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19 **UNITED STATES DISTRICT COURT**
 20 **CENTRAL DISTRICT OF CALIFORNIA**

21 DAVID DIAZ, on behalf of himself and
 all others similarly situated,

22 Plaintiffs,

23 v.

24 GEORGIA-PACIFIC CORRUGATED
 25 LLC,

26 Defendant.

Case No. 2:21-CV-02151-DMG (AMFx)

**[PROPOSED ORDER GRANTING
 STIPULATION AND PROTECTIVE
 ORDER – CONFIDENTIAL
 DESIGNATION ONLY]**

Complaint Filed: March 9, 2021

Judge: Hon. Alexander F. MacKinnon

1 Upon consideration of the Partie’s Stipulation and Protective Order, and finding
2 good cause, IT IS HEREBY ORDERED THAT:

3 **1. GOOD CAUSE STATEMENT:**

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

24 **2. DEFINITIONS:**

25 In this Stipulation and Protective Order, the words set forth below shall have the
26 following meanings:

- 27 a. “Proceeding” means the above-entitled proceeding *David Diaz v.*
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1 *Georgia-Pacific Corrugated, LLC*, Case No. 2:21-CV-02151-DMG (AMFx) pending
2 in the Central District of California.

3 b. “Court” means the Hon. Alexander F. MacKinnon, or any other
4 judge to which this Proceeding may be assigned, including Court staff participating in
5 such proceedings.

6 c. “Confidential” means any information which is in the possession of
7 a Designating Party who believes in good faith that such information is entitled to
8 confidential treatment under applicable law.

9 d. “Confidential Materials” means any Documents, Testimony or
10 Information as defined below designated as “Confidential” pursuant to the provisions
11 of this Stipulation and Protective Order.

12 e. “Designating Party” means the Party that designates Materials as
13 “Confidential.”

14 f. “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge,
15 give, or make available Materials, or any part thereof, or any information contained
16 therein.

17 g. “Documents” means

18 (i) any “Writing,” “Original,” and “Duplicate” as those terms are
19 defined by Federal Rules of Evidence Section 1001, which have been produced in
20 discovery in this Proceeding by any person, and

21 (ii) any copies, reproductions, or summaries of all or any part of
22 the foregoing.

23 h. “Information” means the content of Documents or Testimony.

24 i. “Testimony” means all depositions, declarations or other testimony
25 taken or used in this Proceeding.

26 **3. DESIGNATION OF CONFIDENTIAL MATERIAL:**

27 a. The Designating Party shall have the right to designate as
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1 “Confidential” any Documents, Testimony or Information that the Designating Party in
2 good faith believes to contain non-public information that is entitled to confidential
3 treatment under applicable law.

4 b. The entry of this Stipulation and Protective Order does not alter,
5 waive, modify, or abridge any right, privilege or protection otherwise available to any
6 Party with respect to the discovery of matters, including but not limited to any Party’s
7 right to assert the attorney-client privilege, the attorney work product doctrine, or other
8 privileges, or any Party’s right to contest any such assertion.

9 c. Any Documents, Testimony or Information to be designated as
10 “Confidential” must be clearly so designated before the Document, Testimony or
11 Information is Disclosed or produced. The parties may agree that the case name and
12 number are to be part of the “Confidential” designation. The “Confidential” designation
13 should not obscure or interfere with the legibility of the designated Information.

14 i. For Documents (apart from transcripts of depositions or other
15 pretrial or trial proceedings), the Designating Party must affix the legend “Confidential”
16 on each page of any Document containing such designated Confidential Material.

17 ii. For Testimony given in depositions the Designating Party
18 may either:

19 A. identify on the record, before the close of the
20 deposition, all “Confidential” Testimony, by specifying all portions of the Testimony
21 that qualify as “Confidential;” or

22 B. designate the entirety of the Testimony at the
23 deposition as “Confidential” (before the deposition is concluded) with the right to
24 identify more specific portions of the Testimony as to which protection is sought within
25 30 days following receipt of the deposition transcript. In circumstances where portions
26 of the deposition Testimony are designated for protection, the transcript pages
27 containing “Confidential” Information may be separately bound by the court reporter,
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1 who must affix to the top of each page the legend “Confidential,” as instructed by the
2 Designating Party.

