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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PETER OLNEY,) CASE NO.: 1:12-cv-00992-LJO-GSA

Plaintiff, } **STIPULATED PROTECTIVE
ORDER**

VS.

HUNT & HENRIQUES,

Defendant.

1 The Court recognizes that at least some of the documents and information
2 ("materials") being sought through discovery in the above-captioned action are, for
3 competitive reasons, normally kept confidential by the parties. The parties have
4 agreed to be bound by the terms of this Protective Order ("Order") in this action.
5 The materials to be exchanged throughout the course of the litigation between the
6 parties may contain trade secret or other confidential research, technical, cost, price,
7 marketing or other commercial information, as is contemplated by Federal Rule of
8 Civil Procedure 26(c)(7). The purpose of this Order is to protect the confidentiality
9 of such materials as much as practical during the litigation. THEREFORE:

10 1. PURPOSES AND LIMITATIONS

11 Disclosure and discovery activity in this action are likely to involve production
12 of confidential, proprietary, or private information for which special protection from
13 public disclosure and from use for any purpose other than prosecuting this litigation
14 would be warranted. Accordingly, the parties hereby stipulate to and petition the
15 Court to enter the following Stipulated Protective Order. The parties acknowledge
16 that this Order does not confer blanket protections on all disclosures or responses to
17 discovery and that the protection it affords extends only to the limited information or
18 items that are entitled under the applicable legal principles to treatment as
19 confidential. The parties further acknowledge, as set forth in Section 10, below, that
20 this Protective Order creates no entitlement to file confidential information under
21 seal; L.R. 141 sets forth the procedures that must be followed and reflects the
22 standards that will be applied when a party seeks permission from the court to file
23 material under seal.

24 2. DEFINITIONS

25 2.1 Party: any party to this action, including all of its officers,
26 directors, employees, consultants, retained experts, and outside counsel (and their
27 support staff).

1 2.2 Disclosure or Discovery Material: all items or information,
2 regardless of the medium or manner generated, stored, or maintained (including,
3 among other things, testimony, transcripts, or tangible things) that are produced or
4 generated in disclosures or responses to discovery in this matter.

5 2.3 “Confidential” Information or Items: information (regardless of
6 how generated, stored or maintained) or tangible things that qualify for protection
7 under standards developed under Fed .R. Civ. P. 26(c). Counsel shall not designate
8 discovery materials as “Confidential” without first making a good faith
9 determination that protection is warranted.

10 2.4 “Highly Confidential - Attorneys’ Eyes Only” Information or
11 Items: extremely sensitive “Confidential Information or Items” whose disclosure to
12 another Party or non-party would created a substantial risk of serious injury that
13 could not be avoided by less restrictive means. Counsel shall not designate
14 discovery materials as “Highly Confidential” without first making a good faith
15 determination that protection is warranted.

16 2.5 Receiving Party: a Party that receives Disclosure or Discovery
17 Material from a Producing Party.

18 2.6 Producing Party: a Party or non-party that produces Disclosure or
19 Discovery Material in this action.

20 2.7 Designating Party: a Party or non-party that designates
21 information or items that it produces in disclosures or in responses to discovery as
22 “Confidential” or Highly Confidential - Attorneys’ Eyes Only.”

23 2.8 Protected Material: any Disclosure or Discovery Material that is
24 designated as “Confidential” or as “Highly Confidential - Attorneys’ Eyes Only.”

25 2.9 Outside Counsel: attorneys who are not employees of a Party but
26 who are retained to represent or advise a Party in this action.

27 2.10 House Counsel: attorneys who are employees of a Party.

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

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

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

12 3. SCOPE

13 The protections conferred by this Stipulation and Order cover not only
14 Protected Material (as defined above), but also any information copied or extracted
15 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
16 testimony, conversations, or presentations by parties or counsel to or in court or in
17 other settings that might reveal Protected Material.

18 4. DURATION

19 Even after the termination of this litigation, the confidentiality obligations
20 imposed by this Order shall remain in effect until a Designating Party agrees
21 otherwise in writing or a court order otherwise directs.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for
24 Protection: Each Party or non-party that designates information or items for
25 protection under this Order must take care to limit any such designation to specific
26 material that qualifies under the appropriate standards. A Designating Party must
27 take care to designate for protection only those parts of material, documents, items,
28 or oral or written communications that qualify - so that other portions of the material

1 documents, items or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited.

