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13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 GREGORY ARTHUR, individually and
on behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 UNITED INDUSTRIES
20 CORPORATION,

21 Defendant.

) Case No. 2:17-cv-06983-CAS-SK

) **STIPULATED PROTECTIVE ORDER**

) **[Discovery Document: Referred to
Magistrate Judge Steve Kim]**

1 **I. PURPOSES AND LIMITATIONS**

2 1. Discovery in the above-captioned action (the “Action”) is likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than prosecuting
5 this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition
6 the Court to enter the following Stipulated Protective Order (the “Order”). The parties
7 acknowledge that this Order does not confer blanket protections on all disclosures or
8 responses to discovery and that the protection it affords from public disclosure and use
9 extends only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge that this Stipulated
11 Protective Order does not entitle them to file confidential information under seal; Civil
12 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
13 will be applied when a party seeks permission from the court to file material under seal.

14 2. This Order does not affect the burden of proof that must be met by a party
15 seeking to protect confidential documents or information that is filed in the Court records
16 in this case. A party seeking to protect information to be filed in the public records must
17 prove that the documents or information meets the standards of governing law. In
18 meeting that burden, a party may not rely on its own designation of material as
19 “Confidential” or “Highly Confidential” under this Order.

20 3. Nothing in this Order shall impose any restrictions on the use or disclosure
21 by a party of material obtained by such party independent of discovery in this Action,
22 whether or not such material is also obtained through discovery in this Action, or from
23 the use or disclosure of information that is publicly known. Nothing in this Order
24 restricts the ability of any party to use or disclose its own confidential material as it
25 deems appropriate.

1 **II. GOOD CAUSE DESIGNATIONS**

2 1. This action is likely to involve trade secrets, customer and pricing lists, and
3 other valuable research, development, commercial, financial, technical, and/or
4 proprietary information for which special protection from public disclosure and from use
5 for any purpose other than prosecution of this action is warranted. Such confidential and
6 proprietary materials and information consist of, among other things, confidential
7 business or financial information, information regarding confidential business practices,
8 or other confidential research, development, or commercial information (including
9 information implicating privacy rights of third parties), information otherwise generally
10 unavailable to the public, or which may be privileged or otherwise protected from
11 disclosure under state or federal statutes, court rules, case decisions, or common law.
12 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
13 disputes over confidentiality of discovery materials, to adequately protect information the
14 parties are entitled to keep confidential, to ensure that the parties are permitted reasonable
15 necessary uses of such material in preparation for and in the conduct of trial, to address
16 their handling at the end of the litigation, and serve the ends of justice, a protective order
17 for such information is justified in this matter. It is the intent of the parties that
18 information will not be designated as confidential for tactical reasons and that nothing be
19 so designed without a good faith belief that it has been maintained in a confidential, non-
20 public manner, and there is good cause why it should not be part of the public record of
21 this case.

22 2. No document, information or thing shall be designated “Confidential” or
23 “Highly Confidential” unless good cause exists for such designation.

24 3. Good cause exists for the designation of information as “Highly
25 Confidential” when the information has not been made public and falls into one of the
26 following categories:
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1 a. Confidential past or future business, marketing or sales plans,
2 including specific business plans, strategies and projections, past or future marketing
3 plans and strategies, past or future sales plans and strategies, forward-looking pricing
4 strategies, the development of new product concepts, extensions of existing product lines,
5 and other similar forward and/or backward-looking information that is kept confidential
6 by the party;

7 b. Specific financial information at a level of detail beyond that
8 disclosed in sources available to the public;

9 c. Results of research, studies or other analyses that the parties expended
10 money to develop or obtain and that would be useful to current or potential competitors.
11 This category includes, but is not limited to, consumer research studies (whether
12 developed internally or commissioned from third parties), market analyses (whether
13 developed internally or provided by third parties), analyses of other competitors in the
14 market, and product development studies;

15 d. Terms of contracts with Defendants' suppliers or customers;

16 e. Specific proprietary product formulas or proprietary manufacturing
17 processes; or

18 f. Product concepts in development that have not been launched into the
19 market.

