

1 extends only to the specific material entitled to confidential treatment under the
2 applicable legal principles. This Order does not automatically authorize the filing
3 under seal of material designated under this Order. Instead, the parties must
4 comply with L.R. 79-5.1 if they seek to file anything under seal. This Order does
5 not govern the use at trial of material designated under this Order.

6 2. DESIGNATING PROTECTED MATERIAL

7 **2.1 Over-Designation Prohibited.** Any party or non-party who
8 designates information or items for protection under this Order as
9 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES
10 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” (a “designator”)
11 must only designate specific material that qualifies under the appropriate
12 standards. To the extent practicable, only those parts of documents, items, or oral
13 or written communications that require protection shall be designated.
14 Designations with a higher confidentiality level when a lower level would suffice
15 are prohibited. Mass, indiscriminate, or routinized designations are prohibited.
16 Unjustified designations expose the designator to sanctions, including the Court’s
17 striking all confidentiality designations made by that designator. Designation
18 under this Order is allowed only if the designation is necessary to protect material
19 that, if disclosed to persons not authorized to view it, would cause competitive or
20 other recognized harm. Material may not be designated if it has been made public,
21 or if designation is otherwise unnecessary to protect a secrecy interest. If a
22 designator learns that information or items that it designated for protection do not
23 qualify for protection at all or do not qualify for the level of protection initially
24 asserted, that designator must promptly notify all parties that it is withdrawing the
25 mistaken designation.
26

27 **2.2 Manner and Timing of Designations.** Designation under this Order
28 requires the designator to affix the applicable legend (“CONFIDENTIAL,”

1 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY
2 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected
3 material. For testimony given in deposition or other proceeding, the designator
4 shall specify all protected testimony and the level of protection being asserted. It
5 may make that designation during the deposition or proceeding, or may invoke, on
6 the record or by written notice to all parties on or before the next business day, a
7 right to have up to 21 days from the deposition or proceeding to make its
8 designation.

9
10 2.2.1 A party or non-party that makes original documents or
11 materials available for inspection need not designate them for protection
12 until after the inspecting party has identified which material it would like
13 copied and produced. During the inspection and before the designation, all
14 material shall be treated as HIGHLY CONFIDENTIAL – ATTORNEY
15 EYES ONLY. After the inspecting party has identified the documents it
16 wants copied and produced, the producing party must designate the
17 documents, or portions thereof, that qualify for protection under this Order.

18 2.2.2 Parties shall give advance notice if they expect a deposition or
19 other proceeding to include designated material so that the other parties can
20 ensure that only authorized individuals are present at those proceedings
21 when such material is disclosed or used. The use of a document as an
22 exhibit at a deposition shall not in any way affect its designation.
23 Transcripts containing designated material shall have a legend on the title
24 page noting the presence of designated material, and the title page shall be
25 followed by a list of all pages (including line numbers as appropriate) that
26 have been designated, and the level of protection being asserted. The
27 designator shall inform the court reporter of these requirements. Any
28

1 transcript that is prepared before the expiration of the 21-day period for
2 designation shall be treated during that period as if it had been designated
3 **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY** unless otherwise
4 agreed. After the expiration of the 21-day period, the transcript shall be
5 treated only as actually designated.

6 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to
7 designate does not, standing alone, waive protection under this Order. Upon
8 timely assertion or correction of a designation, all recipients must make
9 reasonable efforts to ensure that the material is treated according to this Order.

10 3. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 All challenges to confidentiality designations shall proceed under L.R. 37-1
12 through L.R. 37-4.

13 4. **ACCESS TO DESIGNATED MATERIAL**

14 **4.1 Basic Principles.** A receiving party may use designated material only
15 for this litigation. Designated material may be disclosed only to the categories of
16 persons and under the conditions described in this Order.