4 Designations that are shown to be clearly unjustified, or that have been made for an
5 improper purpose (e.g. to unnecessarily encumber or retard the case development
6 process, or to impose unnecessary expenses and burdens on other parties), expose the
7 Designating Party to sanctions.

8 If it comes to a Party's or a non-party's attention that information or
9 items that it designated for protection do not qualify for protection at all, or do not
10 qualify for the level of protection initially asserted, that Party or non-party must
11 promptly notify all other parties that it is withdrawing the mistaken designation.

12 **5.2 Manner and Timing of Designations:** Except as otherwise
13 provided in this Order (see, e.g. second paragraph of section 5.2(a), below), or as
14 otherwise stipulated or ordered, material that qualifies for protection under this Order
15 must be clearly so designated before the material is disclosed or produced; provided,
16 however, that the parties agree that materials that have been produced by the parties
17 in this action prior to the entry of this Order may, within 14 days of the entry of this
18 Order, be designated as subject to the protections of this Order.

19 Designation in conformity with this Order requires:

20 (a) **for information in documentary form** (apart from transcripts of
21 depositions or other pretrial or trial proceedings), that the Producing Party affix the
22 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
23 ONLY" at the bottom of each page that contains protected material. If only a portion
24 of portions of the material on a page qualifies for protection, the Producing Party
25 also must clearly identify the protected portion(s) (e.g., by making appropriate
26 markings in the margins) and must specify, for each portion, the level of protection
27 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -
28 ATTORNEYS' EYES ONLY").

1 A Party or non-party that makes original documents or materials
2 available for inspection need not designate them for protection until after the
3 inspecting Party has indicated which material it would like copied and produced.
4 During the inspection and before the designation, all of the material made available
5 for inspection shall be deemed “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
6 ONLY.” After the inspecting Party has identified the document it wants copied and
7 produced, the Producing Party must determine which documents, or portions thereof,
8 qualify for protection under this Order, then, before producing the specified
9 documents, the Producing Party must affix the appropriate legend
10 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
11 ONLY”) at the bottom of each page that contains Protected Material. If only a
12 portion or portions of the material on a page qualifies for protection, the Producing
13 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
14 markings in the margins) and must specify, for each portion, the level of protection
15 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
16 ATTORNEYS’ EYES ONLY”).

17 (b) for testimony given in deposition or in other pretrial or trial
18 proceedings, that the Party or non-party offering or sponsoring the testimony identify
19 on the record, before the close of the deposition, hearing, or other proceeding, all
20 protected testimony, and further specify any portions of the testimony that qualify as
21 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” When it is
22 impractical to identify separately each portion of testimony that is entitled to
23 protection, and when it appears that substantial portions of the testimony may qualify
24 for protection, the Party or non-party that sponsors, offers, or gives the testimony
25 may invoke on the record (before the deposition or proceeding is concluded) a right
26 to have up to 20 days from the date of receipt of the transcript to identify the specific
27 portions of the testimony as to which protection is sought and to specify that level of
28 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -

ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are
appropriately designated for protection within the 20 days shall be covered by the
provisions of this Stipulated Protective Order.

Transcript pages containing Protected Material must be separately
bound by the court reporter, who must affix to the top of each such page the legend
"CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
ONLY," as instructed by the Party or non-party offering or sponsoring the witness or
presenting the testimony.

(c) for information produced in some form other than
documentary, and for any other tangible items, that the Producing Party affix in a
prominent place on the exterior of the container or containers in which the
information or item is stored the legend "CONFIDENTIAL" or "HIGHLY
CONFIDENTIAL - ATTORNEYS' EYES ONLY." If only portions of the
information or item warrant protection, the Producing Party, to the extent practicable,
shall identify the protected portions, specifying whether they qualify as
"Confidential" or as "Highly Confidential - Attorneys' Eyes Only."

5.3 Inadvertent Failures to Designate: If timely corrected, an
inadvertent failure to designate qualified information or items as "Confidential" or
"Highly Confidential - Attorneys' Eyes Only" does not, standing alone, waive the
Designating Party's right to secure protection under this Order for such material. If
material is appropriately designated as "Confidential" or "Highly Confidential -
Attorneys' 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 the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges: Unless a prompt challenge to a
Designating Party's confidentiality designation is necessary to avoid foreseeable
substantial unfairness, unnecessary economic burdens, or a later significant
disruption or delay of the litigation, a Party does not waive its right to challenge a

1 confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed.

