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12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 SIMON V. GARCIA, an individual)
15 Plaintiffs,)
16 vs.)
17 Defendants.)
18)

19 **Case No. 1:10-cv-00324-OWW-SMS**

20 **STIPULATED**
21 **PROTECTIVE ORDER**

22 **Purposes and Limitations.** Disclosure and discovery activity in this action are likely
23 to involve production of confidential, proprietary, or private information for which special
24 protection from public disclosure and from use for any purpose other than prosecuting this
25 litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the
26 Court to enter the following Stipulated Protective Order. The parties acknowledge that this
Order does not confer blanket protections on all disclosures or responses to discovery and that
protection it affords extends only to the limited information or items that are entitled under the
applicable legal principles to treatment as confidential. The parties further acknowledge, as
set forth in Section 10 below, that this Stipulated Protective Order creates no entitlement to

1 file confidential information under seal; LR 39-141 sets forth the procedures that must be
2 followed when a party seeks permission from the Court to file materials under seal.

1. Definitions.

2.1 Party: Any party to this action, including all of its officers, directors, employees, consultants, retained experts and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: All items or information, regardless of the medium or manner generated, stored or maintained (including, among other things, testimony, transcripts or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 “Confidential” Information or Items: Information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under Fed.R.Civ.P. 26(c).

2.4 “Highly Confidential–Attorney Eyes Only” Information or Items:
Extremely sensitive “Confidential Information or Items” whose disclosure to another party or non-party would create a substantial risk of serious injury that could not be avoided by less restrictive means.

2.5 Receiving Party: A party that receives disclosure or discovery material from a producing party.

2.6 Producing Party: A party or non-party that produces disclosure or discovery material in this action.

2.7 Designating Party: A party or non-party that designates information or items that it produces or in responses to discovery as “Confidential” or “Highly Confidential – Attorney Eyes Only.”

2.8 Protected Material: Any disclosure or discovery material that is designated as “Confidential” or as “Highly Confidential – Attorney Eyes Only.”

2.9 Outside Counsel: Attorneys who are not employees of a party but who are retained to represent or advise a party in this action.

2.10 House Counsel: Attorneys who are employees of a party.

1 2.11 Counsel (without qualifier): Outside counsel and house counsel (as well
2 as their support staffs).

3 2.12 Expert: A person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a party or its counsel to serve as an expert
5 witness or as a consultant in this action and who is not a past or a current employee of a party or
6 of a competitor of a party and who, at the time of retention, is not anticipated to become an
7 employee of a party or a competitor of a party. This definition includes a professional jury or
trial consultant retained in connection with this litigation.

8 2.13 Professional Vendors: Persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations;
10 organizing, storing, retrieving data in any form or medium, etc.) and their employees and
subcontractors.

11 3. **Scope**. The protections conferred by this Order cover not only protected material
12 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
13 excerpts, summaries or compilations thereof, plus testimony, conversations or presentations by
14 parties or counsel to or in court or in other settings that might reveal protected material.

15 4. **Duration**. Even after the termination of this litigation, the confidentiality
16 obligations imposed by this Order shall remain in effect until a designating party agrees
17 otherwise in writing or a court order otherwise directs.

18 5. **Designating Protected Material**.

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.
20 Each party or non-party that designates information or items for protection under this Order must
21 take care to limit any such designation to a specific material that qualifies under the appropriate
22 standards. A designating party must take care to designate for protection only those parts of
23 material, documents, items or oral or written communications that qualify – so that other portions
24 of the material, documents, items or communications for which protection is not warranted are
25 not swept unjustifiably within the ambit of this Order. Mass, indiscriminate or routinized
designations are prohibited. Designations that are shown to be clearly unjustified, or that have
been made for an improper purpose (e.g., to unnecessarily encumber or retard the case

1 development process or to impose unnecessary expenses and burdens on other parties), expose
2 the designating party to sanctions. If it comes to the attention of a party or a non-party that
3 information or items that it designated for protection do not qualify for protection at all or do not
4 qualify for the level of protection initially asserted, that party or non-party must promptly notify
5 all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this
Order (see, e.g., second paragraph of Section 5.2(a) below) or as otherwise stipulated or ordered,
material that qualifies for protection under this Order must be clearly so designated before the
material is disclosed or produced. Designation in conformity with this Order requires the
following:

- 10 a. For information in documentary form (apart from transcripts of
11 depositions or other pretrial or trial proceedings), the producing party
12 should affix the legend “CONFIDENTIAL” or “HIGHLY
13 CONFIDENTIAL – ATTORNEY EYES ONLY” on each page that
14 contains protected material. If only a portion or portions of the material
15 on a page qualifies for protection, the producing party must also clearly
16 identify the protected portion(s) (e.g., by making appropriate markings in
17 the margins) and must specify, for each portion, the level of protection
18 being asserted (either “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEY EYES ONLY”). A party or non-party
20 who makes original documents or materials available for inspection need
21 not designate them for protection until after the inspecting party has
22 indicated which material it would like copied and produced. During the
23 inspection and before the designation, all of the material made available
24 for inspection shall be deemed “HIGHLY CONFIDENTIAL –
25 ATTORNEY EYES ONLY.” After the inspecting party has identified the
26 documents it wants copied and produced, the producing party must
determine which documents, or portions thereof, qualify for protection
under this Order. Before producing the specified documents, the
producing party must affix the appropriate legend (“CONFIDENTIAL” or
“HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”) on each
page that contains protected material. If only a portion of the material on
a page qualifies for protection, the producing party must also clearly
identify the protected portion (e.g., by making appropriate markings in the
margins) and must specify, for each portion, the level of protection being
asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
ATTORNEY EYES ONLY”).
- 22 b. For testimony given in deposition or in other pretrial or trial proceedings,
23 the party or non-party offering or sponsoring the testimony should identify
24 on the record, before the close of the deposition, hearing, or other
25 proceeding, all protected testimony, and further specify any portions of the
26 testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEY
EYES ONLY.” When it is impractical to identify separately each portion
of testimony that is entitled to protection, and when it appears that
substantial portions of the testimony may qualify for protection, the party
or non-party that sponsors, offers or gives the testimony may invoke on

1 the record (before the deposition or proceeding is concluded) a right to
2 have up to 20 days to identify the specific portions of the testimony as to
3 which protection is sought and to specify the level of protection being
4 asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
5 ATTORNEY EYES ONLY”). Only those portions of the testimony that
6 are appropriately designed for protection within the 20 days shall be
7 covered by the provisions of this Order. Transcript pages containing
8 protected material must be separately bound by the court reporter, who
9 must affix on each such page the legend “CONFIDENTIAL” or
10 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” as instructed
11 by the party or non-party offering or sponsoring the witness or presenting
12 the testimony.

13 c. For information produced in some form other than documentary, and for
14 any other tangible items, the producing party should affix in a prominent
15 place on the exterior of the container or containers in which the
16 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEY EYES ONLY.” If only portions of the
18 information or item warrant protection, the producing party, to the extent
19 practicable, shall identify the protected portions, specifying whether they
20 qualify as “CONFIDENTIAL” or as “HIGHLY CONFIDENTLY –
21 ATTORNEY EYES ONLY.”

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
23 failure to designate qualified information or items as “CONFIDENTIAL” or as “HIGHLY
24 CONFIDENTIAL – ATTORNEY EYES ONLY” does not, standing alone, waive the
25 designating party’s right to secure protection under this Order for such material. If material is
26 appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY
EYES ONLY” after the material was initially produced, the receiving party, on timely
notification of the designation, must make reasonable efforts to assure that the material is treated
in accordance with this provisions of this Order.

18 6. **Challenging Confidentiality Designations.**

19 6.1 Timing of Challenges. Unless a prompt challenge to a designating party’s
20 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
21 economic burdens or a later significant disruption or delay of the litigation, a party does not
22 waive its right to challenge a confidentiality designation by electing not to mount a challenge
promptly after the original designation is disclosed.

23 6.2 Meet and Confer. A party that elects to initiate a challenge to a
24 designating party’s confidentiality designation must do so in good faith and must begin the
25 process by conferring directly (in voice to voice dialogue; other forms of communication are not
26 sufficient) with counsel for the designating party. Upon request by the challenging party, the

1 designating party must meet and confer pursuant to this paragraph within five (5) days. In
2 conferring, the challenging party must explain the basis for its belief that the confidentiality
3 designation was not proper and must give the designating party an opportunity to review the
4 designated material, to reconsider the circumstances and, if no change in designation is offered,
5 to explain the basis for the chosen designation. A challenging party may proceed to the next
stage of the challenge process only if it has engaged in this meet and confer process first.