3 iii. For Information produced in some form other than
4 Documents, and for any other tangible items, including, without limitation, compact
5 discs or DVDs, the Designating Party must affix in a prominent place on the exterior of
6 the container or containers in which the Information or item is stored the legend
7 “Confidential.” If only portions of the Information or item warrant protection, the
8 Designating Party, to the extent practicable, shall identify the “Confidential” portions.

9 **4. INADVERTENT PRODUCTION OF CONFIDENTIAL**
10 **MATERIAL:**

11 The inadvertent production by any of the undersigned Parties or non-Parties to
12 the Proceedings of any Document, Testimony or Information during discovery in this
13 Proceeding without a “Confidential” designation, shall be without prejudice to any
14 claim that such item is “Confidential” and such Party shall not be held to have waived
15 any rights by such inadvertent production. In the event that any Document, Testimony
16 or Information that is subject to a “Confidential” designation is inadvertently produced
17 without such designation, the Party that inadvertently produced the document shall give
18 written notice of such inadvertent production within twenty (20) days of discovery of
19 the inadvertent production, together with a further copy of the subject Document,
20 Testimony or Information designated as “Confidential” (the “Inadvertent Production
21 Notice”). Upon receipt of such Inadvertent Production Notice, the Party that received
22 the inadvertently produced Document, Testimony or Information shall promptly destroy
23 the inadvertently produced Document, Testimony or Information and all copies thereof,
24 or, at the expense of the producing Party, return such together with all copies of such
25 Document, Testimony or Information to counsel for the producing Party and shall retain
26 only the “Confidential” designated Materials. Should the receiving Party choose to
27 destroy such inadvertently produced Document, Testimony or Information, the
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1 receiving Party shall notify the producing Party in writing of such destruction within
2 ten (10) days of receipt of written notice of the inadvertent production. This provision
3 is not intended to apply to any inadvertent production of any Information protected by
4 attorney-client or work product privileges. In the event that this provision conflicts with
5 any applicable law regarding waiver of confidentiality through the inadvertent
6 production of Documents, Testimony or Information, such law shall govern.

7 **5. OBJECTING TO DESIGNATION OF CONFIDENTIAL**
8 **MATERIAL:**

9 In the event that counsel for a Party receiving Documents, Testimony or
10 Information in discovery designated as “Confidential” objects to such designation with
11 respect to any or all of such items, said counsel shall advise counsel for the Designating
12 Party, in writing, of such objections, the specific Documents, Testimony or Information
13 to which each objection pertains, and the specific reasons and support for such
14 objections (the “Designation Objections”). Counsel for the Designating Party shall have
15 thirty (30) days from receipt of the written Designation Objections to either (a) agree in
16 writing to de-designate Documents, Testimony or Information pursuant to any or all of
17 the Designation Objections and/or (b) file a motion with the Court seeking to uphold
18 any or all designations on Documents, Testimony or Information addressed by the
19 Designation Objections (the “Designation Motion”). Pending a resolution of the
20 Designation Motion by the Court, any and all existing designations on the Documents,
21 Testimony or Information at issue in such Motion shall remain in place. The
22 Designating Party shall have the burden on any Designation Motion of establishing the
23 applicability of its “Confidential” designation. In the event that the Designation
24 Objections are neither timely agreed to nor timely addressed in the Designation Motion,
25 then such Documents, Testimony or Information shall be de-designated in accordance
26 with the Designation Objection applicable to such material.

1 **6. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL:**

2 a. Access to and/or Disclosure of Confidential Materials designated as
3 “Confidential” shall be permitted only to the following persons:

4 i. the Court;

5 ii. (A) Attorneys of record in the Proceedings and their
6 affiliated attorneys, paralegals, clerical and secretarial staff employed by such attorneys
7 who are actively involved in the Proceedings and are not employees of any Party.

