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8 UNITED STATES DISTRICT COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA  
 10 WESTERN DIVISION

12 CACIQUE, INC. *et al.*,

13 Plaintiffs,

14 vs.

15 PEDRO J. TORTOSA-SANCHIS  
 16 *et al.*,

Defendants.

Case No. 2:20-cv-06910-JWH (JEMx)

Before the Hon. John W. Holcomb,  
 U.S. District Judge

**STIPULATED PROTECTIVE  
 ORDER**

18 PEDRO J. TORTOSA-SANCHIS  
 19 *et al.*,

20 Counter-Claimants,

21 vs.

22 CACIQUE, INC. *et al.*,

23 Counter-Defendants.

Action filed: July 22, 2020  
 Trial: January 31, 2022

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1     **1.     PURPOSES AND LIMITATIONS**

2             Discovery in this action is likely to involve production of confidential,  
3     proprietary, or private information for which special protection from public  
4     disclosure and from use for any purpose other than prosecuting this litigation may  
5     be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
6     enter the following Stipulated Protective Order. The parties acknowledge that this  
7     Stipulated Protective Order does not confer blanket protections on all disclosures or  
8     responses to discovery and that the protection it affords from public disclosure and  
9     use extends only to the limited information or items that are entitled to confidential  
10    treatment under the applicable legal principles. The parties further acknowledge, as  
11    set forth in Section 13.3 below, that this Stipulated Protective Order does not entitle  
12    them to file confidential information under seal; Local Rule 79-5 sets forth the  
13    procedures that must be followed and the standards that will be applied when a  
14    party seeks permission from the Court to file material under seal. Discovery in this  
15    action is likely to involve production of confidential, proprietary, or private  
16    information for which special protection from public disclosure and from use for  
17    any purpose other than prosecuting this litigation may be warranted.

18  
19    **2.     GOOD CAUSE STATEMENT**

20             This action is likely to involve trade secrets and other valuable research,  
21    development, commercial, financial, technical and/or proprietary information for  
22    which special protection from public disclosure and from use for any purpose other  
23    than prosecution of this action is warranted. Such confidential and proprietary  
24    materials and information consist of, among other things, confidential business or  
25    financial information, information regarding confidential business practices, or  
26    other confidential research, development, or commercial information (including  
27    information implicating privacy rights of third parties), information otherwise  
28    generally unavailable to the public, or which may be privileged or otherwise

1 protected from disclosure under state or federal statutes, court rules, case decisions,  
2 or common law. Accordingly, to expedite the flow of information, to facilitate the  
3 prompt resolution of disputes over confidentiality of discovery materials, to  
4 adequately protect information the parties are entitled to keep confidential, to  
5 ensure that the parties are permitted reasonable necessary uses of such material in  
6 preparation for and in the conduct of trial, to address their handling at the end of the  
7 litigation, and to serve the ends of justice, a protective order for such information is  
8 justified in this matter. It is the intent of the parties that information will not be  
9 designated as confidential for tactical reasons and that nothing be so designated  
10 without a good faith belief that it has been maintained in a confidential, non-public  
11 manner, and there is good cause why it should not be part of the public record of  
12 this case.

### 13 14 **3. DEFINITIONS**

15 3.1. Action: This pending federal lawsuit.

16 3.2. Challenging Party: A Party or Nonparty that challenges the  
17 designation of information or items under this Stipulated Protective  
18 Order.

19 3.3. “CONFIDENTIAL” Information or Items: Information (regardless of  
20 how it is generated, stored or maintained) or tangible things that  
21 qualify for protection under Federal Rule of Civil Procedure 26(c), and  
22 as specified above in the Good Cause Statement.

23 3.4. Counsel: Outside Counsel of Record and In-House Counsel (as well  
24 as their support staff).

25 3.5. Designating Party: A Party or Nonparty that designates information or  
26 items that it produces in disclosures or in responses to discovery as  
27 “CONFIDENTIAL.”

28 3.6. Disclosure or Discovery Material: All items or information, regardless

1 of the medium or manner in which it is generated, stored, or  
2 maintained (including, among other things, testimony, transcripts, and  
3 tangible things), that is produced or generated in disclosures or  
4 responses to discovery in this matter.

5 3.7. Expert: A person with specialized knowledge or experience in a  
6 matter pertinent to the litigation who has been retained by a Party or its  
7 counsel to serve as an expert witness or as a consultant in this Action.