17 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
18 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
19 designator, a receiving party may disclose any material designated
20 CONFIDENTIAL only to:
21

22 **4.2.1** The receiving party's outside counsel of record in this action
23 and employees of outside counsel of record to whom disclosure is
24 reasonably necessary;

25 **4.2.2** The officers, directors, and employees of the receiving party to
26 whom disclosure is reasonably necessary, and who have signed the
27 Agreement to Be Bound (Exhibit A);
28

1 **4.2.3** Experts retained by the receiving party's outside counsel of
2 record to whom disclosure is reasonably necessary, and who have signed
3 the Agreement to Be Bound (Exhibit A);

4 **4.2.4** The Court and its personnel;

5 **4.2.5** Outside court reporters and their staff, professional jury or trial
6 consultants, and professional vendors to whom disclosure is reasonably
7 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

8 **4.2.6** During their depositions, witnesses in the action to whom
9 disclosure is reasonably necessary and who have signed the Agreement to
10 Be Bound (Exhibit A); and

11 **4.2.7** The author or recipient of a document containing the material,
12 or a custodian or other person who otherwise possessed or knew the
13 information.
14

15 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
16 **ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material**
17 **Without Further Approval.** Unless permitted in writing by the designator, a
18 receiving party may disclose material designated HIGHLY CONFIDENTIAL –
19 ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE
20 without further approval only to:

21 **4.3.1** The receiving party's outside counsel of record in this action
22 and employees of outside counsel of record to whom it is reasonably
23 necessary to disclose the information;

24 **4.3.2** The Court and its personnel;

25 **4.3.3** Outside court reporters and their staff, professional jury or trial
26 consultants, and professional vendors to whom disclosure is reasonably
27

1 necessary, and who have signed the Agreement to Be Bound (Exhibit A);
2 and

3 **4.3.4** The author or recipient of a document containing the material,
4 or a custodian or other person who otherwise possessed or knew the
5 information.

6 **4.4 Procedures for Approving or Objecting to Disclosure of**
7 **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY**
8 **CONFIDENTIAL – SOURCE CODE Material to In-House Counsel or**
9 **Experts.** Unless agreed to in writing by the designator:

10 **4.4.1** A party seeking to disclose to in-house counsel any material
11 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must
12 first make a written request to the designator providing the full name of the
13 in-house counsel, the city and state of such counsel’s residence, and such
14 counsel’s current and reasonably foreseeable future primary job duties and
15 responsibilities in sufficient detail to determine present or potential
16 involvement in any competitive decision-making. In-house counsel are not
17 authorized to receive material designated HIGHLY CONFIDENTIAL –
18 SOURCE CODE.

19 **4.4.2** A party seeking to disclose to an expert retained by outside
20 counsel of record any information or item that has been designated
21 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
22 CONFIDENTIAL – SOURCE CODE must first make a written request to
23 the designator that (1) identifies the general categories of HIGHLY
24 CONFIDENTIAL-ATTORNEY EYES ONLY or HIGHLY
25 CONFIDENTIAL – SOURCE CODE information that the receiving party
26 seeks permission to disclose to the expert, (2) sets forth the full name of the
27 expert and the city and state of his or her primary residence, (3) attaches a
28

1 copy of the expert's current resume, (4) identifies the expert's current
2 employer(s), (5) identifies each person or entity from whom the expert has
3 received compensation or funding for work in his or her areas of expertise
4 (including in connection with litigation) in the past five years, and (6)
5 identifies (by name and number of the case, filing date, and location of
6 court) any litigation where the expert has offered expert testimony,
7 including by declaration, report, or testimony at deposition or trial, in the
8 past five years. If the expert believes any of this information at (4) - (6) is
9 subject to a confidentiality obligation to a third party, then the expert should
10 provide whatever information the expert believes can be disclosed without
11 violating any confidentiality agreements, and the party seeking to disclose
12 the information to the expert shall be available to meet and confer with the
13 designator regarding any such confidentiality obligations.
14

15 **4.4.3** A party that makes a request and provides the information
16 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material
17 to the identified in-house counsel or expert unless, within seven days of
18 delivering the request, the party receives a written objection from the
19 designator providing detailed grounds for the objection.

20 **4.4.4** All challenges to objections from the designator shall proceed
21 under L.R. 37-1 through L.R. 37-4.