8 (B) In-house counsel to the undersigned Parties and the
9 paralegal, clerical and secretarial staff employed by such counsel. Provided, however,
10 that each non-lawyer given access to Confidential Materials shall be advised that such
11 Materials are being Disclosed pursuant to, and are subject to, the terms of this
12 Stipulation and Protective Order and that they may not be Disclosed other than pursuant
13 to its terms;

14 iii. those officers, directors, partners, members, employees and
15 agents of all non-designating Parties that counsel for such Parties deems necessary to
16 aid counsel in the prosecution and defense of this Proceeding; provided, however, that
17 prior to the Disclosure of Confidential Materials to any such officer, director, partner,
18 member, employee or agent, counsel for the Party making the Disclosure shall deliver
19 a copy of this Stipulation and Protective Order to such person, shall explain that such
20 person is bound to follow the terms of such Order, and shall secure the signature of such
21 person on a statement in the form attached hereto as Exhibit A;

22 iv. court reporters in this Proceeding (whether at depositions,
23 hearings, or any other proceeding);

24 v. any deposition, trial or hearing witness in the Proceeding who
25 previously has had access to the Confidential Materials, or who is currently or was
26 previously an officer, director, partner, member, employee or agent of an entity that has
27 had access to the Confidential Materials;

1 vi. any deposition or non-trial hearing witness in the Proceeding
2 who previously did not have access to the Confidential Materials; provided, however,
3 that each such witness given access to Confidential Materials shall be advised that such
4 Materials are being Disclosed pursuant to, and are subject to, the terms of this
5 Stipulation and Protective Order and that they may not be Disclosed other than pursuant
6 to its terms;

7 vii. mock jury participants, provided, however, that prior to the
8 Disclosure of Confidential Materials to any such mock jury participant, counsel for the
9 Party making the Disclosure shall deliver a copy of this Stipulation and Protective Order
10 to such person, shall explain that such person is bound to follow the terms of such Order,
11 and shall secure the signature of such person on a statement in the form attached hereto
12 as Exhibit A.

13 viii. outside experts or expert consultants consulted by the
14 undersigned Parties or their counsel in connection with the Proceeding, whether or not
15 retained to testify at any oral hearing; provided, however, that prior to the Disclosure of
16 Confidential Materials to any such expert or expert consultant, counsel for the Party
17 making the Disclosure shall deliver a copy of this Stipulation and Protective Order to
18 such person, shall explain its terms to such person, and shall secure the signature of
19 such person on a statement in the form attached hereto as Exhibit A. It shall be the
20 obligation of counsel, upon learning of any breach or threatened breach of this
21 Stipulation and Protective Order by any such expert or expert consultant, to promptly
22 notify counsel for the Designating Party of such breach or threatened breach; and

23 ix. any other person that the Designating Party agrees to in
24 writing.

25 b. Confidential Materials shall be used by the persons receiving them
26 only for the purposes of preparing for, conducting, participating in the conduct of,
27 and/or prosecuting and/or defending the Proceeding, and not for any business or other
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1 purpose whatsoever.

2 **7. MODIFICATION OF OR RELIEF FROM STIPULATION AND**
3 **PROTECTIVE ORDER:**

4 Any Party to the Proceeding (or other person subject to the terms of this
5 Stipulation and Protective Order) may ask the Court, after appropriate notice to the other
6 Parties to the Proceeding, to modify or grant relief from any provision of this Stipulation
7 and Protective Order.

8 **8. EFFECT OF STIPULATION AND PROTECTIVE ORDER:**

9 a. Entering into, agreeing to, and/or complying with the terms of this
10 Stipulation and Protective Order shall not:

11 i. operate as an admission by any person that any particular
12 Document, Testimony or Information marked “Confidential” contains or reflects trade
13 secrets, proprietary, confidential or competitively sensitive business, commercial,
14 financial or personal information; or

15 ii. prejudice in any way the right of any Party (or any other
16 person subject to the terms of this Stipulation and Protective Order):

17 A. to seek a determination by the Court of whether any
18 particular Confidential Material should be subject to protection as “Confidential” under
19 the terms of this Stipulation and Protective Order; or

20 B. to seek relief from the Court on appropriate notice to
21 all other Parties to the Proceeding from any provision(s) of this Stipulation and
22 Protective Order, either generally or as to any particular Document, Material or
23 Information.