8 3.8. In-House Counsel: Attorneys who are employees of a party to this  
9 Action. In-House Counsel does not include Outside Counsel of  
10 Record or any other outside counsel.

11 3.9. Nonparty: Any natural person, partnership, corporation, association,  
12 or other legal entity not named as a Party to this action.

13 3.10. Outside Counsel of Record: Attorneys who are not employees of a  
14 party to this Action but are retained to represent or advise a party to  
15 this Action and have appeared in this Action on behalf of that party or  
16 are affiliated with a law firm which has appeared on behalf of that  
17 party, and includes support staff.

18 3.11. Party: Any party to this Action, including all of its officers, directors,  
19 employees, consultants, retained experts, In-House Counsel, and  
20 Outside Counsel of Record (and their support staffs).

21 3.12. Producing Party: A Party or Nonparty that produces Disclosure or  
22 Discovery Material in this Action.

23 3.13. Professional Vendors: Persons or entities that provide litigation  
24 support services (e.g., photocopying, videotaping, translating,  
25 preparing exhibits or demonstrations, and organizing, storing, or  
26 retrieving data in any form or medium) and their employees and  
27 subcontractors.

28 3.14. Protected Material: Any Disclosure or Discovery Material that is

1 designated as “CONFIDENTIAL.”

2 3.15. Receiving Party: A Party that receives Disclosure or Discovery  
3 Material from a Producing Party.  
4

5 **4. SCOPE**

6 The protections conferred by this Stipulated Protective Order cover not only  
7 Protected Material, but also (1) any information copied or extracted from Protected  
8 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;  
9 and (3) any testimony, conversations, or presentations by Parties or their Counsel  
10 that might reveal Protected Material.

11 Any use of Protected Material at trial shall be governed by the orders of the  
12 trial judge. This Stipulated Protective Order does not govern the use of Protected  
13 Material at trial.  
14

15 **5. DURATION**

16  
17 Even after final disposition of this litigation, the confidentiality obligations  
18 imposed by this Stipulated Protective Order shall remain in effect until a  
19 Designating Party agrees otherwise in writing or a court order otherwise directs.  
20 Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
21 defenses in this Action, with or without prejudice; and (2) final judgment herein  
22 after the completion and exhaustion of all appeals, rehearings, remands, trials, or  
23 reviews of this Action, including the time limits for filing any motions or  
24 applications for extension of time pursuant to applicable law.  
25

26 **6. DESIGNATING PROTECTED MATERIAL**

27 6.1. Exercise of Restraint and Care in Designating Material for Protection.

28 Each Party or Nonparty that designates information or items for

1 protection under this Stipulated Protective Order must take care to  
2 limit any such designation to specific material that qualifies under the  
3 appropriate standards. The Designating Party must designate for  
4 protection only those parts of material, documents, items, or oral or  
5 written communications that qualify so that other portions of the  
6 material, documents, items, or communications for which protection is  
7 not warranted are not swept unjustifiably within the ambit of this  
8 Stipulated Protective Order.

9 Mass, indiscriminate, or routinized designations are  
10 prohibited. Designations that are shown to be clearly unjustified or that  
11 have been made for an improper purpose (*e.g.*, to unnecessarily  
12 encumber the case development process or to impose unnecessary  
13 expenses and burdens on other parties) may expose the Designating  
14 Party to sanctions.

15 6.2. Manner and Timing of Designations.

16 Except as otherwise provided in this Stipulated Protective Order  
17 (*see, e.g.*, Section 6.2(a)), or as otherwise stipulated or ordered,  
18 Disclosure or Discovery Material that qualifies for protection under  
19 this Stipulated Protective Order must be clearly so designated before  
20 the material is disclosed or produced.

21 Designation in conformity with this Stipulated Protective Order  
22 requires the following:

- 23 (a) For information in documentary form (*e.g.*, paper or electronic  
24 documents, but excluding transcripts of depositions or other  
25 pretrial or trial proceedings), that the Producing Party affix at a  
26 minimum, the legend “CONFIDENTIAL” to each page that  
27 contains protected material. If only a portion or portions of the  
28 material on a page qualifies for protection, the Producing Party

1 also must clearly identify the protected portion(s) (*e.g.*, by  
2 making appropriate markings in the margins).

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

- 19 (b) For testimony given in depositions, that the Designating Party  
20 identify the Disclosure or Discovery Material on the record,  
21 before the close of the deposition, all protected testimony.
- 22 (c) For information produced in nondocumentary form, and for any  
23 other tangible items, that the Producing Party affix in a  
24 prominent place on the exterior of the container or containers in  
25 which the information is stored the legend “CONFIDENTIAL.”  
26 If only a portion or portions of the information warrants  
27 protection, the Producing Party, to the extent practicable, shall  
28 identify the protected portion(s).

