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11
 12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

14 Eagles, Ltd.,
 15 Plaintiff,
 16 v.
 17 Hotel California Baja; and Does 1-10,
 18 Defendant.

) Case No.: CV-17-3276-RGK-RAO

) ~~[PROPOSED]~~ STIPULATED
) PROTECTIVE ORDER

) [DISCOVERY MATTER]

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1 2. The parties believe that public dissemination and disclosure of
2 confidential information could injure or damage the party or a non-party disclosing
3 or producing the confidential information and/or could place that party or non-party
4 at a competitive disadvantage; and

5 3. To protect the prospective interests of the parties and to facilitate the
6 progress of disclosure and discovery in this case, the following Protective Order
7 should issue.

8 **THEREFORE, IT IS HEREBY STIPULATED AND ORDERED AS**
9 **FOLLOWS:**

10 4. Any document, written discovery response, testimony, deposition
11 transcript, and all other materials and information (collectively hereinafter
12 “Material”) produced or furnished in connection with the above-captioned litigation
13 (the “Action”), or any portion thereof, that is reasonably believed by any party to the
14 Action to contain or constitute trade secrets, or confidential or proprietary business
15 or financial information, or personal information protected by a right of privacy, or
16 non-public drafts or unreleased versions of creative and artistic material, may be
17 designated, in whole or in part, as “Confidential” or “Confidential – Attorneys’ Eyes
18 Only.”

19 5. Any Material or portion thereof that is designated as “Confidential” or
20 “Confidential – Attorneys’ Eyes Only” in accordance with the provisions for such
21 designation contained herein (hereinafter, “Confidential Information”), shall be
22 deemed confidential and shall be disclosed only to “Qualified Persons” as defined
23 herein and in accordance with the terms hereof. The protections conferred by this
24 Protective Order cover not only Confidential Information as defined herein, but also
25 (1) any information copied or extracted from the Confidential Information; (2) all
26 copies, excerpts, summaries, or compilations of the Confidential Information; and
27 (3) any testimony, conversations, or presentations by the parties to this Action or
28 their counsel that might reveal Confidential Information. However, the protections

1 conferred by this Protective Order do not cover any information that is in the public
2 domain at the time of disclosure or becomes part of the public domain after its
3 disclosure not involving a violation of this Protective Order, including becoming
4 part of the public record through trial or otherwise. Any use of Confidential
5 Information at trial shall be governed by a separate agreement or order.

6 6. In designating Material as “Confidential – Attorneys’ Eyes Only,” the
7 designating party must have a good faith and reasonable belief that those Materials
8 contain competitively sensitive or proprietary information, and could cause
9 competitive harm if disclosed to an unauthorized person.

10 7. Any Material other than deposition testimony may be designated as
11 “Confidential” or “Confidential – Attorneys’ Eyes Only” by stamping or otherwise
12 marking the document or other tangible material containing or embodying the
13 Confidential Information as follows: “Confidential – Subject to Protective Order,”
14 “Confidential” or “Confidential – Attorneys’ Eyes Only” at the time of production.

15 8. (a) Counsel for any party or non-party may designate deposition
16 testimony as “Confidential” or “Confidential – Attorneys’ Eyes Only” by indicating
17 on the record at the deposition that the testimony of the deponent is to be treated as
18 “Confidential” or “Confidential – Attorneys’ Eyes Only.” Failure of counsel to
19 designate testimony as Confidential Information on the record at the deposition,
20 however, shall not constitute a waiver of the confidentiality of the testimony, if such
21 testimony is designated as Confidential Information within thirty (30) days after the
22 receipt of the transcript of the deposition. Within thirty (30) days after receipt of the
23 transcript of the deposition, counsel for a party or non-party shall be entitled to
24 designate specific pages and lines of the deposition transcript as Confidential
25 Information by a letter addressed to all counsel in the Action that identifies all pages
26 and lines of the transcript being designated as Confidential Information.

27 (b) To maintain the confidentiality of any deposition testimony or
28 exhibits that have been designated as “Confidential” or “Confidential – Attorneys’

1 Eyes Only” in accordance with the terms of this Protective Order, the court reporter
2 who transcribes the deposition testimony shall mark the cover page of the deposition
3 transcript to indicate that Confidential Information is contained therein. The party
4 introducing Confidential Information bears the burden of adhering to the provisions
5 of this Protective Order, and, as such, shall inform the court reporter of its
6 designation and request that the transcript be marked accordingly.