2 6.2 Meet and Confer: A Party that elects to initiate a challenge to a
3 Designating Party's confidentiality designation must do so in good faith and must
4 begin the process by conferring directly or in writing with counsel for the
5 Designating Party. In conferring, the challenging Party must explain the basis for its
6 belief that the confidentiality designation was not proper and must give the
7 Designating Party an opportunity to review the designated material, to reconsider the
8 circumstances, and, if no change in designation is offered, to explain the basis for the
9 chosen designation. A challenging Party may proceed to the next stage of the
10 challenge process only if it has engaged in this meet and confer process first.

11 6.3 Judicial Intervention: A party that elects to press a challenge to a
12 confidentiality designation after considering the justification offered by the
13 Designating Party may file and serve a motion under L.R. 7-4 that identifies the
14 challenged material and sets forth in detail the basis for the challenge. Each such
15 motion must be accompanied by a competent declaration that affirms that the movant
16 has complied with the meet and confer requirements imposed in the preceding
17 paragraph and that sets forth with specificity the justification for the confidentiality
18 designation that was given by the Designating Party in the meet and confer dialogue.

19 The burden of persuasion in any such challenge proceeding shall be on the
20 Designating Party. Until the court rules on the challenge, all parties shall continue to
21 afford the material in question the level of protection to which it is entitled under the
22 Designating Party's designation.

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles: A Receiving Party may use Protected Material
25 that is disclosed or produced by another Party or by a non-party in connection with
26 this case only for prosecuting, defending, or attempting to settle this litigation. Such
27 Protected Material may be disclosed only to the categories of persons and under the
28 conditions described in this Order. When the litigation has be terminated, a

1 Receiving Party must comply with the provisions of section 11, below (FINAL
2 DISPOSITION).

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

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items: Unless
6 otherwise ordered by the court or permitted in writing by the Designating Party, a
7 Receiving Party may disclose any information or item designated CONFIDENTIAL
8 only to:

9 (a) the Receiving Party’s Outside Counsel of record in this action,
10 as well as employees of said Counsel to whom it is reasonably necessary to disclose
11 the information for this litigation and who have signed the “Agreement to Be Bound
12 by Protective Order” that is attached hereto as Exhibit A;

13 (b) the officers, directors, and employees (including House
14 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
15 litigation and who signed the “Agreement to Be Bound by Protective Order” (Exhibit
16 A);

17 (c) experts (as defined in this Order) of the Receiving Party to
18 whom disclosure is reasonably necessary for this litigation and who have signed the
19 “Agreement to Be Bound by Protective Order” (Exhibit A);

20 (d) the Court and its personnel;

21 (e) court reporters, their staffs, and professional vendors to whom
22 disclosure is reasonably necessary for this litigation and who have signed the
23 “Agreement to Be Bound by Protective Order” (Exhibit A);

24 (f) during their depositions, witnesses in the action to whom
25 disclosure is reasonably necessary and who have signed the “Agreement to be Bound
26 by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or
27 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
1 Stipulated Protective Order.

2 (g) the author of the document or the original source of the
3 information.

4 **7.3 Disclosure of “HIGHLY CONFIDENTIAL - ATTORNEYS’**
5 **EYES ONLY” Information or Items:** Unless otherwise ordered by the court or
6 permitted in writing by the Designating Party, a Receiving Party may disclose any
7 information or item designated “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
8 ONLY” only to:

9 (a) the Receiving Party’s Outside Counsel of record in this action,
10 as well as employees of said Counsel to whom it is reasonably necessary to disclose
11 the information for this litigation and who signed the “Agreement to Be Bound by
12 Protective Order” that is attached hereto as Exhibit A;

13 (b) Experts (as defined in this Order) (1) to whom disclosure is
14 reasonably necessary for this litigation, (2) who have signed the “Agreement to Be
15 Bound by Protective Order” (Exhibit A), and (3) as to whom the procedures set forth
16 in paragraph 7.4, below, have been followed;

17 (c) the Court and its personnel;

18 (d) court reporters, their staffs, and professional vendors to whom
19 disclosure is reasonably necessary for this litigation and who have signed the
20 “Agreement to Be Bound by Protective Order” (Exhibit A); and

21 (e) the author of the document or the original source of the
22 information.

