



1           b. “Court” means the Hon. James V. Selna and Hon. Marc  
2 Goldman, or any other judge or magistrate judge to which this Proceeding  
3 may be assigned, including Court staff participating in such proceedings.

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

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

10          e. “Designating Party” means the Party that designates Materials  
11 as “Confidential.”

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

15          g. “Documents” means (i) any “Writing,” “Original,” and  
16 “Duplicate” as those terms are defined by the Federal Rules of Evidence,  
17 which have been produced in discovery in this Proceeding by any person,  
18 and (ii) any copies, reproductions, or summaries of all or any part of the  
19 foregoing.

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

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

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

27        3. The entry of this Stipulation and Protective Order does not alter,  
28 waive, modify, or abridge any right, privilege or protection otherwise available to

1 any Party with respect to the discovery of matters, including but not limited to any  
2 Party's right to assert the attorney-client privilege, the attorney work product  
3 doctrine, or other privileges, or any Party's right to contest any such assertion.

4 4. Any Documents, Testimony or Information to be designated as  
5 "Confidential" must be clearly so designated before the Document, Testimony or  
6 Information is Disclosed or produced. The "Confidential" designation should not  
7 obscure or interfere with the legibility of the designated Information.

8 a. For Documents (apart from transcripts of depositions or other  
9 pretrial or trial proceedings), the Designating Party must affix the legend  
10 "Confidential" on each page of any Document containing such designated  
11 Confidential Material.

12 b. For Testimony given in depositions the Designating Party may  
13 either:

14 i. identify on the record, before the close of the deposition,  
15 all "Confidential" Testimony, by specifying all portions of the  
16 Testimony that qualify as "Confidential;" or

17 ii. designate the entirety of the Testimony at the deposition  
18 as "Confidential" (before the deposition is concluded) with the need to  
19 identify more specific portions of the Testimony as to which protection  
20 is sought within 30 days following receipt of the deposition transcript,  
21 or such other time as may be mutually agreed between the Parties in  
22 writing or ordered by the Court. In circumstances where portions of  
23 the deposition Testimony are designated for protection, the transcript  
24 pages containing "Confidential" Information may (but need not) be  
25 separately bound by the court reporter, who must affix to the top of  
26 each page so designated the legend "Confidential," as instructed by the  
27 Designating Party.

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

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

1 any Information protected by attorney-client or work product privileges. In the  
2 event that this provision conflicts with any applicable law regarding waiver of  
3 confidentiality through the inadvertent production of Documents, Testimony or  
4 Information, such law shall govern. The receiving party reserves all rights to claim  
5 that the Inadvertent Production Notice is not proper based on the circumstances.

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

27 7. Access to and/or Disclosure of Confidential Materials designated as  
28 “Confidential” shall be permitted only to the following persons:

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- a. the Court;
- b. (1) Attorneys of record in the Proceedings and their affiliated attorneys, paralegals, clerical and secretarial staff employed by such attorneys who are actively involved in the Proceedings and are not employees of any Party. (2) In-house counsel to the undersigned Parties and the paralegal, clerical and secretarial staff employed by such counsel. Provided, however, that each non-lawyer given access to Confidential Materials shall be advised that such Materials are being Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective Order and that they may not be Disclosed other than pursuant to its terms;
- c. those officers, directors, partners, members, employees and agents of all non-designating Parties that counsel for such Parties deems necessary to aid counsel in the prosecution and defense of this Proceeding; provided, however, that prior to the Disclosure of Confidential Materials to any such officer, director, partner, member, employee or agent, counsel for the Party making the Disclosure shall deliver a copy of this Stipulation and Protective Order to such person, shall explain that such person is bound to follow the terms of such Order, and shall secure the signature of such person on a statement in the form attached hereto as Exhibit A;
- d. court reporters in this Proceeding (whether at depositions, hearings, or any other proceeding);
- e. any deposition, trial or hearing witness in the Proceeding who previously has had access to the Confidential Materials, or who is currently or was previously an officer, director, partner, member, employee or agent of an entity that has had access to the Confidential Materials;
- f. any deposition or non-trial hearing witness in the Proceeding who previously did not have access to the Confidential Materials; provided, however, that each such witness given access to Confidential Materials shall

1 be advised that such Materials are being Disclosed pursuant to, and are  
2 subject to, the terms of this Stipulation and Protective Order and that they  
3 may not be Disclosed other than pursuant to its terms;

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

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

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

24 In the event a person is required to execute Exhibit A, counsel for the Party that  
25 provided the Confidential Materials to such person shall retain the original of such  
26 Exhibits. Such Exhibits shall not be discoverable except upon a showing of good  
27 cause.

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

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

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

11           a. operate as an admission by any person that any particular  
12 Document, Testimony or Information marked “Confidential” contains or  
13 reflects non-public information that is entitled to confidential treatment under  
14 applicable law; or

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

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

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

25           11. Any Party to the Proceeding who has not executed this Stipulation and  
26 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  
28 signing and dating a copy thereof and filing the same with the Court, and serving



1 copies of such signed and dated copy upon the other Parties to this Stipulation and  
2 Protective Order.

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

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

1 Confidential Materials. Conversely, if the Designating Party has not taken any such  
2 action, the existence of this Order does not require the recipient of the Subpoena to  
3 act in violation of the obligations imposed by the Subpoena.