1           6.3. Inadvertent Failure to Designate.

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

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10       7.    **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11       7.1. Timing of Challenges.

12                         Any Party or Nonparty may challenge a designation of  
13 confidentiality at any time that is consistent with the Court's  
14 Scheduling Order.

15       7.2. Meet and Confer.

16                         The Challenging Party shall initiate the dispute resolution  
17 process, which shall comply with Local Rule 37.1 et seq.,

18       7.3. Burden of Persuasion.

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

28

1 **8. ACCESS TO AND USE OF PROTECTED MATERIALS**

2 8.1. Basic Principles.

3 A Receiving Party may use Protected Material that is disclosed  
4 or produced by another Party or by a Nonparty in connection with this  
5 Action only for prosecuting, defending, or attempting to settle this  
6 Action. Such Protected Material may be disclosed only to the  
7 categories of persons and under the conditions described in this  
8 Stipulated Protective Order. When the Action reaches a final  
9 disposition, a Receiving Party must comply with the provisions of  
10 Section 14 below.

11 Protected Material must be stored and maintained by a  
12 Receiving Party at a location and in a secure manner that ensures that  
13 access is limited to the persons authorized under this Stipulated  
14 Protective Order.

15 8.2. Disclosure of “CONFIDENTIAL” Information or Items.

16 Unless otherwise ordered by the Court or permitted in writing  
17 by the Designating Party, a Receiving Party may disclose any  
18 information or item designated “CONFIDENTIAL” only to:

- 19 (a) The Receiving Party’s Outside Counsel of Record, as well as  
20 employees of said Outside Counsel of Record to whom it is  
21 reasonably necessary to disclose the information for this Action;
- 22 (b) The officers, directors, and employees (including In-House  
23 Counsel) of the Receiving Party to whom disclosure is  
24 reasonably necessary for this Action;
- 25 (c) Experts of the Receiving Party to whom disclosure is reasonably  
26 necessary for this Action and who have signed the  
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 28 (d) The Court and its personnel;

- 1 (e) Court reporters and their staff;
- 2 (f) Professional jury or trial consultants, mock jurors, and
- 3 Professional Vendors to whom disclosure is reasonably
- 4 necessary or this Action and who have signed the
- 5 “Acknowledgment and Agreement to be Bound” (Exhibit A);
- 6 (g) The author or recipient of a document containing the
- 7 information or a custodian or other person who otherwise
- 8 possessed or knew the information;
- 9 (h) During their depositions, witnesses, and attorneys for witnesses,
- 10 in the Action to whom disclosure is reasonably necessary
- 11 provided: (i) the deposing party requests that the witness sign
- 12 the “Acknowledgment and Agreement to Be Bound” (Exhibit
- 13 A); and (ii) the witness will not be permitted to keep any
- 14 confidential information unless they sign the “Acknowledgment
- 15 and Agreement to Be Bound,” unless otherwise agreed by the
- 16 Designating Party or ordered by the Court. Pages of transcribed
- 17 deposition testimony or exhibits to depositions that reveal
- 18 Protected Material may be separately bound by the court
- 19 reporter and may not be disclosed to anyone except as permitted
- 20 under this Stipulated Protective Order; and
- 21 (i) Any mediator or settlement officer, and their supporting
- 22 personnel, mutually agreed upon by any of the parties engaged
- 23 in settlement discussions.
- 24

25 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**

26 **PRODUCED IN OTHER LITIGATION**

27 If a Party is served with a subpoena or a court order issued in other litigation

28 that compels disclosure of any information or items designated in this Action as

1 “CONFIDENTIAL,” that Party must:

- 2 (a) Promptly notify in writing the Designating Party. Such notification  
3 shall include a copy of the subpoena or court order;
- 4 (b) Promptly notify in writing the party who caused the subpoena or order  
5 to issue in the other litigation that some or all of the material covered  
6 by the subpoena or order is subject to this Stipulated Protective Order.  
7 Such notification shall include a copy of this Stipulated Protective  
8 Order; and
- 9 (c) Cooperate with respect to all reasonable procedures sought to be  
10 pursued by the Designating Party whose Protected Material may be  
11 affected.

