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

KLEAN WATERS INC.; TIM MILLER;
SHAUN MILLER;

Plaintiffs,

v.

ORANGE COUNTY SANITATION
DISTRICT, a government entity organized
under the laws of the State of California; et al.,

Defendants.

CASE NO.: 8:15-cv-00627-JVS-FFM

**PROTECTIVE ORDER
PURSUANT TO STIPULATION**

1 A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does
7 not confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable
10 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
11 that this Stipulated Protective Order does not entitle them to file confidential
12 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
13 followed and the standards that will be applied when a party seeks permission from
14 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
17 other valuable research, development, commercial, financial, technical and/or
18 proprietary information for which special protection from public disclosure and from
19 use for any purpose other than prosecution of this action is warranted. Such
20 confidential and proprietary materials and information consist of, among other things,
21 confidential business or financial information, information regarding confidential
22 business practices, manufacturing processes, engineering information or other
23 confidential research, development, or commercial information (including information
24 implicating privacy rights of third parties), otherwise generally unavailable to the
25 public, or which may be privileged or otherwise protected from disclosure under state
26 or federal statutes, court rules, case decisions, or common law. Accordingly, to
27 expedite the flow of information, to facilitate the prompt resolution of disputes over
28 confidentiality of discovery materials, to adequately protect information the parties are

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

9 2. DEFINITIONS

10 2.1 Action: means the above-entitled proceeding.

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

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
14 how it is generated, stored or maintained) or tangible things that qualify for protection
15 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
16 Cause Statement.

17 2.4 Counsel: Outside Counsel of Record and In-House Counsel (as well as
18 their support staff).

19 2.5 Designating Party: a Party or Non-Party that designates information or
20 items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL.”

22 2.6 Disclosure or Discovery Material: all items or information, regardless of
23 the medium or manner in which it is generated, stored, or maintained (including,
24 among other things, testimony, transcripts, and tangible things), that are produced or
25 generated in disclosures or responses to discovery in this matter.

26 2.7 Expert: a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
28 expert witness or as a consultant in this Action.

1 2.8 In-House Counsel: attorneys who are employees of a party to this
2 Action. In-House Counsel does not include Outside Counsel of Record or any other
3 outside counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a party
7 to this Action but are retained to represent or advise a party to this Action and have
8 appeared in this Action on behalf of that party or are affiliated with a law firm which
9 has appeared on behalf of that party, and includes support staff.

10 2.11 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 2.13 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 2.14 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL.”

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
22 from a Producing Party.

23 **3. SCOPE**

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

1 Any use of Protected Material at trial shall be governed by the orders of the trial
2 judge. This Order does not govern the use of Protected Material at trial.

3 4. DURATION

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

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

14 Each Party or Non-Party that designates information or items for protection under this
15 Order must take care to limit any such designation to specific material that qualifies
16 under the appropriate standards. The Designating Party must designate for protection
17 only those parts of material, documents, items, or oral or written communications that
18 qualify so that other portions of the material, documents, items, or communications
19 for which protection is not warranted are not swept unjustifiably within the ambit of
20 this Order.

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

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

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic documents,
8 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
9 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
10 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
11 portion or portions of the material on a page qualifies for protection, the Producing
12 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
13 markings in the margins).

14 A Party or Non-Party that makes original documents available for inspection
15 need not designate them for protection until after the inspecting Party has indicated
16 which documents it would like copied and produced. During the inspection and before
17 the designation, all of the material made available for inspection shall be deemed
18 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
19 copied and produced, the Producing Party must determine which documents, or
20 portions thereof, qualify for protection under this Order. Then, before producing the
21 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
22 to each page that contains Protected Material. If only a portion or portions of the
23 material on a page qualifies for protection, the Producing Party also must clearly
24 identify the protected portion(s) (e.g., by making appropriate markings in the
25 margins).

26 (b) for testimony given in depositions that the Designating Party identify the
27 Disclosure or Discovery Material on the record, before the close of the deposition all
28 protected testimony.

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

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

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time that is consistent with the Court’s
16 Scheduling Order.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process under Local Rule 37-1 *et seq.* by serving the requisite meet and
19 confer letter. If, following the conference of counsel, the parties fail to reach an
20 agreement regarding the designations, then counsel for the Designating Party shall
21 commence preparation of the joint stipulation pursuant to Local Rule 37-2, *et seq.* If
22 the Designating Party does not submit its portion of the joint stipulation to the
23 Challenging Party within 14 days following the conclusion of the conference of
24 counsel, then the confidential designation is deemed waived or withdrawn, and the
25 challenged document will no longer be deemed Protected Material.

26 6.3 The burden of persuasion in any such challenge proceeding shall be on
27 the Designating Party. Frivolous designations, and those made for an improper
28 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties)

1 may expose the Designating Party to sanctions. Frivolous challenges, and those made
2 for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens
3 on other parties) may expose the Challenging Party to sanctions. Unless the
4 Designating Party has waived or withdrawn the confidentiality designation, all parties
5 shall continue to afford the material in question the level of protection to which it is
6 entitled under the Producing Party’s designation until the Court rules on the challenge.