24 **9. MISCELLANEOUS:**

25 a. Any Party to the Proceeding who has not executed this Stipulation
26 and Protective Order as of the time it is presented to the Court for signature may
27 thereafter become a Party to this Stipulation and Protective Order by its counsel’s

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1 signing and dating a copy thereof and filing the same with the Court, and serving copies
2 of such signed and dated copy upon the other Parties to this Stipulation and Protective
3 Order.

4 b. Any Information that may be produced by a non-Party witness in
5 discovery in the Proceeding pursuant to subpoena or otherwise may be designated by
6 such non-Party as “Confidential” under the terms of this Stipulation and Protective
7 Order, and any such designation by a non-Party shall have the same force and effect,
8 and create the same duties and obligations, as if made by one of the undersigned Parties
9 hereto. Any such designation shall also function as a consent by such producing Party
10 to the authority of the Court in the Proceeding to resolve and conclusively determine
11 any motion or other application made by any person or Party with respect to such
12 designation, or any other matter otherwise arising under this Stipulation and Protective
13 Order.

14 c. If any person subject to this Stipulation and Protective Order who
15 has custody of any Confidential Materials receives a subpoena or other process
16 (“Subpoena”) from any government or other person or entity demanding production of
17 Confidential Materials, the recipient of the Subpoena shall promptly give notice of the
18 same by electronic mail transmission, followed by either express mail or overnight
19 delivery to counsel of record for the Designating Party, and shall furnish such counsel
20 with a copy of the Subpoena. Upon receipt of this notice, the Designating Party may, in
21 its sole discretion and at its own cost, move to quash or limit the Subpoena, otherwise
22 oppose production of the Confidential Materials, and/or seek to obtain confidential
23 treatment of such Confidential Materials from the subpoenaing person or entity to the
24 fullest extent available under law. The recipient of the Subpoena may not produce any
25 Documents, Testimony or Information pursuant to the Subpoena prior to the date
26 specified for production on the Subpoena.

27 d. Nothing in this Stipulation and Protective Order shall be construed
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1 to preclude either Party from asserting in good faith that certain Confidential Materials
2 require additional protection. The Parties shall meet and confer to agree upon the terms
3 of such additional protection.

4 e. If, after execution of this Stipulation and Protective Order, any
5 Confidential Materials submitted by a Designating Party under the terms of this
6 Stipulation and Protective Order is Disclosed by a non-Designating Party to any person
7 other than in the manner authorized by this Stipulation and Protective Order, the non-
8 Designating Party responsible for the Disclosure shall bring all pertinent facts relating
9 to the Disclosure of such Confidential Materials to the immediate attention of the
10 Designating Party.

11 f. This Stipulation and Protective Order is entered into without
12 prejudice to the right of any Party to knowingly waive the applicability of this
13 Stipulation and Protective Order to any Confidential Materials designated by that Party.
14 If the Designating Party uses Confidential Materials in a non-Confidential manner, then
15 the Designating Party shall advise that the designation no longer applies.

16 g. Designation of material as Confidential pursuant to this Stipulation
17 and Protective Order does not entitle the parties to file material under seal. Good cause
18 to file under seal must be established by submission of competent evidence via
19 declaration establishing that the material sought to be filed under seal qualifies as
20 confidential, privileged, or otherwise protectable. *See* Civil Local Rule 79-5.

21 h. A Party that seeks to file under seal any Protected Material must
22 comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
23 pursuant to a court order authorizing the sealing of the specific Protected Material at
24 issue. If a Party's request to file Protected Material under seal is denied by the Court,
25 then the Receiving Party may file the information in the public record unless otherwise
26 instructed by the Court.

27 i. This Stipulation and Protective Order does not govern use of
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1 Confidential Materials at trial. Use of Confidential Materials at trial shall be governed
2 by orders of the trial judge.

