

1 WULFSBERG REESE COLVIG & FIRSTMAN
2 PROFESSIONAL CORPORATION
3 H. James Wulfsberg, SBN 046192
4 Gregory R. Aker, SBN 104171
5 Stephen L. Cali, SBN 133923
6 David J. Hyndman, SBN 193944
7 Kaiser Center
8 300 Lakeside Drive, 24th Floor
9 Oakland, California 94612-3524
10 Telephone: (510) 835-9100
11 Facsimile: (510) 451-2170

8 LANG, RICHERT & PATCH
9 Mark L. Creede, SBN 128418
10 Matthew W. Quall, SBN 183759
11 Fig Garden Financial Center
12 5200 North Palm Avenue, Fourth Floor
13 Fresno, CA 93704
14 Telephone: (559) 228-6700
15 Facsimile: (559) 228-6728

13 Attorneys for Plaintiff and Counterdefendant
14 BLACK & VEATCH CORPORATION

15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

18 BLACK & VEATCH CORPORATION,
19 Plaintiff,
20 vs.
21 MODESTO IRRIGATION DISTRICT,
22 Defendant.
23

Case No. 1:11-cv-00695 LJO SKO

24 **STIPULATION AND PROTECTIVE**
25 **ORDER REGARDING RECOVERY OF**
26 **ELECTRONIC DATA**

24 AND RELATED ACTIONS.
25

1 **A. Purpose of the Protective Order**

2 Through its requests for production of documents in this litigation, plaintiff and counter-
3 defendant, Black & Veatch Corporation, has sought the production from defendant and
4 counterclaimant, Modesto Irrigation District (MID) of MID’s emails and email attachments
5 relating to the Phase Two Expansion and Optimization of the Modesto Regional Water Treatment
6 Plant (the “Project”). Prior to 2008, MID used GroupWise as its email system. MID no longer
7 maintains the computer equipment or software needed to access its GroupWise emails, which are
8 stored on backup tapes that MID maintains at or nearby its offices in Modesto. In addition to
9 emails relating to the Project, MID’s backup tapes may contain GroupWise emails relating to its
10 provision of electric services, including data protected by regulations of the North American
11 Electric Reliability Corporation (NERC).

12 Black & Veatch has obtained a proposal from its electronic discovery consultant, Iris Data
13 Services and its consultant, Data Recovery Systems (hereinafter, collectively, IDS), for recovery
14 of the GroupWise emails from MID’s backup tapes and processing the emails so that they may be
15 searched, reviewed and, if relevant and not privileged, produced in discovery . MID is willing to
16 allow IDS access to the backup tapes, so that IDS may test, catalog, recover and process the
17 GroupWise emails, provided MID is assured that the security of the data contained on the tapes is
18 protected, in accordance with NERC regulations. Black & Veatch and MID wish to facilitate for
19 production of certain emails and email attachments relevant to the Project, while at the same time
20 protecting data contained on MID’s backup tapes that is subject to NERC regulations.

21 Accordingly, Black & Veatch and MID stipulate as follows:

22 **B. Local Rule 141.1**

23 This stipulated protective order (the “Protective Order”) is entered into pursuant to Rule
24 141.1 of the Local Rules of Practice for the U.S. District Court for the Eastern District of
25 California, covering Orders Protecting Confidential Information.

26 **1. Description of the Types of Information Eligible for Protection.**

27 The Order protects MID’s electronically stored records, including, but not limited to,
28 GroupWise emails and email attachments (the “GroupWise Data”) relating to MID’s provision of

1 electric services that is subject to NERC regulations as information associated with Critical Cyber
2 Assets.

3 **2. Showing of Particularized Need for Protection.**

4 Protection of MID's GroupWise Data containing information associated with Critical
5 Cyber Assets, as described in paragraph 2, is needed because, without such protection, MID would
6 by law be unable to provide IDS access to the backup tapes that contain the GroupWise Data that
7 is relevant to the above-captioned litigation. If MID were to allow such access without a
8 protective order, it would expose itself to the risk of substantial monetary sanctions. Further, the
9 electronic records/data to which IDS may be given access contains non-responsive, privileged and
10 confidential information.

11 **3. Why the Need for Protection Should Be Addressed by a Court Order.**

12 In order to comply with NERC regulations, MID must strictly protect information
13 associated with Critical Cyber Assets. A court order is necessary in this case to provide MID the
14 greatest possible assurance that information associated with Critical Cyber Assets is protected
15 from disclosure, as required by law, and that privileged and/or confidential information, which is
16 not responsive is not disseminated.

17 **C. Terms of the Protective Order**

18 1. IDS is permitted access to MID's backup tapes on which the GroupWise Data is stored,
19 solely for the purposes of testing and cataloging the backup tapes, and, subject to the parties
20 identification of pertinent times and sharing of costs, restoring the GroupWise Data that is
21 contained on such tapes, and processing the data so that it can be searched and relevant/non-
22 privileged GroupWise Data produced in discovery. Access to the backup tapes and GroupWise
23 Data shall be limited to the following individuals, each of whom agrees not to disclose to any
24 other person any of the data contained on the backup tapes, including GroupWise Data, and by
25 signing Attachment "A" to this Protective Order, agrees to be bound by its terms.