20 4. Good cause exists for the designation of information as "Confidential" when
21 the information has not been revealed to the public and the information falls into one of
22 the following categories:

23 a. The information is contained in a document or is presented in a form
24 that, when analyzed in conjunction with other information produced in the Action, would
25 reveal information in categories set forth in paragraph II.3.a to b above;

26 b. Private information about any officer, employee or other individual;
27 or

1 c. Commercially sensitive information regarding the development,
2 production, marketing, branding, sales or promotion of Defendants' products or finances,
3 the disclosure of which would have the effect of causing harm to the competitive position
4 of the person or entity from which the information is obtained.

5 5. The list of document categories identified as either "Highly Confidential" in
6 paragraph II.3 and "Confidential" in paragraph II.4 are meant to be illustrative and they
7 are not the exclusive types of documents that may qualify as either "Highly Confidential"
8 or "Confidential." However, the Parties shall use reasonable efforts to minimize the
9 amount of material designated as "Confidential" or "Highly Confidential."

10 6. This Order applies to "Confidential" and "Highly Confidential" information
11 furnished in this Action regardless of the form in which it is transmitted and regardless of
12 whether the information is furnished by a party or third party. Such information may be
13 contained in documents, written discovery responses, declarations, deposition testimony,
14 exhibits, and other materials or testimony provided by any party or third party during this
15 Action. Such materials are collectively referred to as "Discovery Materials" in this
16 Order.

17 **III. PROCEDURE FOR DESIGNATION**

18 1. Any Party may designate Discovery Materials "Confidential" or "Highly
19 Confidential" meeting the standards set forth in paragraphs II.3 and II.4 by taking the
20 following actions (hereafter, the "Designating Party"):

21 a. With respect to documents, discovery responses or other written
22 materials furnished by the Designating Party in paper, as .tiff images, .pdf files, or in any
23 other form in which it is possible to add a legend to each page, the Designating Party may
24 designate the material "Confidential" by stamping, inscribing or otherwise marking or
25 designating on each page of a document containing Confidential Information the words
26 "CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER." The Designating Party may
27 designate the material "Highly Confidential" by marking each page of the document with
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1 the words “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY, SUBJECT TO
2 PROTECTIVE ORDER.” Electronic documents produced as .tiff images or .pdf files
3 shall be marked in accordance with this paragraph III.1.a.

4 b. With respect to “Confidential” or “Highly Confidential Information”
5 furnished by the Designating Party in a non-paper medium, including, without limitation,
6 video or audio tape, computer discs, CD-ROMs, and DVDs, etc., the Designating Party
7 may designate information therein as “Confidential” or “Highly Confidential” by affixing
8 the appropriate legend to the outside of the medium or container.

9 2. With respect to deposition testimony or other oral testimony to be recorded
10 in a written transcript, the Designating Party may designate information as “Confidential”
11 or “Highly Confidential” by making a statement on the record to that effect during the
12 deposition or proceeding at issue. The court reporter shall separately bind the designated
13 portion of the deposition transcript and all designated exhibits. The separately bound
14 deposition material shall be marked in accordance with its designation, as either
15 “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER” or “HIGHLY
16 CONFIDENTIAL-ATTORNEYS’ EYES ONLY, SUBJECT TO PROTECTIVE
17 ORDER.” Alternatively, the Designating Party may, within thirty days (30) days after the
18 deposition transcript is delivered to the Designating Party, provide to all counsel written
19 notice identifying the specific portion (by page and line numbers) that the Designating
20 Party seeks to protect, and all parties to the litigation will mark the pages with the
21 appropriate legends.

22 **IV. USE AND DISCLOSURE OF DESIGNATED MATERIAL**

23 1. Information and materials designated “Confidential” or “Highly
24 Confidential” shall be used only for prosecuting or defending this Action, except that a
25 party may use its own “Confidential” or “Highly Confidential” information for whatever
26 purposes it chooses. A party using, disseminating or distributing “Confidential” or
27 “Highly Confidential” information for any purpose other than for use in connection with
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1 this Action may be subject to sanctions (including, without limitation, monetary,
2 evidentiary or terminating sanctions, in the Court’s discretion), as well as being
3 potentially subject to any disciplinary or other applicable legal proceedings.