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

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is
9 disclosed or produced by another Party or by a Non-Party in connection with this
10 Action only for prosecuting, defending, or attempting to settle this Action. Such
11 Protected Material may be disclosed only to the categories of persons and under the
12 conditions described in this Order. When the Action has been terminated, a Receiving
13 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

17 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
18 otherwise ordered by the court or permitted in writing by the Designating Party, a
19 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
20 only to:

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

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

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

1 (d) the court and its personnel;
2 (e) court reporters and their staff;
3 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
4 to whom disclosure is reasonably necessary for this Action and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

17 (i) in preparation for deposition or trial testimony, witnesses and attorneys of
18 witnesses in the Action to whom disclosure is reasonably necessary provided: (1) the
19 potential witness or deponent is requested to sign the form attached as Exhibit A
20 hereto; and (2) they will not be permitted to keep any confidential information unless
21 they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
22 otherwise agreed by the Designating Party or ordered by the court; and

23 (j) any mediator or settlement officer, and their supporting personnel, mutually
24 agreed upon by any of the parties engaged in settlement discussions.

25 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
26 OTHER LITIGATION

27 If a Party is served with a subpoena or a court order issued in other litigation
28 that compels disclosure of any information or items designated in this Action as

1 “CONFIDENTIAL,” that Party must:

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

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

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

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

18 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
19 IN THIS LITIGATION

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

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

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

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

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

9 (c) If the Non-Party fails to seek a protective order from this court within 14
10 days of receiving the notice and accompanying information, the Receiving Party may
11 produce the Non-Party's confidential information responsive to the discovery request.
12 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
13 any information in its possession or control that is subject to the confidentiality
14 agreement with the Non-Party before a determination by the court. Absent a court
15 order to the contrary, the Non-Party shall bear the burden and expense of seeking
16 protection in this court of its Protected Material.

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
19 Protected Material to any person or in any circumstance not authorized under this
20 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
21 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
22 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
23 persons to whom unauthorized disclosures were made of all the terms of this Order,
24 and (d) request such person or persons to execute the "Acknowledgment and
25 Agreement to Be Bound" that is attached hereto as Exhibit A.

26 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
27 PROTECTED MATERIAL

28 When a Producing Party gives notice to Receiving Parties that certain

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

10 12. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
12 person to seek its modification by the Court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this
14 Protective Order no Party waives any right it otherwise would have to object to
15 disclosing or producing any information or item on any ground not addressed in this
16 Stipulated Protective Order. Similarly, no Party waives any right to object on any
17 ground to use in evidence of any of the material covered by this Protective Order.

18 12.3 Filing Protected Material. A Party that seeks to file under seal any
19 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
20 only be filed under seal pursuant to a court order authorizing the sealing of the
21 specific Protected Material at issue. If a Party's request to file Protected Material
22 under seal is denied by the court, then the Receiving Party may file the information in
23 the public record unless otherwise instructed by the court.

24 13. FINAL DISPOSITION

25 After the final disposition of this Action, as defined in paragraph 4, within 60
26 days of a written request by the Designating Party, each Receiving Party must return
27 all Protected Material to the Producing Party or destroy such material. As used in this
28 subdivision, "all Protected Material" includes all copies, abstracts, compilations,

1 summaries, and any other format reproducing or capturing any of the Protected
2 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
3 must submit a written certification to the Producing Party (and, if not the same person
4 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
5 category, where appropriate) all the Protected Material that was returned or destroyed
6 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
7 compilations, summaries or any other format reproducing or capturing any of the
8 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
9 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
10 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
11 attorney work product, and consultant and expert work product, even if such materials
12 contain Protected Material. Any such archival copies that contain or constitute
13 Protected Material remain subject to this Protective Order as set forth in Section 4.

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

17
18 IT IS SO ORDERED.

19
20 DATED: November 7, 2016

21 /s/ FREDERICK F. MUMM
22 _____
23 UNITED STATES MAGISTRATE JUDGE
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury that
6 I have read in its entirety and understand the Stipulated Protective Order that was
7 issued by the United States District Court for the Central District of California on
8 November __, 2016 in the case of *Klean Waters, Inc. v. Orange County Sanitation*
9 *District, et al.*, USDC, Central District of California, Case No. SACV 15-627 JVS
10 (FFMx). I agree to comply with and to be bound by all the terms of this Stipulated
11 Protective Order and I understand and acknowledge that failure to so comply could
12 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
13 that I will not disclose in any manner any information or item that is subject to this
14 Stipulated Protective Order to any person or entity except in strict compliance with the
15 provisions of this Order.

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

24 Date: _____

25 City and State where sworn and signed: _____

26
27 Printed name: _____

28 Signature: _____