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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

NISAR ALI, an individual,

Plaintiff,

v.

JOHNSON CONTROLS, INC., a
Wisconsin corporation, and DOES 1-
25, inclusive,

Defendants.

Case No. 8:17-cv-01731-CJC (JDEx)
PROTECTIVE ORDER

1 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
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth in
11 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
12 file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a party
14 seeks permission from the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

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

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

8 2. DEFINITIONS

9 2.1 Action: Nisar Ali v. Johnson Controls, Inc., Case No. 8:170cv001731-CJC
10 (JDEx).

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

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
14 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 House Counsel (as well as their
18 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
28 an expert witness or as a consultant in this Action.

1 2.8 House Counsel: attorneys who are employees of a party to this Action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 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
7 party to this Action but are retained to represent or advise a party to this Action and
8 have appeared in this Action on behalf of that party or are affiliated with a law firm
9 which 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
16 support 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
22 Material 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
26 extracted from Protected Material; (2) all copies, excerpts, summaries, or
27 compilations of Protected Material; and (3) any testimony, conversations, or
28 presentations by Parties 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,
8 with 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
15 this Order must take care to limit any such designation to specific material that
16 qualifies under the appropriate standards. The Designating Party must designate for
17 protection only those parts of material, documents, items, or oral or written
18 communications that qualify so that other portions of the material, documents,
19 items, or communications for which protection is not warranted are not swept
20 unjustifiably within the ambit of 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
25 Party 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
8 documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix at a minimum, the legend
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
11 contains protected material. If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the protected
13 portion(s) (e.g., by making appropriate 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
17 before the designation, all of the material made available for inspection shall be
18 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
19 documents it wants copied and produced, the Producing Party must determine which
20 documents, or portions thereof, qualify for protection under this Order. Then, before
21 producing the specified documents, the Producing Party must affix the
22 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
23 portion or portions of the material on a page qualifies for protection, the Producing
24 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
25 markings in the margins).

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

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

19 6.3 The burden of persuasion in any such challenge proceeding shall be on
20 the Designating Party. Frivolous challenges, and those made for an improper
21 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
22 parties) may expose the Challenging Party to sanctions. Unless the Designating
23 Party has waived or withdrawn the confidentiality designation, all parties shall
24 continue to afford the material in question the level of protection to which it is
25 entitled under the Producing Party's designation until the Court rules on the
26 challenge.

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1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 Action only for prosecuting, defending, or attempting to settle this Action. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the Action has been terminated, a
7 Receiving Party must comply with the provisions of section 13 below (FINAL
8 DISPOSITION).

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

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

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

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

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

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

27 12. MISCELLANEOUS

28 12.1 Right to Further Relief. Nothing in this Order abridges the right of any

1 person to seek its modification by the Court in the future.

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

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

13 13. FINAL DISPOSITION

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

1 product, even if such materials contain Protected Material. Any such archival copies
2 that contain or constitute Protected Material remain subject to this Protective Order
3 as set forth in Section 4 (DURATION).

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

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8
9 DATED: October 24, 2018

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

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11
12 By: /s/ Alis M. Moon _____
13 Sean Paisan
14 Mark F. Lovell
15 Alis M. Moon

Attorneys for Defendant
Johnson Controls, Inc.

16 DATED: October 24, 2018

KESLUK, SILVERSTEIN, & JACOB, P.C.

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19 By: /s/ Mia Munro _____
20 Mia Munro

Attorneys for Plaintiff
Nisar Ali

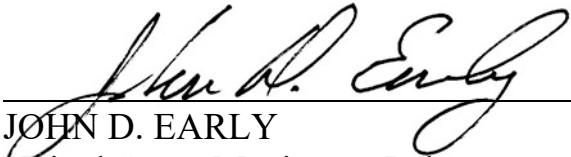
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1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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3 DATED: October 25, 2018

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JOHN D. EARLY
United States Magistrate Judge

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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
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on October 25, 2018, in the case of Nasir Ali v. Johnson Controls, Inc., Case No.
8 8:17-cv-01731-CJC (JDEx). I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any information
12 or item that is subject to this Stipulated Protective Order to any person or entity
13 except in strict compliance with the provisions of this Order.

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

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____

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