7 9. Any non-party that produces or furnishes Material in connection with
8 this Action may obtain the protections provided by this Protective Order with
9 respect to the designation of Material as “Confidential” or “Confidential –
10 Attorneys’ Eyes Only” by agreeing with the parties that this Protective Order shall
11 apply to Material produced by such non-party.

12 10. Unless otherwise expressly authorized by the provisions of this
13 Protective Order, by a written agreement of the parties executed following the
14 effective date hereof or by Court order, any Material that is designated as
15 “Confidential” in accordance with the terms hereof may be disclosed only to the
16 following “Qualified Persons”:

17 a. The named parties in this Action and their respective officers,
18 directors, managers, partners, principals and employees who are assisting that
19 party’s counsel in this Action;

20 b. Inside or outside counsel for the parties, including members of such
21 attorneys’ staff (e.g., paralegals, legal secretaries and law clerks);

22 c. Independent consultants or experts retained by any party in this case
23 who are expected to testify at trial or employed by counsel in order to assist in
24 preparation for trial or for deposition;

25 d. Deponents in this Action (before, during and after their depositions);

26 e. The Court and court personnel;

27 f. Court reporters or videographers selected by the parties; and
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1 g. Any persons who authored or previously received the Confidential
2 Information.

3 11. Unless otherwise expressly authorized by the provisions of this
4 Protective Order, by a written agreement of the parties or by Court order, any
5 Material that is designated as “Confidential – Attorneys’ Eyes Only” in accordance
6 with the terms hereof may be disclosed only to the following “Qualified Persons”:

7 a. Any persons who authored or previously received the Confidential
8 Information;

9 b. Outside counsel for the parties and licensed in-house counsel
10 directly assisting that party’s outside counsel in the defense of this Action, including
11 members of such attorneys’ staff (e.g., paralegals, legal secretaries and law clerks);

12 c. Independent consultants or experts retained by any party in this case
13 who are expected to testify at trial or employed by counsel in order to assist in
14 preparation for trial or for deposition, and who are not competitors of any party or
15 employed by a competitor of any party;

16 d. Non-party witnesses during the course of their depositions, provided
17 that (1) counsel for the designating party shall be informed that the witness will be
18 shown such Material before the designated information is shown to the witness, to
19 give counsel for the designating party an opportunity to object, and (2) if an
20 objection to showing the witness is made, the designated Material shall not be
21 shown to the witness until the Court rules on the objection;

22 e. The Court and court personnel;

23 f. Court reporters or videographers selected by the parties.

24 Copies may be made by or for the foregoing persons, provided that all
25 copies are appropriately marked.

26 12. Before counsel for a party may disclose Confidential Information to
27 any Qualified Person other than those Qualified Persons identified in subparagraphs
28 (b), (f) and (g) of Paragraph 10 hereof or subparagraphs (f)and (g) of Paragraph 11

1 hereof, the disclosing counsel shall obtain from the Qualified Person who is to
2 receive such Confidential Information, an executed copy of a Non-Disclosure
3 Certificate in the form attached hereto as Exhibit “A.” Counsel shall be responsible
4 for obtaining signatures of all such Qualified Persons, and for advising all such
5 Qualified Persons that they are not permitted to disclose Confidential Information to
6 any person other than Qualified Persons as set forth herein.

7 13. Except for the deponent, no person shall attend those portions of any
8 deposition at which Material that has been designated as “Confidential” or
9 “Confidential – Attorneys’ Eyes Only” is discussed or used as an exhibit, unless
10 such person is a Qualified Person authorized to view such material and, if required
11 to do so, has executed a copy of the Non-Disclosure Certificate in the form attached
12 as Exhibit “A” hereto.

13 14. If original documents or materials are made available for inspection,
14 such documents or materials need not be designated for protection until after the
15 inspecting party has indicated which material it would like copied and produced.
16 During the inspection and before the designation, all of the material made available
17 for inspection shall be deemed Confidential Information.

