

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

COLLIERS INTERNATIONAL
VALUATION AND ADVISORY
SERVICES, LLC,

Plaintiff,

vs.

LUCAS E. ROTTER, VALCRE
VENTURES, LLC AND
VALCRE-NORLING, LLC,

Defendants.

Case No. **2:17-cv-04283 DSF (RAOx)**

**STIPULATED PROTECTIVE
ORDER¹**

[Assigned to the Hon. Dale S. Fischer]

¹ This Stipulated Protective Order is substantially based on the model protective order provided under Magistrate Judge Rozella A. Oliver’s Procedures.

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 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that 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 confidential treatment under the applicable legal principles.

B. GOOD CAUSE STATEMENT

This action is likely to involve trade secrets and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business information, information regarding confidential business practices, and other confidential research, development, or commercial information that is generally unavailable to the public and is necessary to maintain the parties' competitive advantage. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good

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

3 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

4 The parties further acknowledge, as set forth in Section 12.3, below, that this
5 Stipulated Protective Order does not entitle them to file confidential information
6 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
7 and the standards that will be applied when a party seeks permission from the court
8 to file material under seal.

9 There is a strong presumption that the public has a right of access to judicial
10 proceedings and records in civil cases. In connection with non-dispositive motions,
11 good cause must be shown to support a filing under seal. See Kamakana v. City and
12 County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen. Motors
13 Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony Electrics,
14 Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders
15 require good cause showing), and a specific showing of good cause or compelling
16 reasons with proper evidentiary support and legal justification, must be made with
17 respect to Protected Material that a party seeks to file under seal. The parties' mere
18 designation of Disclosure or Discovery Material as "CONFIDENTIAL" or
19 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" does not—without
20 the submission of competent evidence by declaration, establishing that the material
21 sought to be filed under seal qualifies as confidential, privileged, or otherwise
22 protectable—constitute good cause.

23 Further, if a party requests sealing related to a dispositive motion or trial, then
24 compelling reasons, not only good cause, for the sealing must be shown, and the
25 relief sought shall be narrowly tailored to serve the specific interest to be protected.
26 See Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-79 (9th Cir. 2010). For
27 each item or type of information, document, or thing sought to be filed or
28 introduced under seal in connection with a dispositive motion or trial, the party

1 seeking protection must articulate compelling reasons, supported by specific facts
2 and legal justification, for the requested sealing order. Again, competent evidence
3 supporting the application to file documents under seal must be provided by
4 declaration.

5 Any document that is not confidential, privileged, or otherwise protectable in
6 its entirety will not be filed under seal if the confidential portions can be redacted. If
7 documents can be redacted, then a redacted version for public viewing, omitting
8 only the confidential, privileged, or otherwise protectable portions of the document,
9 shall be filed. Any application that seeks to file documents under seal in their
10 entirety should include an explanation of why redaction is not feasible.

11 2. DEFINITIONS

12 2.1 Action: the above-captioned lawsuit, entitled *Colliers International*
13 *Valuation and Advisory Services, LLC v. Lucas E. Rotter et al.*, Case No. 2:17-cv-
14 04283.

15 2.2 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 2.3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY” Information or Items: information (regardless of
19 how it is generated, stored or maintained) or tangible things that qualify for
20 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
21 the Good Cause Statement.

22 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
23 their support staff).

24 2.5 Designating Party: a Party or Non-Party that designates information
25 or items that it produces in disclosures or in responses to discovery as
26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
27 ONLY.”
28

1 2.6 Disclosure or Discovery Material: all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced
4 or generated in disclosures or responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a
6 matter pertinent to the litigation who (1) has been retained by a Party or its counsel
7 to serve as an expert witness or as a consultant in this Action, and (2) is not a
8 current employee of a Party or of a Party's competitor, and (3) at the time of
9 retention, is not anticipated to become an employee of a Party or of a Party's
10 competitor.

11 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
12 Information or Items: extremely sensitive "Confidential Information or Items,"
13 disclosure of which to another Party or Non-Party would create a substantial risk of
14 serious harm that could not be avoided by less restrictive means.

