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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

SARAH MCCRACKEN, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

KSF ACQUISITION CORPORATION,

Defendant.

CASE NO. 5:22-cv-01666-SB-SHK

~~PROPOSED~~ **STIPULATED  
PROTECTIVE ORDER**

Date Filed: September 21, 2022

Trial Date: None

**[PROPOSED] STIPULATED PROTECTIVE ORDER**

1 **[PROPOSED] STIPULATED PROTECTIVE ORDER**

2 1. A. **PURPOSES AND LIMITATIONS**

3 Discovery in this action is likely to involve production of confidential, proprietary,  
4 or private information for which special protection from public disclosure and from use for  
5 any purpose other than prosecuting this litigation may be warranted. Accordingly, the  
6 parties hereby stipulate to and petition the Court to enter the following Stipulated  
7 Protective Order. The parties acknowledge that this Order does not confer blanket  
8 protections on all disclosures or responses to discovery and that the protection it affords  
9 from public disclosure and use extends only to the limited information or items that are  
10 entitled to confidential treatment under the applicable legal principles. The parties further  
11 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does  
12 not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth  
13 the procedures that must be followed and the standards that will be applied when a party  
14 seeks permission from the court to file material under seal.

15 B. **GOOD CAUSE STATEMENT**

16 This action is likely to involve trade secrets, customer and pricing lists and other  
17 valuable research, development, commercial, financial, technical and/or proprietary  
18 information for which special protection from public disclosure and from use for any  
19 purpose other than prosecution of this action is warranted. Such confidential and  
20 proprietary materials and information consist of, among other things, confidential business  
21 or financial information, confidential consumer information, information regarding  
22 confidential business practices, or other confidential research, development, or commercial  
23 information (including information implicating privacy rights of third parties), information  
24 otherwise generally unavailable to the public, or which may be privileged or otherwise  
25 protected from disclosure under state or federal statutes, court rules, case decisions, or  
26 common law. Accordingly, to expedite the flow of information, to facilitate the prompt  
27 resolution of disputes over confidentiality of discovery materials, to adequately protect  
28 information the parties are entitled to keep confidential, to ensure that the parties are

1 permitted reasonable necessary uses of such material in preparation for and in the conduct  
2 of trial, to address their handling at the end of the litigation, and serve the ends of justice,  
3 a protective order for such information is justified in this matter. It is the intent of the  
4 parties that information will not be designated as confidential for tactical reasons and that  
5 nothing be so designated without a good faith belief that it has been maintained in a  
6 confidential, non-public manner, and there is good cause why it should not be part of the  
7 public record of this case.

8 **2. DEFINITIONS**

9 2.1 Action: The above-entitled action, *Sarah McCracken v. KSF Acquisition*  
10 *Corporation*, Case No. 5:22-cv-01666-SB-SHK (C.D. Cal. Compl. filed Sept. 21, 2022).

11 2.2 Challenging Party: a Party or Non-Party that challenges the designation of  
12 information or items under this Order.

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it  
14 is generated, stored or maintained) or tangible things that qualify for protection under  
15 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.  
16 The term includes information and documents that are in good faith designated as  
17 confidential by the person or party producing the information or documents. The term  
18 includes documents, materials, items, and/or information involving negotiations or  
19 agreements and drafts surrounding agreements that the parties thereto intended to be kept  
20 confidential and not disclosed. The term also includes other types of documents, materials,  
21 items, and/or information containing trade secrets as defined by California Civil Code §  
22 3426.1, proprietary processes and competitively sensitive information, including financial  
23 information (such as Social Security numbers and financial information), health  
24 information and information which, if disclosed, would violate privacy laws. To the extent  
25 that additional categories of documents, information, items, or materials that qualify for  
26 such a designation under the standards developed under Federal Rule of Civil Procedure  
27 26(c) are requested, parties shall propose an amendment identifying the additional  
28 documents, information, items, or materials subject to this Protective Order.

1           2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
2 support staff).

3           2.5 Designating Party: a Party or Non-Party that designates information or items  
4 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

5           2.6 Disclosure or Discovery Material: all items or information, regardless of the  
6 medium or manner in which it is generated, stored, or maintained (including, among other  
7 things, testimony, transcripts, and tangible things), that are produced or generated in  
8 disclosures or responses to discovery in this matter.

9           2.7 Expert: a person with specialized knowledge or experience in a matter  
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
11 expert witness or as a consultant in this Action.

12           2.8 House Counsel: attorneys who are employees of a party to this Action. House  
13 Counsel does not include Outside Counsel of Record or any other outside counsel.

14           2.9 Non-Party: any natural person, partnership, corporation, association, or other  
15 legal entity not named as a Party to this action.

