6 Party at a location and in a secure manner that is reasonably calculated to ensure that
7 access is limited to the persons authorized under this Order.

8 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
9 otherwise ordered by the court or permitted in writing by the Designating Party, a
10 Receiving Party may disclose any information or item designated
11 “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this action and
13 their support staff, as well as any other employees of said Outside Counsel of
14 Record to whom it is reasonably necessary to disclose the information for this
15 action;

16 (b) the current and former officers, directors, employees and agents
17 (including House Counsel) of the Receiving Party to whom disclosure is reasonably
18 necessary for this litigation and who have signed the “Acknowledgment and
19 Agreement to Be Bound” (Exhibit A);

20 (c) Experts (as defined in this Order) of the Receiving Party to whom
21 disclosure is reasonably necessary for this litigation and who have signed the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (d) the court and its personnel;

24 (e) court reporters and their staff, professional jury or trial consultants, and
25 Professional Vendors to whom disclosure is reasonably necessary for this litigation;

26 (f) mock jurors who have signed the “Acknowledgment and Agreement to
27 Be Bound” (Exhibit A);

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1 (g) during their depositions, witnesses, and any attorneys for witnesses, in
2 the action to whom disclosure is reasonably necessary and who have signed 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 must
6 be separately bound by the court reporter and may not be disclosed to anyone except
7 as permitted under this Stipulated Protective Order; and

8 (h) the author or recipient of a document (including electronic documents)
9 containing the information or a custodian or other person who otherwise possessed
10 or knew the information.

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

13 If a Party is served with a subpoena or a court order issued in other litigation
14 that compels disclosure of any information or items designated in this action as
15 “CONFIDENTIAL,” that Party must:

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

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

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

24 If the Designating Party timely seeks a protective order, the Party served with the
25 subpoena or court order shall not produce any information designated in this action
26 as “CONFIDENTIAL” before a determination by the court from which the
27 subpoena or order issued, unless the Party has obtained the Designating Party’s
28 permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material and nothing in these provisions
2 should be construed as authorizing or encouraging a Receiving Party in this action
3 to disobey a lawful directive from another court.

4 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
5 **PRODUCED IN THIS LITIGATION**

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

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

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

19 (2) promptly provide the Non-Party with a copy of the Stipulated
20 Protective Order in this litigation, the relevant discovery request(s), and a
21 reasonably specific description of the information requested; and

22 (3) make the information requested available for inspection by the
23 Non-Party.

24 (c) If the Non-Party fails to object or seek a protective order either (i)
25 pursuant to the terms of its agreement with the Receiving Party or (ii) from this
26 court within 14 days of receiving the notice and accompanying information, the
27 Receiving Party may produce the Non-Party’s confidential information responsive
28 to the discovery request. If the Non-Party timely seeks a protective order, the

1 Receiving Party shall not produce any information in its possession or control that is
2 subject to the confidentiality agreement with the Non-Party before a determination
3 by a court. Absent a court order to the contrary, the Non-Party shall bear the burden
4 and expense of seeking protection in this court of its Protected Material.

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

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

14 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 15 PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other protection,
18 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
19 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
20 procedure may be established in an e-discovery order that provides for production
21 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
22 (e), insofar as the Parties reach an agreement on the effect of disclosure of a
23 communication or information covered by the attorney-client privilege or work
24 product protection, the Parties may incorporate their agreement in the stipulated
25 protective order submitted to the court.

26 **12. MISCELLANEOUS**

27 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
28 person to seek its modification by the court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

6 12.3 Filing Protected Material. Without written permission from the
7 Designating Party or a court order secured after appropriate notice to all interested
8 persons, a Party may not file in the public record in this action any Protected
9 Material. A Party that seeks to file under seal any Protected Material must comply
10 with Civil Local Rule 79-5. Protected Material may only be filed under seal
11 pursuant to a court order authorizing the sealing of the specific Protected Material at
12 issue. If a Receiving Party's request to file Protected Material under seal pursuant to
13 Civil Local Rule 79-5 is denied by the court, then the Receiving Party may file the
14 information in the public record unless otherwise instructed by the court.

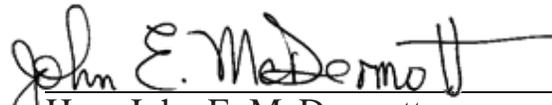
15 **13. FINAL DISPOSITION**

16 Within 60 days after the final disposition of this action, as defined in
17 paragraph 4, each Receiving Party must return all Protected Material to the
18 Producing Party or destroy such material. As used in this subdivision, “all Protected
19 Material” includes all copies, abstracts, compilations, summaries, and any other
20 format reproducing or capturing any of the Protected Material. Whether the
21 Protected Material is returned or destroyed, the Receiving Party must submit a
22 written certification to the Producing Party (and, if not the same person or entity, to
23 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
24 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
25 that the Receiving Party has not retained any copies, abstracts, compilations,
26 summaries or any other format reproducing or capturing any of the Protected
27 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
28 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal

1 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
2 work product, and consultant and expert work product, even if such materials
3 contain Protected Material. Any such archival copies that contain or constitute
4 Protected Material remain subject to this Protective Order as set forth in Section 4.
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6 **IT IS SO ORDERED:**

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8 DATED: November 7, 2017

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11 Hon. John E. McDermott
12 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print full name],
of _____ [print full address], 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 in the case of *Southern California Regional Rail Authority v. Hyundai Rotem Company*, C.D. Cal. Case No. 2:16-cv-08042-JAK-JEM. I agree to comply with and to be bound by all of 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 full name] of _____ [print 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: _____