

1 Stephen M. Doniger (SBN 179314)
 stephen@donigerlawfirm.com
 2 Scott A. Burroughs (SBN 235718)
 scott@donigerlawfirm.com
 3 David Shein (SBN 230870)
 david@donigerlawfirm.com
 4 DONIGER / BURROUGHS APC
 5 603 Rose Avenue
 6 Venice, California 90291
 7 Telephone: (310) 590-1820

8 Attorneys for Plaintiff

9
 10 **UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

11 MIDNIGHT RIDER, INC., a California
 12 Corporation

13 Plaintiff,

14 v.

15 FOREVER 21, INC., a Delaware
 16 Corporation; PROJECT 28 CLOTHING, a
 17 New York Limited Liability Company; and
 18 DOES 1 – 10 inclusive,

19 Defendants.

Case No.: 16-CV-09298-SJO-JEM
Hon. S. James Otero Presiding

DISCOVERY MATTER

Referred to Hon. John E. McDermott

**~~PROPOSED~~ PROTECTIVE
 ORDER**

20
 21 Upon stipulation of the parties, the Court enters a Protective Order in this
 22 matter as follows:

GOOD CAUSE STATEMENT

23 It is the intent of the parties and the Court that information will not be
 24 designated as confidential in this case for tactical reasons, and that nothing shall be
 25 designated without a good faith belief that there is good cause why it should not be
 26 part of the public record. Examples of confidential information that the parties
 27 may seek to protect from unrestricted or unprotected disclosure include, but are not
 28

1 limited to:

- 2 (a) Information that is the subject of a contractual non-disclosure or
3 confidentiality agreement or obligation, and/or Protective Order
4 issued in another case;
- 5 (b) The names, or other information tending to reveal the identity
6 of a party's supplier, distributor, or designer;
- 7 (c) Agreements with third-parties, including license agreements,
8 distributor agreements, manufacturing agreements, design
9 agreements, development agreements, supply agreements, sales
10 agreements, or service agreements;
- 11 (d) Research and development information;
- 12 (e) Proprietary engineering or technical information, including
13 product design, manufacturing techniques, processing
14 information, drawings, memoranda and reports;
- 15 (f) Information related to budgets, sales, profits, costs, margins,
16 licensing of technology or designs, product pricing, or other
17 internal financial/accounting information, including non-public
18 information related to financial condition or performance and
19 income or other non-public tax information;
- 20 (g) Information related to internal operations including personnel
21 information;
- 22 (h) Information related to past, current and future product
23 development;
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- 1 (i) Information related to past, current and future market analyses
2 and business and marketing development, including plans,
3 strategies, forecasts and competition; and
4
5 (j) Trade secrets (as defined by the jurisdiction in which the
6 information is located).

7 Unrestricted or unprotected disclosure of such confidential technical,
8 commercial or personal information would, in the producing party's opinion, result
9 in prejudice or harm to the producing party by revealing the producing party's
10 competitive confidential information, which has been developed at the expense of
11 the producing party and which represents valuable tangible and intangible assets of
12 that party. Additionally, legitimate privacy interests must be safeguarded.
13 Accordingly, the parties respectfully submit that there is good cause for the entry
14 of this Protective Order.

15 The parties agree, subject to the Court's approval, that the following terms
16 and conditions shall apply to this civil action.

17 1. Designated Material.

18 1.1 Information or material may be designated for confidential treatment
19 pursuant to this Protective Order by any party, person or entity producing or
20 lodging it in this action (the "Designating Party"), if: (a) produced or served,
21 formally or informally, pursuant to the Federal Rules of Civil Procedure or in
22 response to any other formal or informal discovery request in this action; and/or
23 (b) filed or lodged with the Court. All such information and material and all
24 information or material derived from it constitutes "Designated Material" under
25 this Protective Order.

26 1.2 Unless and until otherwise ordered by the Court or agreed to in
27 writing by the parties, all Designated Materials designated under this Protective
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1 Order shall be used by the parties and persons receiving such Designated
2 Materials (“Receiving Party”) solely for litigation purposes, including any
3 appellate proceeding relating thereto. Designated Material shall not be used by
4 any party or person receiving them for any business or any other non-litigation
5 purpose. No party or person shall disclose Designated Material to any other party
6 or person not entitled to receive such Designated Material under the specific
7 terms of this Protective Order. For purposes of this Protective Order, “disclose”
8 or “disclosed” means to show, furnish, reveal or provide, indirectly or directly,
9 any portion of the Designated Material or its contents, orally or in writing,
10 including the original or any copy of the Designated Material.