15 2.9 House Counsel: attorneys who are employees of a party to this
16 Action. House Counsel does not include Outside Counsel of Record or any other
17 outside counsel.

18 2.10 Non-Party: any natural person, partnership, corporation, association
19 or other legal entity not named as a Party to this action.

20 2.11 Outside Counsel of Record: attorneys who are not employees of a
21 party to this Action but are retained to represent or advise a party to this Action and
22 have appeared in this Action on behalf of that party or are affiliated with a law firm
23 that has appeared on behalf of that party, and includes support staff.

24 2.12 Party: any party to this Action, including all of its officers, directors,
25 employees, consultants, retained experts, and Outside Counsel of Record (and their
26 support staffs).

27 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
28 Discovery Material in this Action.

1 2.14 Professional Vendors: persons or entities that provide litigation
2 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)
4 and their employees and subcontractors.

5 2.15 Protected Material: any Disclosure or Discovery Material that is
6 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY.”

8 2.16 Receiving Party: a Party that receives Disclosure or Discovery
9 Material from a Producing Party.

10 3. SCOPE

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

16 However, the protections conferred by this Stipulation and Order do not
17 cover the following information: (a) any information that is in the public domain at
18 the time of disclosure to a Receiving Party or becomes part of the public domain
19 after its disclosure to a Receiving Party as a result of publication not involving a
20 violation of this Order, including becoming part of the public record through trial or
21 otherwise; and (b) any information known to the Receiving Party prior to the
22 disclosure or obtained by the Receiving Party after the disclosure from a source
23 who obtained the information lawfully and under no obligation of confidentiality to
24 the Designating Party.

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

1 4. DURATION

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

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in
28 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise

1 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
2 under this Order must be clearly so designated before the material is disclosed or
3 produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic
6 documents, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (hereinafter
9 “CONFIDENTIAL Legend” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
10 EYES ONLY Legend”), to each page that contains protected material. If only a
11 portion or portions of the material on a page qualifies for protection, the Producing
12 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
13 markings in the margins) and must specify, for each portion, the level of protection
14 being asserted.

15 A Party or Non-Party that makes original documents or materials available
16 for inspection need not designate them for protection until after the inspecting Party
17 has indicated which documents it would like copied and produced. During the
18 inspection and before the designation, all of the material made available for
19 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY.” After the inspecting Party has identified the documents it wants copied and
21 produced, the Producing Party must determine which documents, or portions
22 thereof, qualify for protection under this Order. Then, before producing the
23 specified documents, the Producing Party must affix the appropriate legend (*i.e.*, the
24 “CONFIDENTIAL Legend” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
25 EYES ONLY Legend”) to each page that contains Protected Material. If only a
26 portion or portions of the material on a page qualifies for protection, the Producing
27 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
28

1 markings in the margins) and must specify, for each portion, the level of protection
2 being asserted.

3 (b) for testimony given in a deposition or other proceeding, the
4 Designating Party shall specify protected testimony and the level of protection
5 being asserted. The Designating Party may identify the Disclosure or Discovery
6 Material as Protected Material on the record, before the close of the deposition all
7 protected testimony, or may invoke, on the record or by written notice to each Party
8 on or before the next business day, a right to have up to 21 days from the deposition
9 or proceeding to identify and designate Protected Material. Parties shall give
10 advance notice if they expect a deposition or other proceeding to include Protected
11 Material so that the other Party can ensure that only authorized individuals are
12 present at those proceedings when such Disclosure or Discovery Material is used.
13 Further, the use of Protected Material as an exhibit at a deposition shall not in any
14 way affect its designation.

15 Transcripts containing Protected Material shall have a “CONFIDENTIAL
16 Legend” and/or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY
17 Legend” on the title page noting the presence of Protected Material, and the title
18 page shall be followed by a list of all pages (including line numbers as appropriate)
19 that have been designated, and the level of protection being asserted. The
20 Designating Party shall inform the court reporter of these requirements. Any
21 transcript that is prepared before the expiration of the 21-day period for identifying
22 Protected Material shall be treated during that period as “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” unless otherwise agreed. After
24 the expiration of the 21-day period, the transcript shall be treated only as designated.