18 15. All Material produced or furnished in this Action (including but not
19 limited to material not marked Confidential or Confidential – Attorneys’ Eyes Only)
20 including deposition transcripts and deposition videos, shall be used only in
21 connection with this Action and shall not be otherwise disclosed except as agreed to
22 by the parties, as required by any court, judicial tribunal, administrative agency,
23 taxing body or other governmental unit or entity, or as otherwise required by law.
24 All Material, including such deposition transcripts or videos, produced or furnished
25 in this Action shall not be used or disclosed for any business, commercial or
26 competitive purpose and, furthermore, shall not be used in connection with the
27 media or in connection with materials for public dissemination of any kind or type,
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1 including but not limited to dissemination of such Material to the public via the
2 internet, social media or any other means now or hereafter known.

3 16. The parties acknowledge that this Protective Order does not entitle
4 them to file Confidential Information under seal. Any party or non-party must seek
5 permission to file Confidential Information under seal in accordance with the
6 Federal Rules of Civil Procedure and the Local Rules of this Court. No Confidential
7 Information shall be publicly filed with the Court absent agreement of the producing
8 party or Order of the Court.

9 17. The failure of a party or non-party to file a motion or application to seal
10 in accordance with the applicable rules shall not operate as or result in a waiver of
11 the right of such party or non-party to designate or seek to have the Confidential
12 Information at issue treated as Confidential Information for other purposes.

13 18. If Material that a party or non-party intends to designate as Confidential
14 Information is inadvertently disclosed without being marked as Confidential
15 Information in accordance with the provisions of this Protective Order, the failure so
16 to designate such Material shall not be deemed a waiver of its confidentiality. The
17 disclosing party shall be permitted to correct its error and provide notice of the
18 confidentiality of the Materials. Such correction and notice thereof shall be made in
19 writing, accompanied by substitute copies of any document(s) or response(s)
20 appropriately marked as Confidential Information. At such time as the Material is
21 designated as Confidential Information, it shall be treated as Confidential
22 Information in accordance with this Protective Order. Within ten (10) days of
23 receipt of the substitute copies, the receiving party shall return or destroy the
24 previously-unmarked items and all copies thereof.

25 19. In the event that Confidential Information is, either intentionally or
26 inadvertently, disclosed to someone not authorized to receive such Information
27 under this Protective Order or, if a person so authorized breaches any of its
28 obligations under this Protective Order, counsel of record for any party who is

1 involved in or aware of such disclosure shall immediately give written notice of
2 such unauthorized disclosure or breach to counsel for the party or non-party that
3 initially produced the subject Confidential Information and/or requested the
4 confidentiality designation, and also shall disclose the circumstances of the
5 unauthorized disclosure or breach. The responsible party shall also take all
6 reasonable measures promptly to ensure that no further or greater unauthorized
7 disclosure of Confidential Information is made by anyone.

8 20. The acceptance by a party of documents designated as Confidential
9 Information shall not constitute an agreement, admission or concession, or permit an
10 inference, that the Material(s) are in fact properly the subject for protection under
11 Fed. R. Civ. P. 26(c), or some other basis. Documents designated as Confidential
12 Information shall be treated in accordance with the provisions of this Protective
13 Order, except that any party may at any time seek an Order from the Court
14 determining that specified information or categories of information are not properly
15 designated as Confidential Information, provided that prior to making such a motion
16 the parties shall meet and confer in good faith to resolve any differences over the
17 designation. A party shall not be obligated to challenge the propriety of a
18 designation of Confidential Information at the time made, and failure to do so shall
19 not preclude subsequent challenge.

20 21. Notwithstanding the pendency of any challenge to the designation of
21 Material as Confidential Information, all Material so designated shall be treated as
22 such and shall be subject to the provisions hereof unless and until one of the
23 following occurs: (a) the party or non-party who claims that the Material is
24 Confidential Information withdraws such designation in writing; or (b) the Court
25 rules that the Material is not Confidential Information.

26 22. In the event that a Qualified Person: (a) is served with a subpoena in
27 another action, (b) is served with a demand in another action to which the Qualified
28 Person is a party, or (c) is served with any other legal process that seeks

1 Confidential Information that was produced or designated as such by someone other
2 than the Qualified Person who receives the subpoena, demand or other legal process,
3 such Qualified Person shall give prompt written notice of the receipt of such
4 subpoena, demand or other written notice to the party or non-party who produced or
5 designated the Material as Confidential Information, and shall object to its
6 production. Should the person seeking access to the Confidential Information take
7 action to enforce the subpoena, demand or other legal process against the Qualified
8 Person from whom the Confidential Information is sought, the Qualified Person
9 shall cooperate with the party or non-party to this Action who produced or
10 designated the Material as Confidential Information in resisting any efforts by such
11 other parties to obtain such Confidential Information from the Qualified Person.
12 Nothing herein shall be construed as requiring the Qualified Person from whom the
13 Confidential Information is sought, or anyone else subject to this Protective Order,
14 to challenge or appeal any court order requiring production of the Confidential
15 Information, or to subject himself or herself to any penalties for noncompliance with
16 any legal process or order, or to seek any relief from this Court.