3 j. Nothing in this Stipulation and Protective Order shall affect the
4 admissibility into evidence of Confidential Materials, or abridge the rights of any person
5 to seek judicial review or to pursue other appropriate judicial action with respect to any
6 ruling made by the Court concerning the issue of the status of Protected Material.

7 k. This Stipulation and Protective Order shall continue to be binding
8 after the conclusion of this Proceeding and all subsequent proceedings arising from this
9 Proceeding, except that a Party may seek the written permission of the Designating
10 Party or may move the Court for relief from the provisions of this Stipulation and
11 Protective Order. To the extent permitted by law, the Court shall retain jurisdiction to
12 enforce, modify, or reconsider this Stipulation and Protective Order, even after the
13 Proceeding is terminated.

14 l. Upon written request made within thirty (30) days after the
15 settlement or other termination of the Proceeding, the undersigned Parties shall have
16 thirty (30) days to either (a) promptly return to counsel for each Designating Party all
17 Confidential Materials and all copies thereof (except that counsel for each Party may
18 maintain in its files, in continuing compliance with the terms of this Stipulation and
19 Protective Order, all work product, and one copy of each pleading filed with the Court
20 and one copy of each deposition together with the exhibits marked at the deposition),
21 (b) agree with counsel for the Designating Party upon appropriate methods and
22 certification of destruction or other disposition of such Confidential Materials, or (c) as
23 to any Documents, Testimony or other Information not addressed by sub-paragraphs (a)
24 and (b), file a motion seeking a Court order regarding proper preservation of such
25 Materials. To the extent permitted by law the Court shall retain continuing jurisdiction
26 to review and rule upon the motion referred to in sub-paragraph (c) herein.

27 m. After this Stipulation and Protective Order has been signed by
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1 counsel for all Parties, it shall be presented to the Court for entry. Counsel agree to be
2 bound by the terms set forth herein with regard to any Confidential Materials that have
3 been produced before the Court signs this Stipulation and Protective Order.

4 n. The Parties and all signatories to the Certification attached hereto as
5 Exhibit A agree to be bound by this Stipulation and Protective Order pending its
6 approval and entry by the Court. In the event that the Court modifies this Stipulation
7 and Protective Order, or in the event that the Court enters a different Protective Order,
8 the Parties agree to be bound by this Stipulation and Protective Order until such time as
9 the Court may enter such a different Order. It is the Parties' intent to be bound by the
10 terms of this Stipulation and Protective Order pending its entry so as to allow for
11 immediate production of Confidential Materials under the terms herein.

12 This Stipulation and Protective Order may be executed in counterparts.

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15 **GOOD CAUSE APPEARING**, the Court hereby approves this Stipulation and
16 Protective Order.

17 **IT IS SO ORDERED.**



18 Dated: 2/18/2022

19 _____
20 Hon. Alexander F. MacKinnon
21 U.S. Magistrate Judge
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EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____ [NAME],

_____ [POSITION AND EMPLOYER], am about
to receive Confidential Materials supplied in connection with the Proceeding, 2:21-CV-02151-DMG
(AFMx). I certify that I understand that the Confidential Materials are provided to me subject to the
terms and restrictions of the Stipulation and Protective Order filed in this Proceeding. I have been
given a copy of the Stipulation and Protective Order; I have read it, and I agree to be bound by its
terms.

I understand that Confidential Materials, as defined in the Stipulation and Protective Order,
including any notes or other records that may be made regarding any such materials, shall not be
Disclosed to anyone except as expressly permitted by the Stipulation and Protective Order. I will not
copy or use, except solely for the purposes of this Proceeding, any Confidential Materials obtained
pursuant to this Protective Order, except as provided therein or otherwise ordered by the Court in the
Proceeding.

I further understand that I am to retain all copies of all Confidential Materials provided to me
in the Proceeding in a secure manner, and that all copies of such Materials are to remain in my personal
custody until termination of my participation in this Proceeding, whereupon the copies of such
Materials will be returned to counsel who provided me with such Materials.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing
is true and correct. Executed this _____ day of _____, 20__, at _____.

DATED: _____

BY: _____
Signature

Title

Address

City, State, Zip

Telephone Number