4 2. Information and materials designated “CONFIDENTIAL, SUBJECT TO
5 PROTECTIVE ORDER” may only be disclosed to the following individuals:

6 a. The recipient party and officers, directors and/or employees of the
7 recipient party who have direct responsibility for assisting such counsel in the preparation
8 and trial of the action;

9 b. Counsel representing the parties in the Action, and paralegal and
10 clerical staff (whether employees or independent contractors) who are assisting in this
11 litigation;

12 c. The author or recipient of a document containing the information or a
13 custodian or other person who otherwise possessed or knew the information;

14 d. Court staff, court reporters and videographers involved in this
15 litigation;

16 e. Independent consultants or experts retained by any party in this case
17 who are expected to testify at trial or employed by counsel in order to assist in
18 preparation for trial or for deposition, so long as they sign a statement agreeing to abide
19 by the terms of this Order, in the form set forth in Exhibit A;

20 f. Party or third-party witnesses during the course of their depositions
21 and otherwise provided that (1) the third party or witness previously created, generated or
22 received the Discovery Material before the Action commenced; (2) the Court has
23 determined that the “Confidential” information may be shown to the deponent in ruling
24 on a party’s objection to the designation as provided below; or (3) the witness signs a
25 statement agreeing to abide by the terms of this order, in the form set forth in Exhibit A.

26 The requirement for Court determination does not apply to expert witnesses or
27 consultants.

1 The requirement for Court determination does not apply to expert witnesses or
2 consultants of the non-designating party, except for those who have ever provided, are
3 currently providing, or are expected to provide any services to any business unit of the
4 retaining party.

5 f. Any mediator or settlement officer, and their supporting personnel,
6 mutually agreed upon by any of the parties engaged in settlement discussions.

7 4. No person or entity receiving “Confidential” information shall discuss,
8 disseminate, or disclose the “Confidential” information to any person or entity not listed
9 above in paragraph IV.2. No person or entity receiving “Highly Confidential”
10 information shall discuss, disseminate, or disclose the “Highly Confidential” information
11 to any person or entity not listed above in paragraph IV.3. Any person or entity receiving
12 “Confidential” or “Highly Confidential” information shall insure that no unauthorized
13 person or entity is able to obtain access to the “Confidential” or “Highly Confidential”
14 information. The provisions of this paragraph, however, do not apply to the Court or to
15 Court personnel.

16 5. Nothing in this Order affects or limits the Producing Party’s use of its own
17 “Confidential” or “Highly Confidential” information or “Confidential” or “Highly
18 Confidential” information it has created, lawfully possessed or independently generated
19 or discovered, regardless of whether the information is thereafter designated as
20 “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER” or “HIGHLY
21 CONFIDENTIAL-ATTORNEYS’ EYES ONLY, SUBJECT TO PROTECTIVE
22 ORDER.”

23 **V. FILING OF DESIGNATED MATERIAL IN PRE-TRIAL PROCEEDINGS**

24 1. If a party files or seeks to file with the Court material that another party has
25 designated “Confidential” or “Highly Confidential” under this Order, the filing party
26 shall follow the procedures set forth in Civil Local Rule 79-5 to seek permission from the
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1 court to file the material under seal. In doing so, the filing party shall only seek to file
2 under seal the portion of such material that is “Confidential” or “Highly Confidential.”

3 **VI. CHALLENGES TO DESIGNATION**

4 1. A party may challenge the designation of any material as “Confidential” or
5 “Highly Confidential” under this Order, but prior to doing so must meet and confer with
6 the Designating Party under the dispute resolution process under Local Rule 37.1 et seq.

7 2. The burden of persuasion in any such challenge proceeding shall be on the
8 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
9 harass or impose unnecessary expenses and burdens on other parties) may expose the
10 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
11 the confidentiality designation, all parties shall continue to afford the material in question
12 the level of protection to which it is entitled under the Producing Party’s designation until
13 the Court rules on the challenge.

