

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT IRISH, INDIVIDUALLY
AND DOING BUSINESS AS
FURNITURE SALES AGENTS, INC.,

Plaintiff,

vs.

MAGNUSSEN HOME
FURNISHINGS, INC., LIVING
SPACES STORES, INC., AND DOES
1-20, INCLUSIVE,

Defendant.

Case No. 2:17-cv-00515-PSG-KS

**STIPULATED PROTECTIVE
ORDER**

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties have stipulated to the following Stipulated Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to

1 confidential treatment under the applicable legal principles. This Order also does
2 not entitle the Parties to file confidential information under seal; Civil Local Rule
3 79-5 sets forth the procedures that must be followed and the standards that will be
4 applied when a party seeks permission from the Court to file material under seal.

5 B. GOOD CAUSE STATEMENT

6 This action is likely to involve confidential, private, proprietary,
7 commercially sensitive, trade secret or other personal business information
8 regarding, among other things, Plaintiff's confidential personnel, financial, and
9 medical information and documents, Defendant's confidential and financial
10 information and documents, employees and business operations, and information
11 that involves third party privacy rights for which special protection from public
12 disclosure and from use for any purpose other than prosecution of this action is
13 warranted. Such confidential and proprietary materials and information consist of,
14 among other things, confidential business or financial information, information
15 regarding confidential business practice, or other confidential research,
16 development, or commercial information (including information implicating privacy
17 rights of third parties), information otherwise generally unavailable to the public, or
18 which may be privileged or otherwise protected from disclosure under state or
19 federal statutes, court rules, case decisions, or common law. Accordingly, to
20 expedite the flow of information, to facilitate the prompt resolution of disputes over
21 confidentiality of discovery materials, to adequately protect information the Parties
22 are entitled to keep confidential, to ensure that the Parties are permitted reasonable
23 necessary uses of such material in preparation for and in the conduct of trial, to
24 address their handling at the end of the litigation, and serve the ends of justice, a
25 protective order for such information is justified in this matter. It is the intent of the
26 Parties that information will not be designated as confidential for tactical reasons and
27 that nothing be so designated without a good faith belief that it has been maintained
28

1 in a confidential, non-public manner, and there is good cause why it should not be
2 part of the public record of this case.

3 2. DEFINITIONS

4 2.1 Action: This pending federal lawsuit.

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

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

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

13 2.5 Designating Party: A Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL.”

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

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

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

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

28

1 2.10 Outside Counsel of Record: Attorneys who are not employees of a
2 party to this Action, but are retained to represent or advise a party to this Action and
3 have appeared in this Action on behalf of that party or are affiliated with a law firm
4 which has appeared on behalf of that party, and includes support staff.

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

8 2.12 Producing Party: A Party or Non-Party that produces Disclosure or
9 Discovery Material in this Action.

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

14 2.14 Protected Material: Any Disclosure or Discovery Material that is
15 designated as “CONFIDENTIAL.”

16 2.15 Receiving Party: A Party that receives Disclosure or Discovery
17 Material from a Producing Party.

18 3. SCOPE

19 The protections conferred by this Stipulation and Order cover not only
20 Protected Material (as defined above), but also (1) any information copied or
21 extracted from Protected Material; (2) all copies, excerpts, summaries, or
22 compilations of Protected Material; and (3) any testimony, conversations, or
23 presentations by Parties or their Counsel that might reveal Protected Material.

24 Any use of Protected Material at trial shall be governed by the orders of the
25 trial judge. This Order does not govern the use of Protected Material at trial.

26 4. DURATION

27 Even after final disposition of this litigation, the confidentiality obligations
28

1 imposed by this Order shall remain in effect until a Designating Party agrees
2 otherwise in writing or a court order otherwise directs. Final disposition shall be
3 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
4 or without prejudice; and (2) final judgment herein after the completion and
5 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
6 including the time limits for filing any motions or applications for extension of time
7 pursuant to applicable law.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

25 5.2 Manner and Timing of Designations. Except as otherwise provided in
26 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
28

1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic
5 documents, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), that the Producing Party affix at a minimum, the legend
7 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL” legend”), to each page that
8 contains protected material. If only a portion or portions of the material on a page
9 qualifies for protection, the Producing Party also must clearly identify the protected
10 portion(s) (e.g., by making appropriate markings in the margins).

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

23 (b) for testimony given in depositions that the Designating Party
24 identifies the Disclosure or Discovery Material on the record, before the close of the
25 deposition all protected testimony.

26 (c) for information produced in some form other than documentary
27 and for any other tangible items, that the Producing Party affix in a prominent place
28

1 on the exterior of the container or containers in which the information is stored the
2 legend “CONFIDENTIAL.” If only a portion or portions of the information
3 warrants protection, the Producing Party, to the extent practicable, shall identify the
4 protected portion(s).

