

1 SPIRO LAW CORP.
IRA SPIRO (SBN 67641)
2 ira@spirolawcorp.com
JENNIFER CONNOR (SBN 241480)
3 jennifer@spirolawcorp.com
11377 W. Olympic Blvd., 5th Floor
4 Los Angeles, California 90064-1683
Telephone: (310) 235-2350
5 Facsimile: (310) 235-2351

6 BLANCHARD LAW GROUP, APC
JEFF HOLMES (SBN 100891)
7 jeffholmesjh@gmail.com
3311 East Pico Boulevard
8 Los Angeles, California 90023
Telephone: (213) 599-8253
9 Facsimile: (213) 402-3949

10 Attorneys for Plaintiffs SARMAD SYED and
ASHLEY BALFOUR

11 MORGAN, LEWIS & BOCKIUS LLP
GEORGE A. STOHNER (SBN 214508)
12 gstohner@morganlewis.com
JASON S. MILLS (SBN 225126)
13 jmills@morganlewis.com
ALEXANDER M. CHEMERS (SBN 263726)
14 achemers@morganlewis.com
300 South Grand Avenue
15 Twenty-Second Floor
Los Angeles, CA 90071-3132
16 Tel: 213.612.2500
Fax: 213.612.2501

17 Attorneys for Defendant M-I L.L.C.
18

19 UNITED STATES DISTRICT COURT

20 EASTERN DISTRICT OF CALIFORNIA

21 SARMAD SYED, individually, and on behalf
of all others similarly situated, ASHLEY
22 BALFOUR, individually, and on behalf of all
others similarly situated,

23
24 Plaintiffs,

25 vs.

26 M-I, L.L.C., a Delaware Limited Liability
Company, doing business as M-I SWACO;
27 and, DOES 1 through 10, inclusive,

28 Defendants.

Case No.: 1:12-CV-01718-AWI-MJS

STIPULATED PROTECTIVE ORDER

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I. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the 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 the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; the Eastern District of California’s Local Rules, including Local Rule 141 set forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

II. DEFINITIONS

- 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.
- 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).
- 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).
- 2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”
- 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

1 However, the protections conferred by this Stipulation and Order do not cover the following
2 information: (a) any information that is in the public domain at the time of disclosure to a
3 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
4 a result of publication not involving a violation of this Order, including becoming part of the
5 public record through trial or otherwise; and (b) any information known to the Receiving Party
6 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
7 obtained the information lawfully and under no obligation of confidentiality to the Designating
8 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

9 **IV. DURATION**

10 Even after final disposition of this litigation, the confidentiality obligations imposed by
11 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
12 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
13 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
14 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
15 including the time limits for filing any motions or applications for extension of time pursuant to
16 applicable law.

17 **V. DESIGNATING PROTECTED MATERIAL**

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
19 or Non-Party that designates information or items for protection under this Order must take care
20 to limit any such designation to specific material that qualifies under the appropriate standards.
21 The Designating Party must designate for protection only those parts of material, documents,
22 items, or oral or written communications that qualify – so that other portions of the material,
23 documents, items, or communications for which protection is not warranted are not swept
24 unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
26 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
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1 unnecessarily encumber or retard the case development process or to impose unnecessary
2 expenses and burdens on other parties) expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it designated
4 for protection do not qualify for protection, that Designating Party must promptly notify all other
5 Parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
7 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
8 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
9 designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic documents, but
12 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
13 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only
14 a portion or portions of the material on a page qualifies for protection, the Producing Party also
15 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
16 margins).

17 A Party or Non-Party that makes original documents or materials available for inspection
18 need not designate them for protection until after the inspecting Party has indicated which
19 material it would like copied and produced. During the inspection and before the designation, all
20 of the material made available for inspection shall be deemed "CONFIDENTIAL." After the
21 inspecting Party has identified the documents it wants copied and produced, the Producing Party
22 must determine which documents, or portions thereof, qualify for protection under this Order.
23 Then, before producing the specified documents, the Producing Party must affix the
24 "CONFIDENTIAL" legend to each page that contains Protected Material. If only a portion or
25 portions of the material on a page qualifies for protection, the Producing Party also must clearly
26 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

27 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
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1 Designating Party identify on the record, before the close of the deposition, hearing, or other
2 proceeding, all protected testimony, unless the Parties jointly agree on the record to an alternative
3 timeframe for such designations, or otherwise are ordered by the Court.

4 (c) for information produced in some form other than documentary and for any other
5 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
6 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a
7 portion or portions of the information or item warrant protection, the Producing Party, to the
8 extent practicable, shall identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items does not, standing alone, waive the Designating Party’s
11 right to secure protection under this Order for such material. Upon timely correction of a
12 designation, the Receiving Party must make reasonable efforts to assure that the material is
13 treated in accordance with the provisions of this Order.

