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8  
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10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**  
 12 **WESTERN DIVISION**

12 DIAMOND COATING TECHNOLOGIES,  
 LLC

13 Plaintiff,

14 v.

15 NISSAN NORTH AMERICA, INC. AND  
 16 NISSAN MOTOR CO., LTD.,

17 Defendants and Third-Party  
 Plaintiffs,

18 and

19 FEDERAL-MOGUL CORP. AND KS  
 20 KOLBENSCHMIDT US, INC.,  
 Third-Party Defendants.

Case No. 8:13-cv-01481 MRP (DFMx)

**[PROPOSED] STIPULATED  
 PROTECTIVE ORDER**

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22 America, Inc. and Nissan Motor Co., Ltd.  
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1     1.     PURPOSES AND LIMITATIONS

2             Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

5     2.     DEFINITIONS

6             2.1     Challenging Party: a Party or Non-Party that challenges the designation of  
7 information or items under this Order.

8             2.2     “CONFIDENTIAL” Information or Items: information (regardless of how it is  
9 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
10 of Civil Procedure 26(c).

11            2.3     Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
12 well as their support staff).

13            2.4     Designated House Counsel: House Counsel who seek access to “HIGHLY  
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

15            2.5     Designating Party: a Party or Non-Party that designates information or items that it  
16 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY  
17 CONFIDENTIAL – ATTORNEYS' EYES ONLY.”

18            2.6     Disclosure or Discovery Material: all items or information, regardless of the  
19 medium or manner in which it is generated, stored, or maintained (including, among other things,  
20 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
21 responses to discovery in this matter.

22            2.7     Expert: a person with specialized knowledge or experience in a matter pertinent to  
23 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
24 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
25 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
26 or of a Party's competitor.

27            2.8     “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
28 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another

1 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
2 less restrictive means.

3 2.9 [Intentionally left blank.]

4 2.10 House Counsel: attorneys who are employees of a party to this action or  
5 employees of IPVALUE Management, Inc. House Counsel does not include Outside Counsel of  
6 Record or any other outside counsel.

7 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal  
8 entity not named as a Party to this action.

9 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this  
10 action but are retained to represent or advise a party to this action and have appeared in this action  
11 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

12 2.13 Party: any party to this action, including all of its officers, directors, employees,  
13 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

14 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
15 Material in this action.

16 2.15 Professional Vendors: persons or entities that provide litigation support services  
17 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
18 organizing, storing, or retrieving data in any form or medium) and their employees and  
19 subcontractors.

20 2.16 Protected Material: any Disclosure or Discovery Material that is designated as  
21 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

22 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
23 Producing Party.

24 3. SCOPE

25 The protections conferred by this Order cover not only Protected Material (as defined  
26 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,  
27 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,  
28 or presentations by Parties or their Counsel that might reveal Protected Material. However, the

1 protections conferred by this Order do not cover the following information: (a) any information  
2 that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the  
3 public domain after its disclosure to a Receiving Party as a result of publication not involving a  
4 violation of this Order, including becoming part of the public record through trial or otherwise;  
5 and (b) any information known to the Receiving Party prior to the disclosure or obtained by the  
6 Receiving Party after the disclosure from a source who obtained the information lawfully and  
7 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at  
8 trial shall be governed by a separate agreement or order.

9 4. DURATION

10 Even after final disposition of this litigation, the confidentiality obligations imposed by  
11 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
12 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
13 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
14 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
15 including the time limits for filing any motions or applications for extension of time pursuant to  
16 applicable law.

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
19 or Non-Party that designates information or items for protection under this Order must take care  
20 to limit any such designation to specific material that qualifies under the appropriate standards.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
22 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
23 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
24 designated before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic documents, but  
27 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
28 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY” to each page that contains protected material.

2 A Party or Non-Party that makes original documents or materials available for inspection  
3 need not designate them for protection until after the inspecting Party has indicated which  
4 material it would like copied and produced. During the inspection and before the designation, all  
5 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
6 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
7 copied and produced, the Producing Party must determine which documents, or portions thereof,  
8 qualify for protection under this Order. Then, before producing the specified documents, the  
9 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected  
11 Material.

12 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
13 Designating Party identify on the record, before the close of the deposition, hearing, or other  
14 proceeding, all protected testimony and specify the level of protection being asserted. A  
15 Designating Party may specify, at the deposition, that the entire transcript shall be treated as  
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

17 Parties shall give the other parties notice if they reasonably expect a deposition, hearing,  
18 or other proceeding to include Protected Material so that the other parties can ensure that only  
19 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
20 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
21 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

23 Transcripts containing Protected Material shall have an obvious legend on the title page  
24 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
25 pages (including line numbers as appropriate) that have been designated as Protected Material and  
26 the level of protection being asserted by the Designating Party. The Designating Party shall  
27 inform the court reporter of these requirements.