25 (c) for information produced in some form other than documentary and
26 for any other tangible items, that the Producing Party affix in a prominent place on
27 the exterior of the container or containers in which the information is stored the
28 “CONFIDENTIAL Legend” or “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY Legend.” If only a portion or portions of the information warrants
2 protection, the Producing Party, to the extent practicable, shall identify the protected
3 portion(s) and specify the level of protection being asserted.

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the Designating Party’s right to secure protection under this Order for such material.
7 Upon timely correction of a designation, the Receiving Party must make reasonable
8 efforts to assure that the material is treated in accordance with the provisions of this
9 Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time that is consistent with the Court’s
13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Civil Rule 37-1 et seq.

16 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
17 court intervention, the Parties shall follow the dispute resolution process set forth in
18 Local Civil Rule 37 et seq. 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 Protected Material in question the level of
24 protection to which it is entitled under the Producing Party’s designation until the
25 Court rules on the challenge.

26 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

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

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

21 (d) the court and its personnel;

22 (e) court reporters and their staff;

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

26 (g) the author or recipient of a document containing the information or a
27 custodian or other person who otherwise possessed or knew the information;
28

1 (h) during their depositions, witnesses, and 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
7 except as permitted under this Stipulated Protective Order; and

8 (i) any mediator or settlement officer, and their supporting personnel,
9 mutually agreed upon by any of the parties engaged in settlement discussions, who
10 have signed the “Acknowledgement and Agreement to be Bound” (Exhibit A).

11 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY” Information or Items. Unless otherwise ordered by the court or permitted
13 in writing by the Designating Party, a Receiving Party may disclose any
14 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
15 EYES ONLY” only to:

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

19 (b) the court and its personnel;

20 (c) court reporters and their staff;

21 (d) professional jury or trial consultants, and Professional Vendors to
22 whom disclosure is reasonably necessary for this Action and who have signed the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

24 (e) Experts of the Receiving Party (1) to whom disclosure is reasonably
25 necessary for this litigation, (2) who have signed the “Acknowledgment and
26 Agreement to Be Bound” (Exhibit A);

27 (e) the author or recipient of a document containing the information or a
28 custodian or other person who otherwise possessed or knew the information.

1 7.4 Procedures for Disclosure of “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY” Information or Items to Experts. Unless otherwise
3 permitted in writing by the Designating Party:

4 (a) a Party seeking to disclose to an expert (as defined in this Order)
5 retained by a Party’s Outside Counsel of Record any information or item that has
6 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
7 must first make a written request to the Designating Party that (1) identifies the
8 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
9 ONLY” information or item that the Receiving Party seeks permission to disclose to
10 the expert; (2) sets forth the full name of the expert and the city and state of his or
11 her primary residence; (3) attaches a copy of the expert’s resume; (4) identifies the
12 expert’s current employer(s); (5) identifies each person or entity from whom the
13 expert has received compensation or funding for work in his or her areas of
14 expertise (including in connection with litigation) in the past five years; and
15 (6) identifies (by name and number of the case, filing date, and location of court)
16 any litigation where the expert has offered expert testimony, including by
17 declaration, report, or testimony at deposition or trial, in the past five years. If the
18 expert believes that any of the information set forth in Section 7.4(a)(4)-(6) is
19 subject to a confidentiality obligation to a third party, then the expert should provide
20 whatever information the expert believes can be disclosed without violating any
21 confidentiality agreements, and the Party seeking to disclose the “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or item to the expert
23 shall be available to meet and confer with the Designating Party regarding any such
24 confidentiality obligations.

25 (b) a Party that makes a request and provides the information specified in
26 Section 7.4(a) above may disclose the “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY” information or item to the identified expert unless,
28

1 within seven (7) days of delivering the request, the Party receives a written
2 objection from the Designating Party providing detailed grounds for the objection.