16           2.10 Outside Counsel of Record: attorneys who are not employees of a party to  
17 this Action but are retained to represent or advise a party to this Action and have appeared  
18 in this Action on behalf of that party or are affiliated with a law firm that has appeared on  
19 behalf of that party, including support staff.

20           2.11 Party: any party to this Action, including all of its officers, directors,  
21 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
22 staffs).

23           2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
24 Material in this Action.

25           2.13 Professional Vendors: persons or entities that provide litigation support  
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
27 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
28 their employees and subcontractors.

1           2.14 Protected Material: any Disclosure or Discovery Material that is designated  
2 as “CONFIDENTIAL.”

3           2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from  
4 a Producing Party.

5 **3. SCOPE**

6           The protections conferred by this Stipulation and Order cover not only Protected  
7 Material (as defined above), but also (1) any information copied or extracted from  
8 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
9 Material; 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 trial  
12 judge. This Order does not govern the use of Protected Material at trial.

13 **4. DURATION**

14           Once a case proceeds to trial, all of the court-filed information to be introduced that  
15 was previously designated as confidential or maintained pursuant to this protective order  
16 becomes public and will be presumptively available to all members of the public, including  
17 the press, unless compelling reasons supported by specific factual findings to proceed  
18 otherwise are made to the trial judge in advance of the trial. *See Kamakana v. City and*  
19 *County of Honolulu*, [447 F.3d 1172, 1180-81 \(9th Cir. 2006\)](#) (distinguishing “good cause”  
20 showing for sealing documents produced in discovery from “compelling reasons” standard  
21 when merits-related documents are part of court record). Accordingly, the terms of this  
22 protective order do not extend beyond the commencement of the trial.

23 **5. DESIGNATING PROTECTED MATERIAL**

24           5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
25 Party or Non-Party that designates information or items for protection under this Order  
26 must take care to limit any such designation to specific material that qualifies under the  
27 appropriate standards. The Designating Party must designate for protection only those  
28 parts of material, documents, items, or oral or written communications that qualify so that

1 other portions of the material, documents, items, or communications for which protection  
2 is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
11 Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
12 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
13 must be clearly so designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic  
16 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),  
17 that the Producing Party affix, at a minimum, the legend "CONFIDENTIAL" (hereinafter  
18 "CONFIDENTIAL legend"), to each page that contains protected material. If only a  
19 portion or portions of the material on a page qualifies for protection, the Producing Party  
20 also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
21 in the margins).

22 A Party or Non-Party that makes original documents available for inspection need  
23 not designate them for protection until after the inspecting Party has indicated which  
24 documents it would like copied and produced. During the inspection and before the  
25 designation, all of the material made available for inspection shall be deemed  
26 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants  
27 copied and produced, the Producing Party must determine which documents, or portions  
28 thereof, qualify for protection under this Order. Then, before producing the specified

1 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page  
2 that contains Protected Material. If only a portion or portions of the material on a page  
3 qualifies for protection, the Producing Party also must clearly identify the protected  
4 portion(s) (e.g., by making appropriate markings in the margins).

5 (b) or Discovery Material on the record, before the close of the deposition.

6 (c) for information produced in some form other than documentary and for  
7 any other tangible items, that the Producing Party affix in a prominent place on the exterior  
8 of the container or containers in which the information is stored the legend  
9 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,  
10 the Producing Party, to the extent practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
12 to designate qualified information or items does not, standing alone, waive the Designating  
13 Party’s right to secure protection under this Order for such material. Upon timely  
14 correction of a designation, the Receiving Party must make reasonable efforts to assure  
15 that the material is treated in accordance with the provisions of this Order.

16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
18 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
20 process under Local Rule 37-1, *et seq.* Any discovery motion must strictly comply with  
21 the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

22 6.3 Burden. The burden of persuasion in any such challenge proceeding shall be  
23 on the Designating Party. Frivolous challenges, and those made for an improper purpose  
24 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose  
25 the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn  
26 the confidentiality designation, all parties shall continue to afford the material in question  
27 the level of protection to which it is entitled under the Producing Party’s designation until  
28 the Court rules on the challenge.

1 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
3 disclosed or produced by another Party or by a Non-Party in connection with this Action  
4 only for prosecuting, defending, or attempting to settle this Action, and not for any  
5 unrelated business commercial or other purpose. Such Protected Material may be disclosed  
6 only to the categories of persons and under the conditions described in this Order. When  
7 the Action has been terminated, a Receiving Party must comply with the provisions of  
8 section 13 below (FINAL DISPOSITION).