4 14. Nothing in this Stipulation and Protective Order shall be construed to  
5 preclude either Party from asserting in good faith that certain Confidential Materials  
6 require additional protection. The Parties shall meet and confer to agree upon the  
7 terms of such additional protection.

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

15 16. This Stipulation and Protective Order is entered into without prejudice  
16 to the right of any Party to knowingly waive the applicability of this Stipulation and  
17 Protective Order to any Confidential Materials designated by that Party. If the  
18 Designating Party uses Confidential Materials in a non-Confidential manner or in a  
19 manner inconsistent with the terms of this Order, then the Designating Party shall  
20 advise the other Party that the designation no longer applies.

21 17. Any Party seeking to file with the Court any Confidential Materials, or  
22 Information derived from Confidential Materials must file that information under  
23 seal. However, nothing shall be filed under seal, and the Court shall not be required  
24 to take any action, without separate prior order by the Judge before whom the  
25 hearing or proceeding will take place, after application by the affected Party with  
26 appropriate notice to opposing counsel. The Parties shall follow and abide by  
27 applicable law, including Civ. L.R. 79-5, ECF Administrative Policies and  
28 Procedures, Section II.j, and the chambers' rules, with respect to filing documents

1 under seal. Once a Party has complied with L.R. 79-5, ECF Administrative  
2 Policies and Procedures, Section II.j, and the chambers' rules, with respect to filing  
3 documents under seal, the Party shall file or lodge Confidential Materials in a  
4 sealed envelope, or other appropriate sealed container, on which shall be written the  
5 title and case number of this action, an indication of the nature of the contents of  
6 such sealed envelope or other container, and a statement in substantially the  
7 following form:

8 "CONFIDENTIAL — SUBJECT TO PROTECTIVE ORDER"

9 Such envelope or container shall not be opened without order of the Court except  
10 by officers of the Court or the attorneys of record who, after reviewing the contents,  
11 shall return them to the clerk in a sealed envelope or container. A party filing a  
12 document under seal shall publicly file a copy of the document with the confidential  
13 material redacted. The complete unredacted document as well as the redacted  
14 document, along with a written statement or notice indicating what has been  
15 redacted, shall be furnished to the outside counsel of record for all other Parties.

16 18. This Order shall only govern the procedures for use of Confidential  
17 Materials prior to trial. The Parties shall meet and confer regarding the procedures  
18 for use of Confidential Materials at trial and shall move the Court for entry of an  
19 appropriate order prior to the time of trial.

20 19. Nothing in this Stipulation and Protective Order shall affect the  
21 admissibility into evidence of Confidential Materials, or abridge the rights of any  
22 person to seek judicial review or to pursue other appropriate judicial action with  
23 respect to any ruling made by the Court concerning the issue of the status of  
24 Confidential information that is the subject of this Order.

25 20. This Stipulation and Protective Order shall continue to be binding after  
26 the conclusion of this Proceeding and all subsequent proceedings arising from this  
27 Proceeding, except that a Party may seek the written permission of the Designating  
28 Party or may move the Court for relief from the provisions of this Stipulation and

1 Protective Order. To the extent permitted by law, the Court shall retain jurisdiction  
2 to enforce, modify, or reconsider this Stipulation and Protective Order, even after  
3 the Proceeding is terminated.

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

18 22. After this Stipulation and Protective Order has been signed by counsel  
19 for all Parties, it shall be presented to the Court for entry.

20 23. Anyone given access to Confidential Materials pursuant to paragraphs  
21 7(b) through 7(i), inclusive, agrees to be bound by this Stipulation and Protective  
22 Order pending its approval and entry by the Court. In the event that the Court  
23 modifies this Stipulation and Protective Order, or in the event that the Court enters  
24 a different Protective Order, the Parties agree to be bound by this Stipulation and  
25 Protective Order until such time as the Court may enter such a different Order. It is  
26 the Parties' intent to be bound by the terms of this Stipulation and Protective Order  
27 pending its entry so as to allow for immediate production of Confidential Materials  
28 under the terms herein.

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

2 24. The Court may modify the Protective Order in the interests of justice  
3 or for public policy reasons.

4 **IT IS SO ORDERED.**



5 Dated: May 14, 2012

6 \_\_\_\_\_  
7 HON. MARC GOLDMAN  
8 UNITED STATES DISTRICT COURT  
9 MAGISTRATE JUDGE

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1 **EXHIBIT A**

2 **CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS**

3 I hereby acknowledge that I, \_\_\_\_\_  
4 [NAME], \_\_\_\_\_ [POSITION  
5 AND EMPLOYER], am about to receive Confidential Materials supplied in  
6 connection with the Proceeding, United States District Court for the Central District  
7 of California Case No. SACV 11-1573-JVS (MLG). I certify that I understand that  
8 the Confidential Materials are provided to me subject to the terms and restrictions  
9 of the Stipulation and Protective Order filed in this Proceeding. I have been given a  
10 copy of the Stipulation and Protective Order; I have read it, and I agree to be bound  
11 by its terms.

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

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

24 I declare under penalty of perjury, under the laws of the United States, that  
25 the foregoing is true and correct. Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at  
26 \_\_\_\_\_.

27 DATED: \_\_\_\_\_ By: \_\_\_\_\_  
28 Signature

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