

1 GREENBERG TRAURIG, LLP
2 MATTHEW R. GERSHMAN (SBN 253031) (gershmanm@gtlaw.com)
3 RYAN C. BYKERK (SBN 274534) (bykerkr@gtlaw.com)
4 1840 Century Park East, Suite 1900
5 Los Angeles, CA 90067-2121
6 Telephone: 310-586-7700 / Facsimile: 310-586-7800

7 CAMERON M. NELSON (Pro Hac Vice) (nelsonc@gtlaw.com)
8 JACQUELINE BROUSSEAU (Pro Hac Vice) (brousseauj@gtlaw.com)
9 77 West Wacker Drive, Suite 3100
10 Chicago, IL 60601
11 Telephone: 312-456-8400 / Facsimile: 312-456-8435
12 *Attorneys for Plaintiff, UL LLC*

13 BELDEN, BLAINE, RAYTIS, LLP
14 T. SCOTT BELDEN (SBN 184387) (sbelden@beldenblaine.com)
15 T. TODD EGLAND (SBN 240911) (teglan@beldenblaine.com)
16 P.O. Box 9129
17 Bakersfield, CA 93389-9129
18 Telephone: 661-864-7827 / Facsimile: 661-878-9797
19 *Attorneys for Defendants, Cross-Claimants, Third-Party Plaintiffs, and Cross-*
20 *Defendants Sturgeon Services, International, Inc. and Engineered Well Service*
21 *International, Inc.*

22 LAW OFFICES OF SAM X.J. WU. APC
23 ALEXEI BRENOT (SBN 194693) (samwulaw@yahoo.com)
24 8600 Utica Ave., Building 100
25 Rancho Cucamonga, CA 91730
26 TEL: (909) 393-4642 / FAX: (626) 656-8088
27 *Attorneys for Defendant, Cross-Claimant, and Cross-Defendant John E. Powell, Jr.*

19 UNITED STATES DISTRICT COURT
20 FOR THE EASTERN DISTRICT OF CALIFORNIA

21 UL LLC,
22
23 Plaintiff,
24
25 v.
26 Sturgeon Services International, Inc., et al.,
27 Defendants.

CASE NO. 1:16-cv-01389-TLN-SAB
STIPULATED PROTECTIVE ORDER

28 AND RELATED CROSS-ACTIONS

1 **1. PURPOSES AND LIMITATIONS**

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

12 Confidential and proprietary materials and information under this Stipulated Protective Order
13 consist of, among other things, confidential business or financial information, information regarding
14 confidential business practices, or other confidential research, development, or commercial information
15 (including information implicating privacy rights of third parties), information otherwise generally
16 unavailable to the public, or which may be privileged or otherwise protected from disclosure under state
17 or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of
18 information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to
19 adequately protect information the parties are entitled to keep confidential, to ensure that the parties are
20 permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to
21 address their handling at the end of the litigation, and serve the ends of justice, a protective order for
22 such information is justified in this matter. It is the intent of the parties that information will not be
23 designated as confidential for tactical reasons and that nothing be so designated without a good faith
24 belief that it has been maintained in a confidential, non-public manner, and there is good cause why it
25 should not be part of the public record of this case.

26 **2. DEFINITIONS**

27 2.1 Action: This pending federal law suit and related actions.

28 2.2 Challenging Party: a Party or Non-Party that challenges the designation of information

1 or items under this Order.

2 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
3 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil
4 Procedure 26(c), and as specified above in the Good Cause Statement.

5 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

6 2.5 Designating Party: a Party or Non-Party that designates information or items that it
7 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

8 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or
9 manner in which it is generated, stored, or maintained (including, among other things, testimony,
10 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery
11 in this matter.

12 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
13 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
14 in this Action.

15 2.8 House Counsel: attorneys who are employees of a party to this Action. House Counsel
16 does not include Outside Counsel of Record or any other outside counsel.

17 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity
18 not named as a Party to this action.

19 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action
20 but are retained to represent or advise a party to this Action and have appeared in this Action on behalf
21 of that party or are affiliated with a law firm that has appeared on behalf of that party, including support
22 staff.

23 2.11 Party: any party to this Action, including all of its officers, directors, employees,
24 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

25 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
26 this Action.

27 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
28 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or

1 retrieving data in any form or medium) and their employees and subcontractors.

2 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
3 “CONFIDENTIAL.”

4 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
5 Producing Party.

6 **3. SCOPE**

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

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

13 **4. DURATION**

14 Once a case proceeds to trial, all of the court-filed information to be introduced that was
15 previously designated as confidential or maintained pursuant to this protective order becomes public and
16 will be presumptively available to all members of the public, including the press, unless compelling
17 reasons supported by specific factual findings to proceed otherwise are made to the trial judge in
18 advance of the trial. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir.
19 2006) (distinguishing “good cause” showing for sealing documents produced in discovery from
20 “compelling reasons” standard when merits-related documents are part of court record). Accordingly,
21 the terms of this protective order do not extend beyond the commencement of the trial.

22 **5. DESIGNATING PROTECTED MATERIAL**

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

1 indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly
2 unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case
3 development process or to impose unnecessary expenses and burdens on other parties) may expose the
4 Designating Party to sanctions. If it comes to a Designating Party's attention that information or items
5 that it designated for protection do not qualify for protection that Designating Party must promptly
6 notify all other Parties that it is withdrawing the inapplicable designation.

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

11 Designation in conformity with this Order requires:

12 1. (a) for information in documentary form (e.g., paper or electronic documents, but
13 excluding transcripts of depositions or other pretrial or trial proceedings), all documents or other
14 materials produced by any party which are designated "Confidential" shall be so designated by a stamp
15 on the face of the document or by a transmittal letter accompanying production which indicates
16 confidential designation for some or all of the documents produced.