11 2. Access to Designated Materials.

12 2.1 Materials Designated “CONFIDENTIAL”: Subject to the limitations
13 set forth in this Protective Order, Designated Material may be marked
14 “CONFIDENTIAL” for the purpose of preventing the disclosure of information
15 or materials that the designating party in good faith believes is confidential.
16 Before designating any specific information or material “CONFIDENTIAL,” the
17 Designating Party’s counsel shall make a good faith determination that the
18 information warrants protection under Rule 26(c) of the Federal Rules of Civil
19 Procedure. Such information may include, but is not limited to:

20 (a) The financial performance or results of the Designating Party,
21 including without limitation income statements, balance sheets, cash flow
22 analyses, budget projections, sales records, and present value calculations;

23 (b) Corporate and strategic planning by the Designating Party, including
24 without limitation marketing plans, competitive intelligence reports, sales
25 projections and competitive strategy documents;

26 (c) Names, addresses, and other information that would identify
27 prospective customers, or the distributors or prospective distributors of the
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1 Designating Party, however it is expressly understood and agreed that the names
2 of vendors and customers for the allegedly infringing goods at issue, other than
3 individuals, may shall not be deemed confidential, and Plaintiff is free to amend
4 the operative pleadings to add such customers as appropriate;

5 (d) Technical data, research and development data, and any other
6 confidential commercial information, including but not limited to trade secrets of
7 the Designating Party;

8 (e) Information used by the Designating Party in or pertaining to its
9 trade or business, which information the Designating Party believes in good faith
10 has competitive value, which is not generally known to others and which the
11 Designating Party would not normally reveal to third parties except in
12 confidence, or has undertaken with others to maintain in confidence;

13 (f) Information which the Designating Party believes in good faith falls
14 within the right to privacy guaranteed by the laws of the United States or
15 California; and

16 (g) Information which the Designating Party believes in good faith to
17 constitute, contain, reveal or reflect proprietary, financial, business, technical, or
18 other confidential information.

19 The fact that an item or category is listed as an example in this or other
20 sections of this Protective Order does not, by itself, render the item or category
21 discoverable.

22 2.1.0 Materials designated “CONFIDENTIAL” may be disclosed only to
23 the following Designees:

24 2.1.1 Persons who appear on the face of Designated Materials marked
25 “CONFIDENTIAL” as an author, addressee, or recipient thereof;

26 2.1.2 Counsel retained as outside litigation attorneys of record in this
27 action, and their respective associates, clerks, legal assistants, stenographic,
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1 videographic and support personnel, and other employees of such outside
2 litigation attorneys, and organizations retained by such attorneys to provide
3 litigation support services in this action and the employees of said organizations.
4 “Counsel” explicitly excludes any in-house counsel whether or not they are
5 attorneys of record in this action.

6 2.1.3 Consultants, including non-party experts and consultants retained or
7 employed by Counsel to assist in the preparation of the case, to the extent they
8 are reasonably necessary to render professional services in this action. Each
9 consultant must sign a certification that he or she has read this Stipulated
10 Protective Order, will abide by its provisions, and will submit to the jurisdiction
11 of this Court regarding the enforcement of this Order’s provisions.

12 2.1.4 A party’s officers and/or employees, which may include in-house
13 counsel.

14 2.1.5 The Court, its clerks and secretaries, and any court reporter retained
15 to record proceedings before the Court; and

16 2.1.6 Court reporters retained to transcribe depositions.
17

18 2.2 Materials Designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
19 EYES ONLY”: Subject to the limitations in this Protective Order, Designated
20 Materials may be marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY” for the purpose of preventing the disclosure of information or materials
22 which, if disclosed to the receiving party, might cause competitive harm to the
23 Designating Party. Information and material that may be subject to this
24 protection includes, but is not limited to, technical and/or research and
25 development data, intellectual property, financial, marketing and other sales data,
26 and/or information having strategic commercial value pertaining to the
27 Designating Party’s trade or business. Nothing in paragraph 2.1 shall limit the
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1 information or material that can be designated “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY” under this paragraph. Before designating any
3 specific information “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY,” the Designating Party’s counsel shall make a good faith determination
5 that the information warrants such protection.