23 **7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL**
24 **- ATTORNEYS’ EYES ONLY” Information or Items to “Experts”**

25 (a) Unless otherwise ordered by the court or agreed in writing by
26 the Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this
27 Order) any information or item that has been designated “HIGHLY
28 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” first must make a written request

to the Designating Party that (1) identifies the specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity from whom the Expert has received compensation for work in his or her areas of expertise or to whom the expert has provided professional services at any time during the preceding five years, and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has provided any professional services during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding paragraph may disclose the subject Protected Material to the identified Expert unless, within seven days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objections must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 230 (and in compliance with Civil Local Rule 141, if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons for which the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and suggest any additional means that might be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration in which the 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 forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

1 In any such proceeding the Party opposing disclosure to the
2 Expert shall bear the burden of proving that the risk of harm that the disclosure
3 would entail (under the safeguards proposed) outweighs the Receiving Party's need
4 to disclose the Protected Material to its Expert.

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
6 PRODUCED IN OTHER LITIGATION

7 If a Receiving Party is served with a subpoena or an order issued in other
8 litigation that would compel disclosure of any information or items designated in this
9 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS'
10 EYES ONLY," the Receiving Party must so notify the Designating Party, in writing
11 (by fax, if possible) immediately and in no event more than three court days after
12 receiving the subpoena or order. Such notification must include a copy of the
subpoena or court order.

13 The Receiving Party also must immediately inform in writing the Party who
14 caused the subpoena or order to issue in the other litigation that some or all the
15 material covered by the subpoena or order is the subject of this Protective Order. In
16 addition, the Receiving Party must deliver a copy of this Stipulated Protective Order
17 promptly to the Party in the other action that caused the subpoena or order to issue.

18 The purpose of imposing these duties is to alert the interested parties to the
19 existence of this Protective Order to afford the Designating Party in this case an
20 opportunity to try to protect its confidentiality interests in the court from which the
21 subpoena or order issued. The Designating Party shall bear the burdens and the
22 expenses of seeking protection in that court of its confidential material - and nothing
23 in these provisions should be construed as authorizing or encouraging a Receiving
24 Party in this action to disobey a lawful directive from another court.

25 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
27 Protected Material to any person or in any circumstance not authorized under this
28 Stipulated Protective Order, the Receiving Party must immediately (a) notify in

writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
1 to retrieve all copies of the Protected Material, (c) inform the person or persons to
2 whom unauthorized disclosures were made of all the terms of this Order, and (d)
3 request such person or persons to execute the “Acknowledgment and Agreement to
4 Be Bound” that is attached hereto as Exhibit A.

5 10. FILING PROTECTED MATERIAL

6 Without written permission from the Designating Party or a court order
7 secured after appropriate notice to all interested persons, a Party may not file in the
8 public record in this action any Protected Material. A Party that seeks to file under
9 seal any Protected Material must comply with L.R. 141.

10 11. FINAL DISPOSITION

11 After final termination of this action the Receiving Party, upon written request
12 of the Producing Party, shall destroy all Protected Material produced by the
13 Producing Party. After final termination of this action, the Receiving Party may also
14 destroy any Protected material received from the Producing Party without prior
15 consent from the Producing Party. As used in this subdivision, “all Protected
16 Material” includes all copies, abstracts, compilations, summaries or any other form
17 of reproducing or capturing any of the Protected Material. With permission in
18 writing from the Designating Party, the Receiving Party may destroy some or all of
19 the Protected Material instead of returning it. Whether the Protected Material is
20 returned or destroyed, the Receiving Party must submit a written certification to the
21 Producing Party (and, if not the same person or entity, to the Designating Party) by
22 the sixty day deadline that identifies (by category, where appropriate) all the
23 Protected material that was returned or destroyed and that affirms that the Receiving
24 Party has not retained any copies, abstracts, compilations, summaries or other forms
25 of reproducing or capturing any of the Protected Material. Counsel for Plaintiff is a
26 paperless office and will purge its file 60 days after termination of the action.
27 Notwithstanding this provision, Counsel are entitled to retain any archival copy of all
28 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 Protective 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 Protective 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 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

11 **ORDER**

12 Upon a review of the stipulation, the Court adopts the parties' protective order
13 in full.

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IT IS SO ORDERED.

1 **Dated: February 15, 2013**

2 /s/ Gary S. Austin
3 UNITED STATES MAGISTRATE JUDGE

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