28 (c) for information produced in some form other than documentary and for any other

1 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
2 or containers in which the information or item is stored the legend “CONFIDENTIAL” or  
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
5 designate qualified information or items does not, standing alone, waive the Designating Party’s  
6 right to secure protection under this Order for such material. Upon timely correction of a  
7 designation, the Receiving Party must make reasonable efforts to assure that the material is  
8 treated in accordance with the provisions of this Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
11 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
13 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
14 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
15 original designation is disclosed.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
17 process by providing written notice of each designation it is challenging and describing the basis  
18 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
19 notice must recite that the challenge to confidentiality is being made in accordance with this  
20 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
21 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
22 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
23 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
24 designation was not proper and must give the Designating Party an opportunity to review the  
25 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
26 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
27 stage of the challenge process only if it has engaged in this meet and confer process first or  
28 establishes that the Designating Party is unwilling to participate in the meet and confer process in

1 a timely manner.

2 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
3 intervention, the Receiving Party shall file and serve a motion for redesignation of confidentiality  
4 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the  
5 meet and confer process will not resolve their dispute, whichever is earlier. Each such motion  
6 must be accompanied by a competent declaration affirming that the movant has complied with the  
7 meet and confer requirements imposed in the preceding paragraph. Failure by the Designating  
8 Party to make such a motion including the required declaration within 21 days (or 14 days, if  
9 applicable) shall automatically waive the challenge to the confidentiality designation. In addition,  
10 the Challenging Party may file a motion challenging a confidentiality designation at any time if  
11 there is good cause for doing so, including a challenge to the designation of a deposition  
12 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
13 accompanied by a competent declaration affirming that the movant has complied with the meet  
14 and confer requirements imposed by the preceding paragraph.

15 The burden of persuasion in any such challenge proceeding shall be on the Designating  
16 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
17 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
18 sanctions. All parties shall continue to afford the material in question the level of protection to  
19 which it is entitled under the Producing Party's designation until the court rules on the challenge.

## 20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
22 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
23 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
24 the categories of persons and under the conditions described in this Order. When the litigation has  
25 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
26 DISPOSITION).

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



1           7.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
2 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
3 information or item designated “CONFIDENTIAL” only to:

4           (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
6 information for this litigation ;

7           (b) the officers, directors, and employees (including House Counsel) of the Receiving  
8 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

13          (d) the court and its personnel;

14          (e) court reporters and their staff, professional jury or trial consultants, and  
15 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
16 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17          (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
18 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
19 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
20 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
21 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
22 Protective Order.

23          (g) the author or recipient of a document containing the information or a custodian or  
24 other person who otherwise possessed or knew the information.

25           7.3    Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
26 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
27 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

1 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
2 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
3 information for this litigation ;

4 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in  
5 competitive decision-making, including patent prosecution matters, (2) to whom disclosure is  
6 reasonably necessary for this litigation, (3) who has signed the “Acknowledgment and Agreement  
7 to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1),  
8 below, have been followed;

9 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for  
10 this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
11 A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been  
12 followed;

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants, and  
15 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
16 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

17 (f) the author or recipient of a document containing the information or a custodian or  
18 other person who otherwise possessed or knew the information.

19 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL  
20 – ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Experts.

21 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating  
22 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has  
23 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to  
24 paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the  
25 full name of the Designated House Counsel and the city and state of his or her residence and (2)  
26 describes the Designated House Counsel’s current and reasonably foreseeable future primary job  
27 duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may  
28 become involved, in any competitive decision-making, including patent prosecution.

1 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating  
2 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item  
3 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant  
4 to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies  
5 the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
6 information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the  
7 full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy  
8 of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each  
9 person or entity from whom the Expert has received compensation or funding for work in his or  
10 her areas of expertise or to whom the expert has provided professional services, including in  
11 connection with a litigation, at any time during the preceding five years,<sup>1</sup> and (6) identifies (by  
12 name and number of the case, filing date, and location of court) any litigation in connection with  
13 which the Expert has offered expert testimony, including through a declaration, report, or  
14 testimony at a deposition or trial, during the preceding five years.

15 (b) A Party that makes a request and provides the information specified in the  
16 preceding respective paragraphs may disclose the subject Protected Material to the identified  
17 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party  
18 receives a written objection from the Designating Party. Any such objection must set forth in  
19 detail the grounds on which it is based.

20 (c) A Party that receives a timely written objection must meet and confer with the  
21 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
22 agreement within seven days of the written objection. If no agreement is reached, the Party  
23 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion  
24 seeking permission from the court to do so. Any such motion must describe the circumstances

25 \_\_\_\_\_  
26  
27 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the  
28 Expert should provide whatever information the Expert believes can be disclosed without violating any  
confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with  
the Designating Party regarding any such engagement.

1 with specificity, set forth in detail the reasons why disclosure to Designated House Counsel or the  
2 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and  
3 suggest any additional means that could be used to reduce that risk. In addition, any such motion  
4 must be accompanied by a competent declaration describing the parties' efforts to resolve the  
5 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and  
6 setting forth the reasons advanced by the Designating Party for its refusal to approve the  
7 disclosure.