14 VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
16 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
18 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
19 challenge a confidentiality designation by electing not to mount a challenge promptly after the
20 original designation is disclosed.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
22 process by providing written notice of each designation it is challenging and describing the basis
23 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
24 notice must recite that the challenge to confidentiality is being made in accordance with this
25 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
26 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
27 forms of communication are not sufficient) within 14 days of the date of service of notice. In
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1 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
2 designation was not proper and must give the Designating Party an opportunity to review the
3 designated material, to reconsider the circumstances, and, if no change in designation is offered,
4 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
5 stage of the challenge process only if it has engaged in this meet and confer process first or
6 establishes that the Designating Party is unwilling to participate in the meet and confer process in
7 a timely manner.

8 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
9 intervention, the Designating Party shall file and serve a motion to retain confidentiality under the
10 Local Rules within 21 days of the initial notice of challenge or within 14 days of the parties
11 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.
12 Each such motion must be accompanied by a competent declaration affirming that the movant has
13 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by
14 the Designating Party to make such a motion including the required declaration within 21 days (or
15 14 days, if applicable) shall automatically waive the confidentiality designation for each
16 challenged designation. In addition, the Challenging Party may file a motion challenging a
17 confidentiality designation at any time if there is good cause for doing so, including a challenge to
18 the designation of a deposition transcript or any portions thereof. Any motion brought pursuant
19 to this provision must be accompanied by a competent declaration affirming that the movant has
20 complied with the meet and confer requirements imposed by the preceding paragraph.

21 The burden of persuasion in any such challenge proceeding shall be on the Designating
22 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
23 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
24 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
25 file a motion to retain confidentiality as described above, all parties shall continue to afford the
26 material in question the level of protection to which it is entitled under the Producing Party's
27 designation until the court rules on the challenge.
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VII. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless 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:

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

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

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

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),

unless otherwise agreed by the Designating Party or ordered by the Court. Pages of

1 transcribed deposition testimony or exhibits to depositions that reveal Protected Material may not
2 be disclosed to anyone except as permitted under this Stipulated Protective Order.

3 (g) the author or recipient of a document containing the information or a custodian or
4 other person who otherwise possessed or knew the information.

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

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8 If a Party is served with a subpoena or a court order issued in other litigation that compels
9 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
10 must:

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

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

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

18 If the Designating Party timely seeks a protective order, the Party served with the
19 subpoena or court order shall not produce any information designated in this action as
20 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
21 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
22 shall bear the burden and expense of seeking protection in that court of its confidential material –
23 and nothing 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 **IX. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
26 **THIS LITIGATION**

27 (a) The terms of this Order are applicable to information produced by a Non-Party in
28 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in

1 connection with this litigation is protected by the remedies and relief provided by this Order.
2 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
3 additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to produce a
5 Non-Party's confidential information in its possession, and the Party is subject to an agreement
6 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

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

10 (2) promptly provide the Non-Party with a copy of the Stipulated
11 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
12 description of the information requested; and

13 (3) make the information requested available for inspection by the
14 Non-Party.

15 (c) If the Non-Party fails to object or seek a protective order from this court within 14
16 days of receiving the notice and accompanying information, the Receiving Party may produce the
17 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
18 seeks a protective order, the Receiving Party shall not produce any information in its possession
19 or control that is subject to the confidentiality agreement with the Non-Party before a
20 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
21 burden and expense of seeking protection in this court of its Protected Material.

22 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

3 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
4 **PROTECTED MATERIAL**

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

14 **XII. MISCELLANEOUS**

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
16 seek its modification by the court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
18 Order no Party waives any right it otherwise would have to object to disclosing or producing any
19 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
20 no Party waives any right to object on any ground to use in evidence of any of the material
21 covered by this Protective Order.

22 12.3 Filing Protected Material. Without written permission from the Designating Party
23 or a court order secured after appropriate notice to all interested persons, a Party may not file in
24 the public record in this action any Protected Material. If the Party seeking to file papers
25 containing information or materials designated “Confidential” is not the Designating Party of
26 those materials, the Party must first file and serve an application to file under seal and proposed
27 order in accordance with applicable rules. The application must state the fact that the Designating
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1 Party has designated the information or items as Protected Material. The Designating Party must
2 then promptly file and serve a declaration in support of the pending application to seal the
3 Protected Material for purposes of establishing the requisite good cause and/or compelling
4 reasons to seal, or withdraw its “Confidential” designation. If the Designating Party does not file
5 a supporting declaration, the filing Party is not responsible if that Protected Material is ordered
6 available to the public. If the application to seal is denied, the filing Party may re-submit the
7 document in a manner that conforms to the Court’s order and the re-submitted documents are
8 deemed filed as of the date they were originally lodged. Any Party that seeks to file under seal
9 any Protected Material must comply with the Eastern District of California’s Local Rules.

10 **XIII. FINAL DISPOSITION**

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

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