6 2.2.0 Materials designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
7 EYES ONLY” materials may be disclosed only to the following Designees:

8 2.2.1 Persons who appear on the face of Designated Materials marked
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as an author,
10 addressee, or recipient thereof;

11 2.2.2 Counsel for the parties to this action, as defined in section 2.1.2;

12 2.2.3 Consultants for the parties to this action, as defined in section 2.1.3;

13 and

14 2.2.4 The Court, its clerks and secretaries, and any court reporter retained
15 to record proceedings before the Court.

16 2.2.5 Court reporters retained to transcribe depositions.

17
18 2.3 Legal Effect of Designation. The designation of any information or
19 materials as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’
20 EYES ONLY” is intended solely to facilitate the conduct of this litigation.

21 Neither such designation nor treatment in conformity with such designation shall
22 be construed in any way as an admission or agreement by the Receiving Party
23 that the Designated Materials constitute or contain any trade secret or confidential
24 information. Except as provided in this Protective Order, the Receiving Party
25 shall not be obligated to challenge the propriety of any designation, and a failure
26 to do so shall not preclude a subsequent attack on the propriety of such
27 designation.

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1 2.4 Nothing herein in any way restricts the ability of the Receiving Party
2 to use “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’
3 EYES ONLY” material produced to it in examining or cross-examining any
4 employee or consultant of the Designating Party.

5 2.5 The parties agree that the Parties may be provided by their counsel a
6 summary document, or oral summary, setting forth the alleged infringers’ full
7 identities, revenues, and gross profits numbers, as well as the plaintiff’s sales,
8 revenues and profits and from the sale of product affixed with the allegedly
9 infringed design(s) at issue in this action, or other similar financial information,
10 notwithstanding any party’s designation of documents showing such information
11 as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. The parties
12 further agree that Plaintiff is free to name revealed alleged infringers as
13 defendants in a lawsuit.

14 3. Certificates Concerning Designated Materials. Each Consultant as
15 defined in section 2.1.3, to whom any Designated Materials will be disclosed
16 shall, prior to disclosure of such material, execute the Acknowledgement of
17 Stipulated Protective Order in the form attached hereto as Exhibit A. Counsel
18 who makes any disclosure of Designated Materials shall retain each executed
19 Acknowledgement of Stipulated Protective Order and shall circulate copies to all
20 Counsel for the opposing party concurrently with the identification of the
21 Consultant to the attorneys for the Designating Party.

22 4. Use of Designated Materials by Designating Party. Nothing in this
23 Protective Order shall limit a Designating Party’s use of its own information or
24 materials, or prevent a Designating Party from disclosing its own information or
25 materials to any person. Such disclosure shall not affect any designations made
26 pursuant to the terms of this Protective Order, so long as the disclosure is made in
27 a manner that is reasonably calculated to maintain the confidentiality of the
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1 information.

2 5. Manner of Designating Written Materials.

3 5.1 Documents, discovery responses and other written materials shall be
4 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY” whether in whole or in part, as follows.

6 5.2 The producing party shall designate materials by placing the legend
7 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
8 ONLY” on each page so designated prior to production.

9 5.3 A designation of “CONFIDENTIAL,” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as to any item, thing or
11 object that cannot otherwise be categorized as a document, shall be made: (1) by
12 placing the legend “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY” on the thing, object or container within which it is
14 stored; or (2) by specifically identifying, in writing, the item and the level of
15 confidentiality designation, where such labeling is not feasible.

16 5.4 When a party wishes to designate as “CONFIDENTIAL,” or
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” materials
18 produced by someone other than the Designating Party (a “Producing Party”),
19 such designation shall be made:

20 5.4.1 Within fifteen (15) business days from the date that the Designating
21 Party receives copies of the materials from the producing or disclosing entity; and

22 5.4.2 By notice to all parties to this action and to the Producing Party, if
23 such party is not a party to this action, identifying the materials to be designated
24 with particularity (either by production numbers or by providing other adequate
25 identification of the specific material). Such notice shall be sent by U.S. mail or
26 e-mail.

27 5.4.3. A party shall be permitted to designate as “CONFIDENTIAL,” or
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1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material produced
2 by a Producing Party only where:

3 a. The material being produced was provided to or developed by such
4 Producing Party: (i) under a written confidentiality agreement with the Designating
5 Party; or (ii) within a relationship with the Designating Party (or a party operating
6 under the control thereof) in which confidentiality is imposed by law (including,
7 but not limited, to the employment relationship and the vendor-customer
8 relationship); and

9 b. The material being produced would be considered confidential material
10 of the Designating Party under Section 2.1 of this Agreement if it were in the
11 possession of the Designating Party.