3 (c) all challenges to objections from the Designating Party shall proceed
4 under Local Rule 37-1.

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
6 IN OTHER LITIGATION

7 If a Party is served with a subpoena or a court order issued in other litigation
8 that compels disclosure of any information or items designated in this Action as
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” that Party must:

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

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

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

19 If the Designating Party timely seeks a protective order, the Party served with
20 the subpoena or court order shall not produce any information designated in this
21 Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY” before a determination by the court from which the subpoena or
23 order issued, unless the Party has obtained the Designating Party’s permission. The
24 Designating Party shall bear the burden and expense of seeking protection in that
25 court of its confidential material and nothing in these provisions should be
26 construed as authorizing or encouraging a Receiving Party in this Action to disobey
27 a lawful directive from another court.
28

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as "CONFIDENTIAL" or "HIGHLY
5 CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced by
6 Non-Parties in connection with this Action is protected by the remedies and relief
7 provided by this Order. Nothing in these provisions should be construed as
8 prohibiting a Non-Party from seeking additional protections.

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

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

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

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

21 (c) If the Non-Party fails to seek a protective order from this court within
22 14 days of receiving the notice and accompanying information, the Receiving Party
23 may produce the Non-Party's confidential information responsive to the discovery
24 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
25 not produce any information in its possession or control that is subject to the
26 confidentiality agreement with the Non-Party before a determination by the court.
27 Absent a court order to the contrary, the Non-Party shall bear the burden and
28 expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

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

12. MISCELLANEOUS

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

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
5 only be filed under seal pursuant to a court order authorizing the sealing of the
6 specific Protected Material at issue. If a Party's request to file Protected Material
7 under seal is denied by the court, then the Receiving Party may file the information
8 in the public record unless otherwise instructed by the court.

9 13. FINAL DISPOSITION

10 Within 60 days after the final disposition of this Action, as defined in Section
11 4, each Receiving Party must return all Protected Material to the Producing Party or
12 destroy such material. As used in this subdivision, "all Protected Material" includes
13 all copies, abstracts, compilations, summaries, and any other format reproducing or
14 capturing any of the Protected Material. Whether the Protected Material is returned
15 or destroyed, the Receiving Party must submit a written certification to the
16 Producing Party (and, if not the same person or entity, to the Designating Party) by
17 the 60 day deadline that (1) identifies (by category, where appropriate) all the
18 Protected Material that was returned or destroyed and (2) affirms that the Receiving
19 Party has not retained any copies, abstracts, compilations, summaries or any other
20 format reproducing or capturing any of the Protected Material. Notwithstanding this
21 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
22 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
23 deposition and trial exhibits, expert reports, attorney work product, and consultant
24 and expert work product, even if such materials contain Protected Material. Any
25 such archival copies that contain or constitute Protected Material remain subject to
26 this Protective Order as set forth in Section 4 (DURATION).

1 14. VIOLATION

2 Any violation of this Order may be punished by appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 DATED August 8, 2017

6 /s/ Jennifer L. Brockett
7 Attorneys for Plaintiff

8 DATED: August 8, 2017

9 /s/ Catherine N. Grech
10 Attorneys for Defendant

11
12 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

13
14
15 DATED: 8/17/2017

16 Rozella A. Oliver
17

18 HON. ROZELLA A. OLIVER
19 United States Magistrate Judge

20
21
22
23
24
25
26
27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on [date] in the case of _____ [**insert formal name of the case and the**
8 **number and initials assigned to it by the court**]. I agree to comply with and to be
9 bound by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in
12 any manner any information or item that is subject to this Stipulated Protective
13 Order to any person or entity except in strict compliance with the provisions of this
14 Order. I further agree to submit to the jurisdiction of the United States District
15 Court for the Central District of California for enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of
17 this action. I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone
19 number] as my California agent for service of process in connection with this action
20 or any proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

24 Printed name: _____

26 Signature: _____