8 In any such proceeding, the Party opposing disclosure to Designated House Counsel or  
9 the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail  
10 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
11 Material to its Designated House Counsel or Expert.

12 8. PROSECUTION BAR

13 Absent written consent from the Producing Party, any individual who receives  
14 access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information shall not be  
15 involved in the prosecution of patents or patent applications relating to the subject matter of this  
16 action, including without limitation the patents asserted in this action and any patent or  
17 application claiming priority to or otherwise related to the patents asserted in this action, before  
18 any foreign or domestic agency, including the United States Patent and Trademark Office ("the  
19 Patent Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly  
20 drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims,  
21 provided, however, that counsel-of-record may assist their clients in responding to post-issuance  
22 proceedings (e.g., reexaminations, *inter partes* review proceedings, etc.) so long as that assistance  
23 does not involve providing any advice as to the amendment of claims or drafting of new claims.  
24 To avoid any doubt, "prosecution" as used in this paragraph does not include representing a party  
25 challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue  
26 protest, *ex parte* reexamination or *inter partes* reexamination or review). This Prosecution Bar  
27 shall begin when access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
28 information is first received by the affected individual and shall end two (2) years after final

1 termination of this action.

2 9. SOURCE CODE

3 [Intentionally left blank.]

4 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
5 LITIGATION

6 If a Party is served with a subpoena or a court order issued in other litigation that compels  
7 disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that Party must:

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

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

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
15 Designating Party whose Protected Material may be affected.<sup>2</sup>

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

24 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
25 LITIGATION

26 \_\_\_\_\_

27 <sup>2</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to  
28 afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from  
which the subpoena or order issued.

1 (a) The terms of this Order are applicable to information produced by a Non-Party in  
2 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
3 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with  
4 this litigation is protected by the remedies and relief provided by this Order. Nothing in these  
5 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

9 1. promptly notify in writing the Requesting Party and the Non-Party that  
10 some or all of the information requested is subject to a confidentiality agreement with a Non-  
11 Party;

12 2. promptly provide the Non-Party with a copy of the Protective Order in this  
13 litigation, the relevant discovery request(s), and a reasonably specific description of the  
14 information requested; and

15 3. make the information requested available for inspection by the Non-Party.

16 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
17 days of receiving the notice and accompanying information, the Receiving Party may produce the  
18 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely  
19 seeks a protective order, the Receiving Party shall not produce any information in its possession  
20 or control that is subject to the confidentiality agreement with the Non-Party before a  
21 determination by the court.<sup>3</sup> Absent a court order to the contrary, the Non-Party shall bear the  
22 burden and expense of seeking protection in this court of its Protected Material.

23 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
25 Material to any person or in any circumstance not authorized under this Protective Order, the  
26

27  
28 <sup>3</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-  
Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
2 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)  
3 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
4 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to  
5 Be Bound” that is attached hereto as Exhibit A.

6 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
7 MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
9 produced material is subject to a claim of privilege or other protection, the obligations of the  
10 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
11 provision is not intended to modify whatever procedure may be established in an e-discovery  
12 order that provides for production without prior privilege review. Pursuant to Federal Rule of  
13 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
14 communication or information covered by the attorney-client privilege or work product  
15 protection, the parties may incorporate their agreement in a stipulated protective order submitted  
16 to the court.

17 14. MISCELLANEOUS

18 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
19 seek its modification by the court in the future.

20 14.2 Right to Assert Other Objections. No Party waives any right it otherwise would  
21 have to object to disclosing or producing any information or item on any ground not addressed in  
22 this Protective Order. Similarly, no Party waives any right to object on any ground to use in  
23 evidence of any of the material covered by this Protective Order.

24 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable  
25 laws and regulations relating to the export of technical data contained in such Protected Material,  
26 including the release of such technical data to foreign persons or nationals in the United States or  
27 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical  
28 data, and the Receiving Party shall take measures necessary to ensure compliance.

1           14.4 Filing Protected Material. Without written permission from the Designating Party  
2 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
3 the public record in this action any Protected Material. Protected Material may only be filed under  
4 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. A  
5 sealing order will issue only upon a request establishing that the Protected Material at issue is  
6 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a  
7 Receiving Party's request to file Protected Material under seal is denied by the court, then the  
8 Receiving Party may file the Protected Material in the public record unless otherwise instructed  
9 by the court.

10       15. FINAL DISPOSITION

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



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IT IS SO ORDERED.

DATED: \_April 24 \_\_\_\_, 2014



Hon. Mariana R. Pfaelzer  
United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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

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

16 I hereby appoint \_\_\_\_\_ [print or type full name] of  
17 \_\_\_\_\_ [print or type full address and telephone  
18 number] as my California agent for service of process in connection with this action or any  
19 proceedings related to enforcement of this Protective Order.

20  
21 Date: \_\_\_\_\_

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

23 Printed name: \_\_\_\_\_  
24 [printed name]

25 Signature: \_\_\_\_\_  
26 [signature]