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

11 ///

12 6. CHALLENGING CONFIDENTIALITY PROVISIONS

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
14 designation of confidentiality at any time that is consistent with the Court’s
15 Scheduling Order.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
17 resolution process under Local Rule 37.1, *et seq.*

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

26 7. ACCESS TO AND USE OF PROTECTED MATERIAL

27 7.1 Basic Principles. A Receiving Party may use Protected Material that is
28

1 disclosed or produced by another Party or by a Non-Party in connection with this
2 Action only for prosecuting, defending, or attempting to settle this Action. Such
3 Protected Material may be disclosed only to the categories of persons and under the
4 conditions described in this Order. When the Action has been terminated, a
5 Receiving Party must comply with the provisions of Section 13 below (FINAL
6 DISPOSITION).

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

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

14 (a) the Receiving Party’s Outside Counsel of Record in this Action,
15 as well as employees of said Outside Counsel of Record to whom it is reasonably
16 necessary to disclose the information for this Action;

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

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

22 (d) the court and its personnel;

23 (e) court reporters and their staff;

24 (f) professional jury or trial consultants, mock jurors, and
25 Professional Vendors to whom disclosure is reasonably necessary for this Action
26 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
27 A);

28

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

3 (h) during their depositions, witnesses, and attorneys for witnesses,
4 in the Action to whom disclosure is reasonably necessary provided: (1) the
5 deposing party requests that the witness sign the form attached as Exhibit 1 hereto;
6 and (2) they will not be permitted to keep any confidential information unless they
7 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
8 otherwise agreed by the Designating Party or ordered by the court. Pages of
9 transcribed deposition testimony or exhibits to depositions that reveal Protected
10 Material may be separately bound by the court reporter and may not be disclosed to
11 anyone except as permitted under this Stipulated Protective Order; and

12 (i) any mediator or settlement officer, and their supporting
13 personnel, mutually agreed upon by any of the Parties engaged in settlement
14 discussions.

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

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

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

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

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

28

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

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

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

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

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

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

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

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

9 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

18 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
19 OTHERWISE PROTECTED MATERIAL

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

1 production protection, the Parties may incorporate their agreement in the stipulated
2 protective order submitted to the court.

3 12. MISCELLANEOUS

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

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in this
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5. Protected Material
13 may only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue. If a Party's request to file Protected Material
15 under seal is denied by the court, then the Receiving Party may file the information
16 in the public record unless otherwise instructed by the court.

17 13. FINAL DISPOSITION

18 After the final disposition of this Action, as defined in paragraph 4, within 60
19 days of a written request by the Designating Party, each Receiving Party must return
20 all Protected Material to the Producing Party or destroy such material. As used in
21 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
22 summaries, and any other format reproducing or capturing any of the Protected
23 Material. Whether the Protected Material is returned or destroyed, the Receiving
24 Party must submit a written certification to the Producing Party (and, if not the same
25 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
26 (by category, where appropriate) all the Protected Material that was returned or
27 destroyed; and (2) affirms that the Receiving Party has not retained any copies,
28

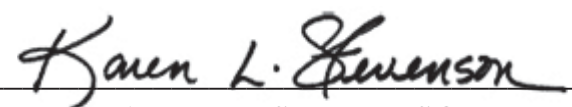
1 abstracts, compilations, summaries or any other format reproducing or capturing any
2 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
3 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
4 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
5 reports, attorney work production, and consultant and expert work product, even if
6 such materials contain Protected Material. Any such archival copies that contain or
7 constitute Protected Material remain subject to this Protective Order as set forth in
8 Section 4 (DURATION).

9 14. VIOLATIONS OF ORDER

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

13
14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

15
16 DATED: November 22, 2017

17
18 
19 KAREN L. STEVENSON
20 UNITED STATES MAGISTRATE JUDGE

21
22
23
24
25
26
27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____, of
4 _____ [print full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Central
7 District of California on _____, 201__ in the case of **ROBERT IRISH,**
8 **INDIVIDUALLY AND DOING BUSINESS AS FURNITURE SALES AGENTS,**
9 **INC. v. MAGNUSSEN HOME FURNISHINGS, INC., ET AL., United States**
10 **District Court Case No.: 2:17-cv-00515-PSG-KS.** I agree to comply with and to be
11 bound by all the terms of this Stipulated Protective Order and I understand and
12 acknowledge that failure to so comply could expose me to sanctions and punishment
13 in the nature of contempt. I solemnly promise that I will not disclose in any manner
14 any information or item that is subject to this Stipulated Protective Order to any
15 person or entity except in strict compliance with the provisions of this Order.

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

23
24 Dated: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____