17 23. The provisions of this Protective Order may be modified at any time by
18 stipulation of the parties approved by order of the Court. In addition, a party may at
19 any time apply to the Court for modification of this Protective Order pursuant to a
20 motion brought on in accordance with the rules of the Court. The parties consent to
21 an expedited hearing upon any such application, provided that reasonable time for
22 response is allowed.

23 24. Nothing herein shall prevent any of the parties from using Confidential
24 Information in any trial in this litigation or from seeking further protection with
25 respect to the use of any Confidential Information in any trial in this litigation.
26 Means to preserve the confidentiality of Confidential Information presented at any
27 trial shall be considered and implemented in advance of such trial.
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1 25. By stipulating to the entry of this Protective Order, no party waives any
2 right it otherwise would have to object to disclosing or producing any information or
3 item on any ground not addressed in this Protective Order. Similarly, no party
4 waives any right to object on any ground to use in evidence of any of the material
5 covered by this Protective Order.

6 26. Within thirty (30) days of the final determination of this Action,
7 whether by judgment, settlement or otherwise, and including any appeal from a final
8 judgment, any person who is in possession of physical copies of documents that
9 have been designated as Confidential Information shall return such copies to the
10 person who produced it or the person's counsel, or shall destroy them, except that
11 this paragraph shall not apply to work product of counsel, or to counsels' copies of
12 pleadings, briefs or declarations ("counsels' pleadings files"). Written confirmation
13 of such return or destruction shall be forwarded to the person producing such
14 Confidential Information or the person's counsel.

15 27. This Protective Order shall survive the final conclusion of this Action
16 and shall continue in full force and effect. The Court shall retain jurisdiction over
17 the parties and any other person bound by this Protective Order in order to enforce
18 the provisions contained herein.

19 28. By affixing their signatures below, the parties agree to abide by the
20 terms of this Stipulation until this Protective Order or a further protective order is
21 entered by the Court.

22 **IT IS SO STIPULATED.**

23
24 Dated: September 20, 2017

LOEB & LOEB LLP

25 By: /s/ Thomas P. Jirgal
26 Thomas P. Jirgal
27 Attorneys for Plaintiff
28 EAGLES, LTD.

1 Dated: September 20, 2017

SEITER LEGAL STUDIO

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By: /s/ William J. Seiter

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William J. Seiter

4

Attorneys for Defendant

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HOTEL CALIFORNIA BAJA, LLC

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8 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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10 Dated: September 22, 2017

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/S/

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Honorable Rozella A. Oliver

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United States Magistrate Judge

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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____, declare under penalty of perjury
4 that my address is _____. I have
5 read in its entirety and understand the Protective Order that was issued by the United
6 States District Court for the Central District of California on
7 _____, 2017, in the case of *Eagles, Ltd. v. Hotel California Baja,*
8 *LLC*, Case No.: CV-17-3276-RGK-RAO.

9 I agree to comply with and to be bound by all the terms of the Protective
10 Order and I understand and acknowledge that failure to so comply could expose me
11 to sanctions and punishment in the nature of contempt.

12 I will hold all Confidential Information and any duplicates, notes, abstracts or
13 summaries thereof in confidence, will not disclose such information to anyone not
14 specifically entitled to access under the Protective Order, and will use the
15 Confidential Information solely for purposes of this litigation, except as provided by
16 the Protective Order.

17 At the conclusion of this litigation, I will return or destroy all Confidential
18 Information and any duplicates, notes, abstracts or summaries thereof, whether
19 prepared by me or to anyone else, to counsel for the party by whom I am employed
20 or retained.

21 I further agree to submit to the jurisdiction of the United States District Court
22 for the Central District of California for the purpose of enforcing the terms of the
23 Protective Order, even if such enforcement proceedings occur after termination of
24 this action.

1 I hereby swear and affirm under the penalties of perjury that the foregoing is
2 true and correct.

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4 Date: _____

5 City and State where sworn and signed: _____

6 Printed name: _____

7 Signature: _____

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