26 **Iris Data Services**

27 Jim Oliverius

28 Holly Jenks

1 Bryan Allen

2 Drew Kartes

3 Scott Berger

4 Data Recovery Systems

5 John Glauvitz

6 John Svec

7 Steve Morgan

8 2. In cataloging and restoring the GroupWise Data, MID's original GroupWise backup
9 tapes shall at all times remain at MID's offices in Modesto, California. IDS may test and catalog
10 the backup tapes at MID's offices and may make encrypted copies of any of the tapes containing
11 GroupWise Data. Prior to the removal of such encrypted copy, IDS shall provide MID and Black
12 & Veatch with a catalog of the copied tapes. To enable IDS to restore the GroupWise Data, IDS
13 may remove the encrypted copies of backup tapes from MID's offices for transport to IDS's
14 laboratories, at which the restoration and processing of GroupWise data will be performed, which
15 shall consist of the restoration of the mail boxes of the following MID personnel: Greg Dias,
16 Regina Cox, Ken Edwards, Claudia Hidahl, Pat Ryan, Walter Ward, Allen Domecq, Bill Ketscher,
17 and Allen Short. In performing such work, including cataloging, encryption, transport, data
18 restoration and processing, only those individuals named above shall at any time have access to
19 the backup tapes or GroupWise Data, which will at all times be maintained in encrypted form.
20 Only one encrypted copy of the backup tapes selected for restoration shall be created, which is not
21 to be duplicated in part or in whole. As soon as restoration and processing of the GroupWise Data
22 is complete, IDS shall destroy or purge all remaining data received from MID, including any and
23 all copies of such data, and will provide MID and Black & Veatch a certificate of such destruction.
24 Following the restoration of the mail boxes, IDS shall deliver two copies of each mailbox restored
25 to counsel for MID, for review as to relevance, privilege and confidentiality, with the resulting
26 documents produced to Black & Veatch. Upon notice from MID, IDS shall destroy any copies of
27 all or any part of the mail boxes, and provide MID and Black & Veatch with a certificate of such
28 destruction.

1 3. This Protective Order shall survive the final termination of this action, and the Court
2 shall retain jurisdiction to resolve any dispute arising under the Protective Order.

3 **D. Unauthorized Disclosure Of the GroupWise Data.**

4 If a Party bound by this protective order learns that, by inadvertence or otherwise, it has
5 disclosed GroupWise Data to any person or in any circumstance not authorized under this
6 Stipulated Protective Order, that Party must immediately (a) notify in writing the other Parties of
7 the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
8 GroupWise Data, (c) inform the person or persons to whom the unauthorized disclosures were
9 made of all the terms of this Order, and (d) request such person or persons to execute Exhibit “A”
10 hereto.

11 **E. Inadvertent Production of Privileged or Otherwise Protected Material.**

12 If MID gives notice to Black & Veatch that certain inadvertently produced material is
13 subject to a claim of privilege or other protection, the obligations of Black & Veatch are those set
14 forth in Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal Rule of Evidence 502(d)
15 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or
16 information covered by the attorney-client privilege or work product protection, the parties may
17 incorporate their agreement in the stipulated protective order submitted to the court.

18 **F. Miscellaneous.**

19 **1. Right to Further Relief.**

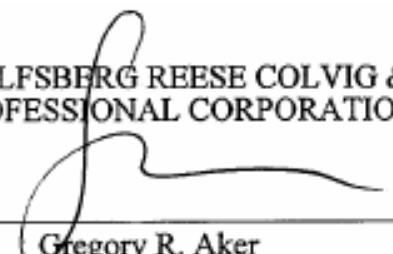
20 Nothing in this Order abridges the right of any person to seek its modification by the court
21 in the future.

22 **2. Right to Assert Other Objections.**

23 By stipulating to the entry of this Protective Order, neither Black & Veatch nor MID
24 waives any right it otherwise would have to object to disclosing or producing any information or
25 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party hereto
26 waives any right to object on any ground to use in evidence of any of the material covered by this
27 Stipulated Protective Order.
28

1 DATED: August 7, 2012

WULFSBERG REESE COLVIG & FIRSTMAN
PROFESSIONAL CORPORATION

2
3 By 
Gregory R. Aker

4
5 Attorneys for Plaintiff and Counterdefendant
BLACK & VEATCH CORPORATION

6 DATED: August 7, 2012

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH, LLP

7
8 By 
9 Stephen E. Carroll

10
11 Attorneys for Defendant and Counterclaimant
MODESTO IRRIGATION DISTRICT

12
13
14 **ORDER**

15 Based upon the stipulation of Black & Veatch and MID, as set forth above, and good cause
16 appearing therefor,

17
18
19 IT IS SO ORDERED.

20
21 Dated: August 8, 2012

/s/ Sheila K. Oberto
22 UNITED STATES MAGISTRATE JUDGE