6 6.3 Judicial Intervention. A party that elects to press a challenge to a
7 confidentiality designation after considering the justification offered by the designating party
8 may file and serve a motion under LR 37-251 that identifies the challenged material and sets forth
9 in detail the basis for the challenge. Each such motion must be accompanied by a competent
10 declaration that affirms the movant has complied with the meet and confer requirements imposed
11 in Section 6.2 above and that sets forth with specificity the justification for the confidentiality
12 designation that was given by the designating party in the meet and confer dialogue. The burden
13 of persuasion in any such challenge proceeding shall be on the designating party. Until the Court
14 rules on the challenge, all parties shall continue to afford the material in question the level of
protection to which it is entitled under the producing party's designation.

7. Access to and Use of Protected Material

16 7.1 Basic Principles. A receiving party may use protected material that is
17 disclosed or produced by another party or by a non-party in connection with this case only for
18 prosecuting, defending or attempting to settle this litigation. Such protected material may be
19 disclosed only to the categories of persons and under the conditions described in this Order.
20 When the litigation has been terminated, a receiving party must comply with the provisions of
21 Section 11 below (Final Disposition). Protected material must be stored and maintained by a
22 receiving party at a location and in a secure manner that ensures that access is limited to the
persons authorized under this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
24 otherwise ordered by the Court or permitted in writing by the designating party, a receiving party
may disclose any information or item designated CONFIDENTIAL only to:

- 1 a. The receiving party's outside counsel of record in this action, as well as
2 employees of counsel to whom it is reasonably necessary to disclose the
information for this litigation;
- 3 b. The officers, directors and employees (including house counsel) of the
4 receiving party to whom disclosure is reasonably necessary for this
litigation and who have signed the "Agreement to be Bound by Protective
Order" (*Exhibit A*);
- 5 c. Experts (as defined in this Order) of the Receiving party to whom
6 disclosure is reasonably necessary for this litigation and who have signed
the "Agreement to be Bound by Protective Order" (*Exhibit A*);
- 7 d. The Court and its personnel;
- 8 e. During their depositions, witnesses in the action to whom disclosure is
9 reasonable necessary and who have signed the "Agreement to be Bound
by Protective Order" (*Exhibit A*). Pages of transcribed deposition
testimony or exhibits to depositions that reveal protected material must be
separately bound by the court reporter and may not be disclosed to anyone
except as permitted under this Order.
- 10 f. The author, addressee, and any recipients of the document or the original
11 source of the information.

12 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEY EYES

13 ONLY" Information or Items. Unless otherwise ordered by the Court or permitted in writing by
14 the designating party, a receiving party may disclose any information or item designated
15 "HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY" only to:

- 16 a. The receiving party's outside counsel of record in this action, as well as
17 employees of counsel to whom it is reasonably necessary to disclose the
information for this litigation;
- 18 b. Experts (as defined in this Order (i) to whom disclosure is reasonably
necessary for this litigation and (ii) who have signed the "Agreement to be
Bound by Protective Order" (*Exhibit A*);
- 19 c. The Court and its personnel; and
- 20 d. The author, addressee, and any recipients of the document or the original
21 source of the information.

22 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL –

23 ATTORNEY EYES ONLY" Information or Items to "Experts"

- 24 a. Unless otherwise ordered by the Court or agreed in writing by the
25 designating party, a party that seeks to disclose to an expert (as defined in
26 this Order) any information or item that has been designated "HIGHLY
CONFIDENTIAL – ATTORNEY EYES ONLY" first must make a written
request to the designating party that (i) identifies the specific HIGHLY
CONFIDENTIAL information that the receiving party seeks permission to

1 disclose to the expert, (ii) sets forth the full name of the expert and the city
2 and state of his or her primary residence, (iii) attaches a copy of the
3 expert's current resume, and (iv) identifies the expert's current employer.

4

5 b. A party that makes a request and provides the information specified in
6 Section 7.4(a) may disclose the subject protected material to the identified
7 expert unless, within seven days of delivering the request, the party
8 receives a written objection from the designating party. Any such
9 objection must set forth in detail the grounds on which it is based.