12 5.5 Upon notice of designation, all persons receiving notice of the
13 requested designation of materials shall:

14 5.5.1 Make no further disclosure of such Designated Material or
15 information contained therein, except as allowed in this Protective Order;

16 5.5.2 Take reasonable steps to notify any persons known to have
17 possession of or access to such Designated Materials of the effect of such
18 designation under this Protective Order; and

19 5.5.3 If “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY” material or information contained therein is
21 disclosed to any person other than those entitled to disclosure in the manner
22 authorized by this Protective Order, the party responsible for the disclosure shall,
23 immediately upon learning of such disclosure, inform the Designating Party in
24 writing of all pertinent facts relating to such disclosure, and shall make every
25 effort to prevent further disclosure by the unauthorized person(s).

26 6. Manner of Designating Deposition Testimony.

27 6.1 Deposition transcripts and portions thereof taken in this action may
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1 be designated as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY” during the deposition or after, in which case the
3 portion of the transcript containing Designated Material shall be identified in the
4 transcript by the Court Reporter as “CONFIDENTIAL,” or “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” The designated testimony
6 shall be bound in a separate volume and marked by the reporter accordingly.

7 6.2 Where testimony is designated during the deposition, the
8 Designating Party shall have the right to exclude, at those portions of the
9 deposition, all persons not authorized by the terms of this Protective Order to
10 receive such Designated Material.

11 6.3 Within seven (7) days after a deposition transcript is certified by the
12 court reporter, any party may designate pages of the transcript and/or its exhibits
13 as Designated Material. During such seven (7) day period, the transcript in its
14 entirety shall be treated as “CONFIDENTIAL” (except for those portions
15 identified earlier as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY” which shall be treated accordingly from the date of designation). If any
17 party so designates such material, the parties shall provide written notice of such
18 designation to all parties within the seven (7) day period. Designated Material
19 within the deposition transcript or the exhibits thereto may be identified in
20 writing by page and line, or by underlining and marking such portions
21 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY” and providing such marked-up portions to all counsel.

23 7. Copies. All complete or partial copies of a document that disclose
24 Designated Materials shall be subject to the terms of this Protective Order.

25 8. Court Procedures.

26 8.1 Disclosure of Designated Material to Court Officials. Subject to the
27 provisions of this section, Designated Material may be disclosed to the Court,
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1 Court officials or employees involved in this action (including court reporters,
2 persons operating video recording equipment at depositions, and any special
3 master, referee, expert, technical advisor or Third-Party Consultant appointed by
4 the Court), and to the jury in this action, and any interpreters interpreting on
5 behalf of any party or deponent.

6 8.2 Filing Designated Materials with the Court. Nothing in this Order
7 shall vary the requirements for filing under Seal imposed by the Federal Rules of
8 Civil Procedure or the Local Rules of this Court. If a party wishes to file with the
9 Court any document, transcript or thing containing information which has been
10 designated “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
11 ATTORNEYS’ EYES ONLY” the Party shall designate the material as set forth
12 herein and file it with the Court in an application for filing under seal under the
13 Local Rules of this Court, with the material bearing the following or substantially
14 similar legend:

15 **“[CONFIDENTIAL, or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES**
16 **ONLY] INFORMATION SUBJECT TO PROTECTIVE ORDER.”**

17 The Application for Filing under Seal must show good cause for the under seal
18 filing. Filing the document under seal shall not bar any party from unrestricted use
19 or dissemination of those portions of the document that do not contain material
20 designated “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY.” If a filing party fails to designate information as
22 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
23 ONLY,” any party who in good faith believes that designation and filing under seal
24 is required by this Protective Order may move the Court to file said information
25 under seal within five (5) days of learning of the defective filing. Notice of such
26 designation shall be given to all parties. Nothing in this provision relieves a party
27 of liability for damages caused by failure to properly file Designated Material
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1 under seal.

2 8.3 In the event that the Court refuses to allow any document to be filed
3 under seal, despite the Receiving Party's compliance with Section 8.2, the Federal
4 Rules of Civil Procedure and Local Rules of this Court, the Receiving Party may,
5 nonetheless, file such documents with the Court as part of the public record.