14 **VII. SUBPOENA IN ANOTHER ACTION**

15 1. In the event any person, party or entity having possession, custody or control
16 of any “Confidential” or “Highly Confidential” information receives a subpoena or other
17 process or order to produce the “Confidential” or “Highly Confidential” information, that
18 person or party shall, within three (3) business days:

- 19 a. Notify, in writing, the attorneys of record of the Designating Party;
- 20 b. Notify, in writing, the attorneys of record or other representative (if
21 there is no attorney of record) of all persons having an interest in maintaining the
22 confidentiality of the “Confidential” or “Highly Confidential” information and who are
23 known to the recipient of the subpoena, process or order;
- 24 c. Furnish all persons notified pursuant to subsections (a) and (b), above,
25 a copy of the subpoena or other process or order; and

1 d. Provide reasonable cooperation with respect to all procedures set forth
2 in the Order for the protection of the “Confidential” or “Highly Confidential”
3 information.

4 2. If after receiving the notification set forth in paragraph VII.1 the Designating
5 Party desires to prevent or limit the requested production of “Confidential” or “Highly
6 Confidential” information, it will be the responsibility of the Designating Party to move
7 to quash or modify the subpoena, or otherwise resolve the issue with the subpoenaing
8 party.

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

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

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

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

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

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1 c. make the information requested available for inspection by the Non-
2 Party, if requested.

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

11 **IX. TERM OF ORDER**

12 1. This Order does not govern or restrict the use of any document or
13 information (including information designated as "Confidential" or "Highly
14 Confidential" under this Order) at trial in any manner whatsoever. The designation of
15 any information, documents, or things as "Confidential" or "Highly Confidential"
16 information pursuant to this Order shall not, in and of itself, raise any inference as to the
17 confidentiality of any information, documents, exhibits, or things marked for
18 identification purposes or introduced into evidence at trial.

19 2. Any party desiring to maintain the confidentiality of any information or
20 documents designated as "Confidential" or "Highly Confidential" during the trial shall
21 seek an Order from the Court with respect to such information, documents, exhibits, or
22 things prior to commencement of the trial. The parties to this Order expressly reserve
23 their rights to object to the manner in which "Confidential" or "Highly Confidential"
24 information may be used in an evidentiary hearing or at trial. Special procedures or *in*
25 *camera* treatment, if any, shall be determined in the future in compliance with any
26 applicable rules and orders. Nothing in this Order shall preclude any party from raising
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1 any objections, including without limitation objections concerning admissibility,
2 materiality, and privilege.

3 3. If this Action is concluded before trial is commenced, the Order shall remain
4 in full force and effect after such conclusion and the Court shall retain jurisdiction to
5 enforce its terms. In such a case, all materials (including copies) containing information
6 designated as “Confidential” or “Highly Confidential” shall be returned to the Producing
7 Party, or shall be disposed of in a manner assuring its confidential destruction, within the
8 following time period: Within 30 days after final termination of this Action either by
9 consensual dismissal with prejudice, after final appellate review has been obtained, or
10 after the time for appeal has lapsed without the filing of an appeal by either of the parties.
11 Each party shall provide to the Designating Party a declaration certifying compliance
12 with this paragraph.

13 **X. NO WAIVER**

14 1. The disclosure of “Confidential” or “Highly Confidential” information
15 pursuant to discovery or the procedures set forth in this Order shall not constitute a
16 waiver of any trade secret or any intellectual property, proprietary, privacy or other rights
17 to or in such information.

18 2. The inadvertent disclosure of information protected by the attorney-client,
19 work product, or other applicable privilege or protection in this Action shall not
20 constitute a waiver of any valid claim of privilege. Further, failure to assert a privilege in
21 this Action as to one document or communication shall not be deemed to constitute a
22 waiver of the privilege as to any other document or communication allegedly so
23 protected, even involving the same subject matter, unless the Producing Party seeks to
24 use or rely upon the privileged material in this Action. A party that discovers that it has
25 inadvertently produced privileged information shall promptly request its return. The
26 privileged documents together with all copies thereof shall be returned forthwith to the
27 party claiming privilege. Any notes or other work product made from the documents in

1 question (or their contents) shall be returned along with the documents themselves or
2 destroyed. The party claiming privilege shall thereafter promptly produce a privilege log
3 listing the documents in question and any other party shall thereafter have the right to
4 challenge the assertion of privilege by motion or any other appropriate means.