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

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

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

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

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

23 (d) the Court and its personnel;

24 (e) court reporters and their staff;

25 (f) professional jury or trial consultants, mock jurors, and Professional  
26 Vendors to whom disclosure is reasonably necessary for this Action and who have signed  
27 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);  
28



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

3 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
4 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
5 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not  
6 be permitted to keep any confidential information unless they sign the “Acknowledgment  
7 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating  
8 Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to  
9 depositions that reveal Protected Material may be separately bound by the court reporter  
10 and may not be disclosed to anyone except as permitted under this Stipulated Protective  
11 Order; and

12 (i) any mediator or settlement officer, and their supporting personnel,  
13 mutually agreed upon by any of the parties engaged in settlement discussions.

14 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
15 **OTHER LITIGATION**

16 If a Party is served with a subpoena or a court order issued in other litigation that  
17 compels disclosure of any information or items designated in this Action as  
18 “CONFIDENTIAL,” that Party must:

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

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

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

27 If the Designating Party timely seeks a protective order, the Party served with the  
28 subpoena or court order shall not produce any information designated in this action as

1 “CONFIDENTIAL” before a determination by the court from which the subpoena or order  
2 issued, unless the Party has obtained the Designating Party’s permission. The Designating  
3 Party shall bear the burden and expense of seeking protection in that court of its  
4 confidential material and nothing in these provisions should be construed as authorizing or  
5 encouraging a Receiving Party in this Action to disobey a lawful directive from another  
6 court.

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

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

14 (b) In the event that a Party is required, by a valid discovery request, to  
15 produce a Non-Party’s confidential information in its possession, and the Party is subject  
16 to an agreement with the Non-Party not to produce the Non-Party’s confidential  
17 information, then the Party shall:

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

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

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

26 (c) If the Non-Party fails to seek a protective order from this Court within  
27 14 days of receiving the notice and accompanying information, the Receiving Party may  
28 produce the Non-Party’s confidential information responsive to the discovery request. If

1 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
2 information in its possession or control that is subject to the confidentiality agreement with  
3 the Non-Party before a determination by the Court. Absent a court order to the contrary,  
4 the Non-Party shall bear the burden and expense of seeking protection in this Court of its  
5 Protected Material.

6 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

15 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
16 **PROTECTED MATERIAL**

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

26 **12. MISCELLANEOUS**

27 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person  
28 to seek its modification by the Court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
2 Protective Order, no Party waives any right it otherwise would have to object to disclosing  
3 or producing any information or item on any ground not addressed in this Stipulated  
4 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
5 evidence of any of the material covered by this Protective Order.

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

12 13. **FINAL DISPOSITION**

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

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

4 IT IS SO STIPULATED.

5 DATED: January 10, 2023

GREENBERG TRAURIG, LLP

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7  
8 By /s/ Rick L. Shackelford  
RICK L. SHACKELFORD  
9 Attorneys for Defendant KSF  
Acquisition Corporation  
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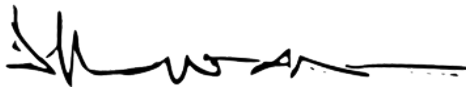
11 DATED: January 10, 2023

SCHUBERT JONCKHEER & KOLBE LLP

12  
13 By /s/ Amber L. Schubert  
14 AMBER L. SCHUBERT  
Attorneys for Plaintiff Sarah McCracken  
15

16 IT IS SO ORDERED.

17 DATED: January 18, 2023



18 HON. SHASHI H. KEWALRAMANI  
19 United States Magistrate Judge  
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1 **ECF CERTIFICATION**

2 Pursuant to Local Civil Rule 5-4.3.4(a)(2)(i), I hereby attest that Amber L.  
3 Schubert, on whose behalf this filing is jointly submitted, has concurred in this filing's  
4 content and has authorized me to file this document.

5  
6 By: /s/Rick L. Shackelford  
7 Rick L. Shackelford  
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1 EXHIBIT A

2 AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address],

5 declare under penalty of perjury that I have read in its entirety and understand the  
6 Protective Order that was issued by the United States District Court for the Central  
7 District of California on \_\_\_\_\_ [date] in the case of *Sarah McCracken v. KSF*  
8 *Acquisition Corporation*, Case No. 5:22-cv-01666-SB-SHK (C.D. Cal. Compl. filed Sept.  
9 21, 2022). I agree to comply with and to be bound by all the terms of this Protective  
10 Order, and I understand and acknowledge that failure to so comply could expose me to  
11 sanctions and punishment for contempt. I solemnly promise that I will not disclose in any  
12 manner any information or item that is subject to this Protective Order to any person or  
13 entity except in strict compliance with this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for  
15 the Central District of California for the purpose of enforcing this Order, even if such  
16 enforcement proceedings occur after termination of this action.

17  
18 Date: \_\_\_\_\_

19 City and State where sworn and signed: \_\_\_\_\_

20  
21 Printed name: \_\_\_\_\_

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