6 8.4 Retrieval of Designated Materials. The party responsible for lodging
7 or filing the Designated Materials shall be responsible for retrieving such
8 Designated Materials from the Court following the final termination of the action
9 (including after any appeals).

10 9. Objections

11 9.1 A party may challenge any designation under this Protective Order at
12 any time, on the grounds that the information or material does not meet the
13 standards of Sections 1 and 2, by following the procedure of Local Rule 37 of this
14 Court.

15 9.2 The parties shall meet and confer in good faith prior to the filing of
16 any motion under this section.

17 10. Client Communication. Nothing in this Protective Order shall
18 prevent or otherwise restrict counsel from rendering advice to their clients and, in
19 the course of rendering such advice, relying upon the examination of Designated
20 Material. In rendering such advice and otherwise communicating with the client,
21 however, counsel shall not disclose any Designated Material, except as otherwise
22 permitted by this Protective Order.

23 11. No Prejudice.

24 11.1 This Protective Order shall not diminish any existing obligation or
25 right with respect to Designated Material, nor shall it prevent a disclosure to
26 which the Designating Party consented in writing before the disclosure takes
27 place.

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1 11.2 Unless the parties stipulate otherwise, evidence of the existence or
2 nonexistence of a designation under this Protective Order shall not be admissible
3 for any purpose during any proceeding on the merits of this action.

4 11.3 If any party required to produce documents contends that it
5 inadvertently produced any Designated Material without marking it with the
6 appropriate legend, or inadvertently produced any Designated Material with an
7 incorrect legend, the producing party may give written notice to the receiving
8 party or parties, including appropriately stamped substitute copies of the
9 Designated Material. Within three (3) business days of receipt of the substitute
10 copies, the receiving party shall return the previously unmarked or mismarked
11 items and all copies thereof.

12 11.4 Neither the provisions of this Protective Order, nor the filing of any
13 material under seal, shall prevent the use in open court, in deposition, at any
14 hearing, or at trial of this case of any material that is subject to this Protective
15 Order or filed under seal pursuant to its provisions. At deposition, the party using
16 Designated Material must request that the portion of the proceeding where use is
17 made be conducted so as to exclude persons not qualified to receive such
18 Designated Material. At trial, the party using Designated Material must request
19 that the portion of the proceeding where use is made be conducted so as to
20 exclude persons not qualified to receive such Designated Material. All
21 confidentiality designations or legends placed pursuant to this Stipulated
22 Protective Order shall be removed from any document or thing used as a trial
23 exhibit in this case. The removal of such confidentiality designations or legends
24 under the preceding sentence shall not affect the treatment of such documents and
25 things as Designated Material under this Stipulated Protective Order. Upon
26 request of a party, the parties shall meet and confer concerning the use and
27 protection of Designated Material in open court at any hearing. Prior to the
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1 pretrial conference, the parties shall meet and confer concerning appropriate
2 methods for dealing with Designated Material at trial.

3 11.5 Any inadvertent production of documents containing privileged
4 information shall not be deemed to be a waiver of the attorney-client privilege,
5 work product doctrine, or any other applicable privilege or doctrines. All parties
6 specifically reserve the right to demand the return of any privileged documents
7 that it may produce inadvertently during discovery if the producing party
8 determines that such documents contain privileged information. After receiving
9 notice of such inadvertent production by the producing party, the receiving party
10 agrees to make reasonable and good faith efforts to locate and return to the
11 producing party all such inadvertently produced documents.

12 12. Modification and Survival.

13 12.1 Modification. The Order shall be subject to modification by the Court
14 on its own initiative, or on Motion of a party or any other person with standing.
15 Accordingly, the parties reserve the right to seek modification of this Protective
16 Order at any time for good cause. The parties agree to meet and confer prior to
17 seeking to modify this Protective Order for any reason. The restrictions imposed
18 by this Protective Order may only be modified or terminated by written
19 stipulation of all parties or by order of this Court. Parties entering into this
20 Protective Order will not be deemed to have waived any of their rights to seek
21 later amendment to this Protective Order.

22 12.2 Trial. The parties understand that this Protective Order does not
23 extend to material presented at the trial of this Action. Once the case proceeds to
24 trial, any information that is presented on the record during trial, whether or not
25 designated as confidential and/or kept and maintained pursuant to the terms of
26 this Protective Order, will be presumptively available to all members of the
27 public, including the press, unless good cause is shown to the district judge in
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1 advance of the presentation of that material at trial to proceed otherwise.
2 However, any documents or things that have been designated as confidential do
3 not lose their protected character simply by virtue of having been presented as an
4 exhibit at trial.