12 If the Designating Party timely seeks a protective order, the Party served with  
13 the subpoena or court order shall not produce any information designated in this  
14 action as “CONFIDENTIAL” before a determination by the Court from which the  
15 subpoena or order issued, unless the Party has obtained the Designating Party’s  
16 permission. The Designating Party shall bear the burden and expense of seeking  
17 protection in that court of its confidential material and nothing in these provisions  
18 should be construed as authorizing or encouraging a Receiving Party in this Action  
19 to disobey a lawful directive from another court.  
20

21 **10. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
22 **PRODUCED IN THIS LITIGATION**

23 10.1. Application.

24 The terms of this Stipulated Protective Order are applicable to  
25 information produced by a Nonparty in this Action and designated as  
26 “CONFIDENTIAL.” Such information produced by Nonparties in  
27 connection with this litigation is protected by the remedies and relief  
28 provided by this Stipulated Protective Order. Nothing in these

1 provisions should be construed as prohibiting a Nonparty from seeking  
2 additional protections.

3 10.2. Notification.

4 In the event that a Party is required, by a valid discovery  
5 request, to produce a Nonparty's confidential information in its  
6 possession, and the Party is subject to an agreement with the Nonparty  
7 not to produce the Nonparty's confidential information, then the Party  
8 shall:

- 9 (a) Promptly notify in writing the Requesting Party and the  
10 Nonparty that some or all of the information requested is subject  
11 to a confidentiality agreement with a Nonparty;
- 12 (b) Promptly provide the Nonparty with a copy of the Stipulated  
13 Protective Order in this Action, the relevant discovery  
14 request(s), and a reasonably specific description of the  
15 information requested; and
- 16 (c) Make the information requested available for inspection by the  
17 Nonparty, if requested.

18 10.3. Conditions of Production.

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

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**11. 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 immediately must (1) notify in writing the Designating Party of the unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies of the Protected Material, (3) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Stipulated Protective Order, and (4) request such person or persons to execute the “Acknowledgment and Agreement to be Bound” (Exhibit A).

**12. 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.

**13. MISCELLANEOUS**

13.1. Right to Further Relief.

Nothing in this Stipulated Protective Order abridges the right of any person to seek its modification by the Court in the future.

1           13.2. Right to Assert Other Objections.

2                       By stipulating to the entry of this Stipulated Protective Order, no  
3           Party waives any right it otherwise would have to object to disclosing  
4           or producing any information or item on any ground not addressed in  
5           this Stipulated Protective Order. Similarly, no Party waives any right  
6           to object on any ground to use in evidence of any of the material  
7           covered by this Stipulated Protective Order.

8           13.3. Filing Protected Material.

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

16  
17       **14. FINAL DISPOSITION**

18                       After the final disposition of this Action, within sixty (60) days of a written  
19           request by the Designating Party, each Receiving Party must return all Protected  
20           Material to the Producing Party or destroy such material. As used in this  
21           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  
25           same person or entity, to the Designating Party) by the 60-day deadline that  
26           (1) identifies (by category, where appropriate) all the Protected Material that was  
27           returned or destroyed and (2) affirms that the Receiving Party has not retained any  
28           copies, abstracts, compilations, summaries or any other format reproducing or

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

8  
9 **15. VIOLATION**

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

13  
14 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

15 Dated: 7/15/21

/Allen B. Grodsky/  
Attorney for Plaintiffs and  
Counterdefendants

16  
17  
18 Dated: 7/15/21

/Michael Schwartz/  
Attorney for Defendants and  
Counterclaimants

19  
20 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

21  
22 Dated: 7/15/21

John E. McDermott  
John E. McDermott  
United States Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [full name], of \_\_\_\_\_  
4 \_\_\_\_\_ [address], declare under penalty of perjury that I have read in its  
5 entirety and understand the Stipulated Protective Order that was issued by the  
6 United States District Court for the Central District of California on \_\_\_\_\_  
7 [date] in the case of \_\_\_\_\_  
8 [case name and number]. I agree to comply with and to be bound by all the terms  
9 of this Stipulated Protective Order, and I understand and acknowledge that failure  
10 to so comply could expose me to sanctions and punishment in the nature of  
11 contempt. I solemnly promise that I will not disclose in any manner any  
12 information or item that is subject to this Stipulated Protective Order to any person  
13 or entity except in strict compliance with the provisions of this Stipulated Protective  
14 Order.

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

22  
23 Signature: \_\_\_\_\_

24 Printed Name: \_\_\_\_\_

25 Date: \_\_\_\_\_

26 City and State Where Sworn and Signed: \_\_\_\_\_

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