22 **5. SOURCE CODE**

23 **5.1 Designation of Source Code.** If production of source code is
24 necessary, a party may designate it as HIGHLY CONFIDENTIAL – SOURCE
25 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

26 **5.2 Location and Supervision of Inspection.** Any HIGHLY
27 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made
28

1 available for inspection, in a format allowing it to be reasonably reviewed and
2 searched, during normal business hours or at other mutually agreeable times, at
3 an office of the designating party's counsel or another mutually agreeable
4 location. The source code shall be made available for inspection on a secured
5 computer in a secured room, and the inspecting party shall not copy, remove, or
6 otherwise transfer any portion of the source code onto any recordable media or
7 recordable device. The designator may visually monitor the activities of the
8 inspecting party's representatives during any source code review, but only to
9 ensure that there is no unauthorized recording, copying, or transmission of the
10 source code.

11 **5.3 Paper Copies of Source Code Excerpts.** The inspecting party may
12 request paper copies of limited portions of source code that are reasonably
13 necessary for the preparation of court filings, pleadings, expert reports, other
14 papers, or for deposition or trial. The designator shall provide all such source code
15 in paper form, including Bates numbers and the label "HIGHLY
16 CONFIDENTIAL – SOURCE CODE."

17 **5.4 Access Record.** The inspecting party shall maintain a record of any
18 individual who has inspected any portion of the source code in electronic or paper
19 form, and shall maintain all paper copies of any printed portions of the source
20 code in a secured, locked area. The inspecting party shall not convert any of the
21 information contained in the paper copies into any electronic format other than for
22 the preparation of a pleading, exhibit, expert report, discovery document,
23 deposition transcript, or other Court document. Any paper copies used during a
24 deposition shall be retrieved at the end of each day and must not be left with a
25 court reporter or any other unauthorized individual.

26
27 **6. PROSECUTION BAR**
28

1 Absent written consent from the designator, any individual who receives
2 access to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
3 CONFIDENTIAL - SOURCE CODE information shall not be involved in the
4 prosecution of patents or patent applications concerning the field of the invention
5 of the patents-in-suit for the receiving party or its acquirer, successor, predecessor,
6 or other affiliate during the pendency of this action and for one year after its
7 conclusion, including any appeals. “Prosecution” means drafting, amending,
8 advising on the content of, or otherwise affecting the scope or content of patent
9 claims or specifications. These prohibitions shall not preclude counsel from
10 participating in reexamination or *inter partes* review proceedings to challenge or
11 defend the validity of any patent, but counsel may not participate in the drafting of
12 amended claims in any such proceedings.

13 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
14 **PRODUCED IN OTHER LITIGATION**

15 **7.1 Subpoenas and Court Orders.** This Order in no way excuses non-
16 compliance with a lawful subpoena or court order. The purpose of the duties
17 described in this section is to alert the interested parties to the existence of this
18 Order and to give the designator an opportunity to protect its confidentiality
19 interests in the court where the subpoena or order issued.

20 **7.2 Notification Requirement.** If a party is served with a subpoena or a
21 court order issued in other litigation that compels disclosure of any information or
22 items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL
23 – ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE,
24 that party must:
25

26 **7.2.1** Promptly notify the designator in writing. Such notification
27 shall include a copy of the subpoena or court order;
28

1 **7.2.2** Promptly notify in writing the party who caused the subpoena
2 or order to issue in the other litigation that some or all of the material
3 covered by the subpoena or order is subject to this Order. Such
4 notification shall include a copy of this Order; and

5 **7.2.3** Cooperate with all reasonable procedures sought by the
6 designator whose material may be affected.

7 **7.3 Wait for Resolution of Protective Order.** If the designator timely
8 seeks a protective order, the party served with the subpoena or court order shall
9 not produce any information designated in this action as CONFIDENTIAL,
10 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
11 CONFIDENTIAL – SOURCE CODE before a determination by the court where
12 the subpoena or order issued, unless the party has obtained the designator’s
13 permission. The designator shall bear the burden and expense of seeking
14 protection of its confidential material in that court.
15

16 **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

17 If a receiving party learns that, by inadvertence or otherwise, it has
18 disclosed designated material to any person or in any circumstance not authorized
19 under this Order, it must immediately (1) notify in writing the designator of the
20 unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies
21 of the designated material, (3) inform the person or persons to whom unauthorized
22 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
23 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

24 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**
25 **OTHERWISE PROTECTED MATERIAL**

26 When a producing party gives notice that certain inadvertently produced
27 material is subject to a claim of privilege or other protection, the obligations of
28 the receiving parties are those set forth in Federal Rule of Civil Procedure

1 26(b)(5)(B). This provision is not intended to modify whatever procedure may be
2 established in an e-discovery order that provides for production without prior
3 privilege review pursuant to Federal Rule of Evidence 502(d) and (e).