5 12.3 Survival and Return of Designated Material. This Protective Order
6 shall survive termination of this action prior to trial of this action. Upon final
7 termination of the action prior to trial of this action, and at the written request
8 of the Designating Party, all Designated Material, including deposition
9 testimony, and all copies thereof, shall be returned to counsel for the
10 Designating Party (at the expense of the Designating Party) or (at the option
11 and expense of the requesting party) shall be destroyed. Upon request for the
12 return or destruction of Designated Materials, counsel shall certify their
13 compliance with this provision and shall serve such certification to counsel
14 for the Designating Party not more than ninety (90) days after the written
15 request to return or destroy Designated Materials. Counsel who have
16 submitted one or more Certificate(s) prepared pursuant to Section 3 do not
17 need to retain such Certificate(s) past the ninety (90) day period.

18 13. No Contract. This Protective Order shall not be construed to
19 create a contract between the parties or between the parties and their
20 respective counsel.

21 14. Court's Retention of Jurisdiction. The Court retains jurisdiction
22 after final termination of the action prior to trial, to enforce this Stipulation.

23 15. Exception for Public Information. Nothing in this Stipulation shall be
24 deemed in any way to restrict the use of documents or information which are
25 lawfully obtained or publicly available to a party independently of discovery in this
26 action, whether or not the same material has been obtained during the course of
27 discovery in the action and whether or not such documents or information have
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1 been designated hereunder. However, in the event of a dispute regarding such
2 independent acquisition, a party wishing to use any independently acquired
3 documents or information shall bear the burden of proving independent
4 acquisition.

5 16. Any material designated “CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by a party will be deemed by
7 the Designating Party to this agreement to be authentic and a business record of the
8 Designating Party, and the Designating Party will be precluded from challenging
9 the authenticity of any document so designated at any time during this litigation,
10 including during any necessary collection or appeal proceedings. To the extent that
11 such material is not a business record of the Designating Party and was not created
12 by the Designating Party, the non-producing party for which the material is a
13 business record shall have opportunity to challenge the authenticity of the material
14 so designated.

15 17. No Prior Judicial Determination. This Order is entered based on the
16 representations and agreements of the parties and for the purpose of facilitating
17 discovery. Nothing herein shall be construed or presented as a judicial
18 determination that any document or material designated Confidential Information
19 or Attorneys’ Eyes Only Information by counsel or the parties is entitled to
20 protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise
21 until such time as the Court may rule on a specific document or issue.

22 18. No Admission. The designation by a producing Party of Confidential
23 Information or Attorneys Eyes Only Information is intended solely to facilitate the
24 preparation and trial of this action. Such designation is not an admission by any
25 Party that the designated disclosure constitutes or contains any Confidential
26 Information or Attorneys Eyes Only Information. Disclosure of Confidential
27 Information or Attorneys Eyes Only Information is not a waiver of any right of the
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1 producing Party to object to admissibility.

2 19. Miscellaneous.

3 (a) Right to Assert Other Objections. By stipulating to the entry of this
4 Order no Party waives any right it otherwise would have to object to disclosing or
5 producing any information or item on any ground not addressed in this Order.
6 Similarly, no Party waives any right to object on any ground to the use in evidence
7 of any of the material covered by this Order. Moreover, this Order shall not
8 preclude or limit any Party's right to seek further and additional protection against
9 or limitation upon production of documents produced in response to discovery.


10 (b) Other Privileges. Nothing in this Order shall require disclosure of
11 materials that a Party contends are protected from disclosure by the attorney-client
12 privilege or the attorney work-product doctrine. This provision shall not, however,
13 be construed to preclude any Party from moving the Court for an order directing
14 the disclosure of such materials where it disputes the claim of attorney-client
15 privilege or attorney work-product doctrine.

16 (c) Self-Disclosure. Nothing in this Order shall affect the right of the
17 Designating Party to disclose the Designating Party's own Confidential
18 information or items to any person or entity. Such disclosure shall not waive any
19 of the protections of this Order.

20 (d) Captions. The captions of paragraphs contained in this Order are
21 for reference only and are not to be construed in any way as a part of this Order.

22 **SO ORDERED.**

23
24 Dated: May 15, 2017

25 
26 _____
27 Hon. John E. McDermott
28 U.S. District Magistrate Judge