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17 UNITED STATES DISTRICT COURT  
18 EASTERN DISTRICT OF CALIFORNIA

19 STEPHEN HALE and O'BRIAN  
20 RANGEL Individually, on Behalf of  
21 Themselves, and All Others Similarly  
22 Situated,

Plaintiff,

v.

24 ENSIGN ENERGY SERVICES, INC.,  
25 ENSIGN UNITED STATES  
26 DRILLING INC., and ENSIGN  
27 UNITED STATES DRILLING  
28 (CALIFORNIA) INC.,

Defendants.

**Case No: 1:15-CV-01042-MCE-JLT**

**STIPULATED PROTECTIVE  
ORDER  
(Doc. 39)**

1     1.     PREAMBLE

2             1.1 PURPOSES AND LIMITATIONS

3             Discovery in this action is likely to involve production of confidential,  
4 proprietary, or private information for which special protection from public  
5 disclosure and use for any purpose other than prosecuting this litigation may be  
6 warranted. Accordingly, the parties hereby stipulate and petition the Court to enter  
7 the following Stipulated Protective Order. The parties acknowledge that this Order  
8 does not confer blanket protections on all disclosures or responses to discovery  
9 and that the protection it affords from public disclosure and use extends only to  
10 the limited information or items that are entitled to confidential treatment under  
11 applicable legal principles. The parties further acknowledge, as set forth in  
12 Section 12.3, below, that this Stipulated Protective Order does not entitle them to  
13 file confidential information under seal; Local Rules of the United States District  
14 Court, Eastern District of California (“Local Rule”), rule 141 sets forth the  
15 procedures that must be followed and the standards that will be applied when a  
16 party seeks permission from the court to file material under seal.

17             1.2 GOOD CAUSE STATEMENT

18             This action is likely to involve trade secrets, customer lists, pricing lists,  
19 and other valuable research, development, commercial, financial, technical, and/or  
20 proprietary information for which special protection from public disclosure and  
21 use for any purpose other than prosecution of this action is warranted. Such  
22 confidential and proprietary materials and information consist of, among other  
23 things, confidential business or financial information, information regarding  
24 confidential business practices, or other confidential research, development, or  
25 commercial information, information otherwise generally unavailable to the  
26 public, or which may be privileged or otherwise protected from disclosure under  
27 state or federal statutes, court rules, case decisions, or common law. Accordingly,  
28 to expedite the flow of information, facilitate the prompt resolution of disputes

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

10  
11 2. DEFINITIONS

12 2.1 Action: this pending law suit.

13 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
14 of information or items under this Order.

15 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
16 how it is generated, stored, or maintained) or tangible things that qualify for  
17 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
18 the Good Cause Statement.

19 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
20 their support staff).

21 2.5 Designating Party: a Party or Non-Party that designates information or  
22 items that it produces in disclosures or in responses to discovery as  
23 “CONFIDENTIAL.”

24 2.6 Disclosure or Discovery Material: all items or information, regardless of  
25 the medium or manner in which it is generated, stored, or maintained (including,  
26 among other things, testimony, transcripts, and tangible things), that are produced  
27 or generated in disclosures or responses to discovery in this Action.

28 2.7 Expert: a person with specialized knowledge or experience in a matter

1 pertinent to the litigation who has been retained by a Party or its counsel to serve  
2 as an expert witness or as a consultant in this Action.

3 2.8 House Counsel: attorneys who are employees of or act as general  
4 counsel for a party, or affiliated entity, to this Action. House Counsel does not  
5 include Outside Counsel of Record or any other outside counsel. This definition  
6 includes any support staff employed by House Counsel’s firm.

7 2.9 Non-Party: any natural person, partnership, corporation, association, or  
8 other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a  
10 party to this Action but are retained to represent or advise a party to this Action  
11 and have appeared in this Action on behalf of that party or are affiliated with a law  
12 firm which has appeared on behalf of that party. This definition includes any  
13 support staff employed by Outside Counsel of Record’s firm.

14 2.11 Party: any party to this Action, including all of its officers, directors,  
15 employees, consultants, retained experts, and Outside Counsel of Record (and  
16 their support staffs).

17 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
18 Discovery Material in this Action.

19 2.13 Professional Vendors: persons or entities that provide litigation  
20 support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits  
21 or demonstrations, and organizing, storing, or retrieving data in any form or  
22 medium) and their employees and subcontractors.

23 2.14 Protected Material: any Disclosure or Discovery Material that is  
24 designated as “CONFIDENTIAL.”

25 2.15 Receiving Party: a Party that receives Disclosure or Discovery  
26 Material from a Producing Party.

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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only  
3 Protected Material (as defined above), but also: (1) any information copied or  
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
5 compilations of Protected Material; and (3) any testimony, conversations, or  
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the  
8 trial judge. This Order does not govern the use of Protected Material at trial.

9  
10 4. DURATION

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

19  
20 5. DESIGNATING PROTECTED MATERIAL

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

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

6 If it comes to a Designating Party's attention that information or items that  
7 it designated for protection do not qualify for protection, then that Designating  
8 Party must promptly notify all other Parties that it is withdrawing the inapplicable  
9 designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in  
11 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise  
12 stipulated or ordered, Disclosure or Discovery Material that qualifies for  
13 protection under this Order must be clearly so designated before the material is  
14 disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (*e.g.*, paper or electronic  
17 documents, but excluding transcripts of depositions or other pretrial or trial  
18 proceedings), that the Producing Party affix at a minimum, the legend  
19 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
20 contains protected material. If only a portion or portions of the material on a page  
21 qualifies for protection, the Producing Party also must clearly identify the  
22 protected portion(s) (*e.g.*, by making appropriate markings in the margins).