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

27 (b) for testimony given in depositions that the Designating Party identify the Disclosure or
28 Discovery Material on the record, before the close of the deposition.

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

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
7 qualified information or items does not, standing alone, waive the Designating Party's right to secure
8 protection under this Order for such material. Upon timely correction of a designation, the Receiving
9 Party must make reasonable efforts to assure that the material is treated in accordance with the
10 provisions of this Order.

11 **6. CHALLENGING CONFIDENTIALITY**

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
13 confidentiality at any time that is consistent with the Court's Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
15 under Local Rule 251(b). Any discovery motion must strictly comply with the procedures set forth in
16 Local Rule 251.

17 6.3 Burden. The burden of persuasion in any such challenge proceeding shall be on the
18 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or
19 impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to
20 sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all
21 parties shall continue to afford the material in question the level of protection to which it is entitled
22 under the Producing Party's designation until the Court rules on the challenge.

23 **7. ACCESS TO USE OF PROTECTED MATERIAL**

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
25 produced by another Party or by a Non-Party in connection with this Action only for prosecuting,
26 defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the
27 categories of persons and under the conditions described in this Order. When the Action has been
28 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL

1 DISPOSITION).

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
5 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
6 information or item designated “CONFIDENTIAL” only to:

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

10 (b) the House Counsel of the Receiving Party, as well as staff of the House Counsel to whom
11 disclosure is reasonably necessary for this Action;

12 (b) the officers, directors, and employees (excluding House Counsel) of the Receiving Party to
13 whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment
14 and Agreement to Be Bound” (Exhibit A);

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

18 (d) the Court and its personnel;

19 (e) court reporters and their staff;

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

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

25 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom
26 disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the
27 form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential
28 information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless

1 otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition
2 testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court
3 reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order;
4 and

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

7 **8. PROTECTED MATERIAL SUBPOENAED, ORDERED, OR PRODUCED IN OTHER**
8 **LITIGATION**

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

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

13 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
14 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
15 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 Designating
17 Party whose Protected Material may be affected.

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

25 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
26 **LITIGATION**

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

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

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

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

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

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

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

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

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

27 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED** 28 **MATERIAL**

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

9 **12. MISCELLANEOUS**

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
11 modification by the Court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no
13 Party waives any right it otherwise would have to object to disclosing or producing any information or
14 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
15 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. Protected Material may only be filed under seal pursuant to a
17 court order, as set forth in Local Rule 141. A Designating Party may file a memorandum in support of
18 sealing, if it is not the party seeking to file Protected Materials. If a Party's request to file Protected
19 Material under seal is denied by the Court, then the Receiving Party may file the information in the
20 public record unless otherwise instructed by the Court.

21 **13. FINAL DISPOSITION**

22 After the final disposition of this Action, within 60 days of a written request by the Designating
23 Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such
24 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
25 compilations, summaries, and any other format reproducing or capturing any of the Protected Material.
26 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written
27 certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by
28 the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that

1 was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
2 compilations, summaries or any other format reproducing or capturing any of the Protected Material.
3 Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings, motion
4 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial
5 exhibits, expert reports, attorney work product, and consultant and expert work product, even if such
6 materials contain Protected Material. Any such archival copies that contain or constitute Protected
7 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

8 14. Any violation of this Order may be punished by any and all appropriate measures including,
9 without limitation, contempt

10 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

11 DATED: June 9, 2017

12 GREENBERG TRAURIG, LLP

13
14 By: /s/ Matthew R. Gershman (as authorized on June 8, 2017)
Attorneys for Plaintiff UL LLC

15 BELDEN, BLAINE, RAYTIS, LLP

16
17 By: /s/ T. Todd Eglund
*Attorneys for Defendants, Cross-Claimants, Third-Party
18 Plaintiffs, and Cross-Defendants Sturgeon Services,
International, Inc. and Engineered Well Service International,
Inc.*

19 LAW OFFICES OF SAM X.J. WU, APC

20
21 By: /s/ Alexei Brenot (as authorized on June 8, 2017)
*Attorneys for Defendant, Cross-Claimant, and Cross-
22 Defendant John E. Powell, Jr.*

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1 **ORDER**

2 Pursuant to the stipulation of the parties, IT IS HEREBY ORDERED that:

- 3 1. The protective order is entered;
- 4 2. The parties are advised that pursuant to the Local Rules of the United States
5 District Court, Eastern District of California, any documents which are to be filed
6 under seal will require a written request which complies with Local Rule 141; and
- 7 3. The party making a request to file documents under seal shall be required to show
8 good cause for documents attached to a nondispositive motion or compelling reasons
9 for documents attached to a dispositive motion. Pintos v. Pacific Creditors Ass'n,
10 605 F.3d 665, 677-78 (9th Cir. 2009).

11
12
13 IT IS SO ORDERED.

14 Dated: June 9, 2017

15 
16 _____
17 UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of _____ [print or
5 type full address], declare under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for the Eastern District of
7 California on [date] in the case of *UL v. Sturgeon Services, Inc., et al*, CASE NO. 1:16-cv-01389-
8 **TLN-SAB**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
9 and I understand and acknowledge that failure to so comply could expose me to sanctions and
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any
11 information or item that is subject to this Stipulated Protective Order to any person or entity except in
12 strict compliance with the provisions of this Order.

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

20
21 Date: _____

22 City and State where sworn and signed: _____

23
24 Printed name: _____

25
26 Signature: _____

27
28