5 3. A party who receives apparently privileged materials from the Producing
6 Party, upon understanding that the document may be privileged or contain confidential
7 attorney work product, must act as follows:

8 a. Cease review of the document.

9 b. Immediately contact lead trial counsel for the party with whom they
10 are affiliated and consult with that individual concerning further steps required to be
11 taken. Lead trial counsel shall review the document in question and make a
12 determination of whether the document contains privileged information or attorney work
13 product. If not, the Receiving Party shall continue to treat the document as designated by
14 the Producing Party. If lead trial counsel agrees that the document contains privileged
15 information or attorney work product, lead trial counsel (or his or her designee) shall
16 immediately take the following steps:

17 i. Promptly notify opposing counsel of the potentially privileged
18 document(s), taking all reasonable measures to reach opposing counsel to obtain
19 instructions as to further handling of the document(s). The Receiving Party must follow
20 such counsel's instructions regarding the disposition of the material. The Receiving
21 Party must also completely refrain from using the material until instruction by opposing
22 counsel is received, which may include returning the document and all copies, and
23 removal of the document from electronic databases.

24 ii. Until such time that the Receiving Party receives instructions
25 from opposing counsel, the Receiving Party may not share the document or its contents
26 with any other persons.

1 c. If the Producing Party claims the privilege it shall thereafter promptly
2 add the document(s) in question to its privilege log and any other party shall thereafter
3 have the right to challenge the assertion of privilege by motion or any other appropriate
4 means.

5 **XI. PRIVILEGE LOG**

6 1. Within 30 days of production, the Producing Party shall produce a privilege
7 log that complies with all requirements set forth in Fed. R. Civ. P. 26(b)(5)(A)(ii).

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12 DATED: November 29, 2017

TUCKER ELLIS LLP

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14
15 By: /s/ Ronie M. Schmelz

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28 Attorney for Defendant UNITED
INDUSTRIES CORPORATION

1 DATED: November 29, 2017

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4 By: /s/ Michael Houchin

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14 Attorneys for Plaintiff GREGORY
15 ARTHUR

16 **IT IS SO ORDERED.**

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19 DATED: November 30, 2017

20 By  _____
21 Honorable Steve Kim
22 UNITED STATES MAGISTRATE JUDGE
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GREGORY ARTHUR, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

UNITED INDUSTRIES
CORPORATION,

Defendant.

) Case No. 2:17-cv-06983-CAS-SK
)
) **EXHIBIT A TO STIPULATED**
) **PROTECTIVE ORDER:**
) **AGREEMENT TO BE BOUND**

1 **CERTIFICATE OF SERVICE**

2 This Certificate of Service is made in compliance with Local Rule 5.1.2 and Civ.R.
3 5(b). I am employed in the County of Los Angeles, State of California. I am over the
4 age of 18 and not a party to the within action. My business address is 515 South Flower
5 Street, Forty-Second Floor, Los Angeles, CA 90071-2223.

6 On the date indicated below, a true and correct copy of the foregoing
7 **STIPULATED PROTECTIVE ORDER** was filed with the Court and served
8 electronically and will be available for viewing and downloading from the Court's
9 CM/ECF system:

10 The Notice of Electronic Case Filing automatically generated by the system and
11 sent to all parties entitled to service under the Federal Rules of Civil Procedure and the
12 Local Rules of the Central District of California who have consented to electronic service
13 shall constitute service of the filed document to all such parties.

14 Executed on, **November 30, 2017**, at Los Angeles, CA.

15 I declare under penalty of perjury that I am employed in the office of a member
16 admitted to practice before the District Court for the Central District of California and
17 ECF registered in this Court at whose direction the service was made and that the
18 foregoing is true and correct.

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21 By /s/ Ronie M. Schmelz
22 Ronie M. Schmelz
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