23 A Party or Non-Party that makes original documents available for  
24 inspection need not designate them for protection until after the inspecting Party  
25 has indicated which documents it would like copied and produced. During the  
26 inspection and before the designation, all of the material made available for  
27 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has  
28 identified the documents it wants copied and produced, the Producing Party must

1 determine which documents, or portions thereof, qualify for protection under this  
2 Order. Then, before producing the specified documents, the Producing Party must  
3 affix the “CONFIDENTIAL legend” to each page that contains Protected  
4 Material. If only a portion or portions of the material on a page qualifies for  
5 protection, the Producing Party also must clearly identify the protected portion(s)  
6 (*e.g.*, by making appropriate markings in the margins).

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

10 (c) for information produced in some form other than documentary and for  
11 any other tangible items, that the Producing Party affix in a prominent place on  
12 the exterior of the container or containers in which the information is stored the  
13 legend “CONFIDENTIAL.” If only a portion or portions of the information  
14 warrants protection, the Producing Party, to the extent practicable, shall identify  
15 the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
17 failure to designate qualified information or items does not, standing alone, waive  
18 the Designating Party’s right to secure protection under this Order for such  
19 material. Upon timely correction of a designation, the Receiving Party must make  
20 reasonable efforts to assure that the material is treated in accordance with the  
21 provisions of this Order.

## 22 23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
25 designation of confidentiality at any time that is consistent with the Court’s  
26 Scheduling Order.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
28 resolution process under Local Rule 251.

1           6.3 The burden of persuasion in any such challenge proceeding shall be on  
2 the Designating Party. Frivolous challenges, and those made for an improper  
3 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other  
4 parties) may expose the Challenging Party to sanctions. Unless the Designating  
5 Party has waived or withdrawn the confidentiality designation, all parties shall  
6 continue to afford the material in question the level of protection to which it is  
7 entitled under the Producing Party’s designation until the Court rules on the  
8 challenge.

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10       7.     ACCESS TO AND USE OF PROTECTED MATERIAL

11           7.1 Basic Principles. A Receiving Party may use Protected Material that is  
12 disclosed or produced by another Party or by a Non-Party in connection with this  
13 Action only for prosecuting, defending, or attempting to settle this Action. Such  
14 Protected Material may be disclosed only to the categories of persons and under  
15 the conditions described in this Order. When the Action has been terminated, a  
16 Receiving Party must comply with the provisions of section 13 below (FINAL  
17 DISPOSITION).

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

21           7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
22 otherwise ordered by the court or permitted in writing by the Designating Party, a  
23 Receiving Party may disclose any information or item designated  
24 “CONFIDENTIAL” only to:

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

28           (b) the officers, directors, and employees (including House Counsel) of the



1 Receiving Party to whom disclosure is reasonably necessary for this Action;

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

5 (d) the court and its personnel;

6 (e) court reporters and their staff;

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

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

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

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

23  
24 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
25 IN OTHER LITIGATION

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

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

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

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

9 If the Designating Party timely seeks a protective order, the Receiving Party  
10 served with the subpoena or court order shall not produce any information  
11 designated in this action as “CONFIDENTIAL” before a determination by the  
12 court from which the subpoena or order issued, unless the Receiving Party has  
13 obtained the Designating Party’s permission. The Designating Party shall bear the  
14 burden and expense of seeking protection in that court of its confidential material  
15 and nothing in these provisions should be construed as authorizing or encouraging  
16 a Receiving Party in this Action to disobey a lawful directive from another court.

17  
18 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
19 PRODUCED IN THIS LITIGATION

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

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

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

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

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

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

18  
19 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

28 A.

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11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

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

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.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Local Rule 141. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the

1 information in the public record unless otherwise instructed by the court.

2  
3 13. FINAL DISPOSITION

4 After the final disposition of this Action, as defined in paragraph 4, within  
5 60 days of a written request by the Designating Party, each Receiving Party must  
6 return all Material to the Producing Party or destroy such material. As used in this  
7 subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
8 summaries, and any other format reproducing or capturing any of the Protected  
9 Material. Whether the Protected Material is returned or destroyed, the Receiving  
10 Party must submit a written certification to the Producing Party (and, if not the  
11 same person or entity, to the Designating Party) by the 60 day deadline that (1)  
12 identifies (by category, where appropriate) all the Protected Material that was  
13 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
14 copies, abstracts, compilations, summaries or any other format reproducing or  
15 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
16 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
17 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
18 and trial exhibits, expert reports, attorney work product, and consultant and expert  
19 work product, even if such materials contain Protected Material. Any such  
20 archival copies that contain or constitute Protected Material remain subject to this  
21 Protective Order as set forth in Section 4 (DURATION).

22  
23 14. Any violation of this Order may be punished by any and all appropriate  
24 measures including, without limitation, contempt proceedings and/or monetary  
25 sanctions.

26 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

1 Dated: June \_\_, 2016

2 \_\_\_\_\_ /s/ 6/28/16

3 CHRISTOPHER J. KUPKA

4 LEVI & KORSINSKY LLP

5 Eduard Korsinsky (to be admitted *pro hac vice*)

6 Christopher J. Kupka (admitted *pro hac vice*)

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19 *Attorneys for Plaintiffs*

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EXHIBIT A  
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of \_\_\_\_\_ *Stephen Hale and O'Brian Rangel v. Ensign Energy Services, Inc., et al.*, Case No. 1:15-CV-01042-MCE-JLT (E.D. California). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_