4 **10. FILING UNDER SEAL**

5 Without written permission from the designator or a Court order, a party
6 may not file in the public record in this action any designated material. A party
7 seeking to file under seal any designated material must comply with L.R. 79-5.1.
8 Filings may be made under seal only pursuant to a court order authorizing the
9 sealing of the specific material at issue. The fact that a document has been
10 designated under this Order is insufficient to justify filing under seal. Instead,
11 parties must explain the basis for confidentiality of each document sought to be
12 filed under seal. Because a party other than the designator will often be seeking to
13 file designated material, cooperation between the parties in preparing, and in
14 reducing the number and extent of, requests for under seal filing is essential. If a
15 *receiving party's* request to file designated material under seal pursuant to L.R.
16 79-5.1 is denied by the Court, then the receiving party *may file the material in*
17 *the public record* unless (1) *the designator* seeks reconsideration within four
18 days of the denial, or (2) as otherwise instructed by the Court.

20 **11. FINAL DISPOSITION**

21 Within 60 days after the final disposition of this action, each party shall
22 return all designated material to the designator or destroy such material, including
23 all copies, abstracts, compilations, summaries, and any other format reproducing
24 or capturing any designated material. The receiving party must submit a written
25 certification to the designator by the 60-day deadline that (1) identifies (by
26 category, where appropriate) all the designated material that was returned or
27 destroyed, and (2) affirms that the receiving party has not retained any copies,
28 abstracts, compilations, summaries, or any other format reproducing or capturing

1 any of the designated material. This provision shall not prevent counsel from
2 retaining an archival copy of all pleadings, motion papers, trial, deposition, and
3 hearing transcripts, legal memoranda, correspondence, deposition and trial
4 exhibits, expert reports, attorney work product, and consultant and expert work
5 product, even if such materials contain designated material. Any such archival
6 copies remain subject to this Order.

7
8 **IT IS SO STIPULATED.**

9
10 Dated: October 4, 2017

11 Respectfully submitted,
12 /s/ Amy L. Bennecoff Ginsburg
13 Amy L. Bennecoff Ginsburg
14 Kimmel and Silverman PC
15 30 East Butler Avenue
16 Ambler, PA 19002
17 215-540-8888 ext 141
18 Fax: 877-788-7864
19 Email: teamkimmel@creditlaw.com
20 *Attorneys for Plaintiff*

21
22 Dated: October 4, 2017

23 Respectfully submitted,
24 /s/ Damian P. Richard
25 Damian P. Richard
26 Sessions Fishman Nathan and Israel LLP
27 1545 Hotel Circle South Suite 150
28 San Diego, CA 92108
(619) 758-1891
Fax: (619) 296-2013
Email: drichard@sessions.legal
Attorneys for Defendant

29
30 **IT IS SO ORDERED.**

31
32 DATED: 10/10/2017

33
34 
35 _____
36 Jay C. Gandhi, United States Magistrate Judge

37
38 Stipulated Protective Order

EXHIBIT A
AGREEMENT TO BE BOUND

1
2
3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Protective
6 Order that was issued by the United States District Court for the Central District
7 of California on _____ [date] in the case of *Christopher Robinson v.*
8 *Diversified Consultants, Inc.*, No. 17-cv-00992-JVS-JCG (C.D. Cal. June 9, 2017).
9 I agree to comply with and to be bound by all the terms of this Protective Order,
10 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
12 disclose in any manner any information or item that is subject to this Protective
13 Order to any person or entity except in strict compliance with this Order.

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

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

21
22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26 [printed name]

27 Signature: _____

28 [signature]