10

11 c. A party that receives a timely written objection must meet and confer with
12 the designating party (through direct voice to voice dialogue) to try to
13 resolve the matter by agreement. If no agreement is reached, the party
14 seeking to make the disclosure to the expert may file a motion as provided
15 in LR 37-251 seeking permission from the Court to do so. Any such
16 motion must describe the circumstances with specificity, set forth in detail
17 the reasons for which the disclosure to the expert is reasonably necessary,
18 and assess the risk of harm that the disclosure would entail and suggest any
19 additional means that might be used to reduce that risk. In addition, any
20 such motion must be accompanied by a competent declaration in which the
21 movant describes the parties' efforts to resolve the matter by agreement
(i.e., the extent and the content of the meet and confer discussions) and sets
22 forth the reasons advanced by the designating party for its refusal to
23 approve the disclosure. In any such proceeding, the party opposing
24 disclosure to the expert shall bear the burden of providing that the risk of
25 harm that the disclosure would entail (under the safeguards proposed)
26 outweighs the receiving party's need to disclose the protected material to
its expert.

13 **8. Protected Material Subpoenaed or Ordered Produced in Other Litigation.** If

14 a receiving party is served with a subpoena or an order issued in other litigation that would
15 compel disclosure of any information or items designated in this action as "CONFIDENTIAL"
16 or "HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY," the receiving party must so
17 notify the designating party, in writing (by e-mail or fax, if possible) immediately and in no
18 event more than three court days after receiving the subpoena or order. Such notification must
19 include a copy of the subpoena or court order. The receiving party also must immediately
20 inform in writing the party who caused the subpoena or order to issue in the other litigation that
21 some or all the material covered by the subpoena or order is the subject of this Order. In
22 addition, the receiving party must deliver a copy of this Order promptly to the party in the other
23 action that caused the subpoena or order to issue. The purpose of imposing these duties is to
24 alert the interested parties to the existence of this Order and to afford the designating party in this
25 case an opportunity to try to protect its confidentiality interests in the court from which the
26 subpoena or order issued. The designating party shall bear the burdens and the expenses of
seeking protection in that court of its confidential material – and nothing in these provisions

1 should be construed as authorizing or encouraging a receiving party in this action to disobey a
2 lawful directive from another court.

3 **9. Unauthorized Disclosure of Protected Material.** If a receiving party learns
4 that, by inadvertence or otherwise, it has disclosed protected material to any person or in any
5 circumstance not authorized under this Order, the receiving party must immediately (a) notify in
6 writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all
7 copies of the protected material, (c) inform the person or persons to whom unauthorized
8 disclosures were made of all the terms of this Order, and (d) request such person or persons to
9 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as *Exhibit A*.

10 **10. Filing Protected Material.** Without written permission from the designating
11 party or a court order secured after appropriate notice to all interested persons, a party may not
12 file in the public record in this action any protected material. A party that seeks to file under seal
13 any protected material must comply with LR 39-141.

14 **11. Final Disposition.** Unless otherwise ordered or agreed in writing by the
15 producing party, within 60 days after the final termination of this action, each receiving party
16 must return all protected material to the producing party. As used in this subdivision, “all
17 protected material” includes all copies, abstracts, compilations, summaries or any other form of
18 reproducing or capturing any of the protected material. With permission in writing from the
19 designating party, the receiving party must destroy some or all of the protected material instead
20 of returning it. Whether the protected material is returned or destroyed, the receiving party must
21 submit a written certification to the producing party (and, if not the same person or entity, to the
22 designating party) by the 60-day deadline that identifies (by category, where appropriate) all the
23 protected material that was returned or destroyed and that affirms that the receiving party has not
24 retained any copies, abstracts, compilations, summaries or other forms of reproducing or
25 capturing any of the protected material. Notwithstanding this provision, counsel are entitled to
26 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
correspondence or attorney work product, even if such materials contain protected material. Any
such archival copies that contain or constitute protected material remain subject to this Order as
set forth in Section 4 (Duration) above.

12. Miscellaneous.

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

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

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.

/s/ S. Brett Sutton
S. Brett Sutton
Attorney for Plaintiff

/s/ Adam C. Smedstad
Adam C. Smedstad
Attorney for Defendant

Dated: November 16, 2010

Dated: November 16, 2010

IT IS SO ORDERED.

Dated: **November 17, 2010**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE