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15 **UNITED STATES DISTRICT COURT**
16 **EASTERN DISTRICT OF CALIFORNIA**

18 VERTICAL TANK, INC., a California
19 corporation

20 Plaintiff,

21 vs.

23 BAKERCORP, a Delaware corporation;

24 Defendant.

Case No. 1:18-CV-00145-LJO-JLT

[~~PROPOSED~~] STIPULATED PROTECTIVE
ORDER¹

(Doc. 17)

28 ¹ This Stipulated Protective Order is based substantially on the Northern District of California's Interim Model Protective Order for patent cases.

1 **PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from
4 use for any purpose other than prosecuting this litigation may be warranted. This Order does
5 not confer blanket protections on all disclosures or responses to discovery and the protection it
6 affords from public disclosure and use extends only to the limited information or items that are
7 entitled to confidential treatment under the applicable legal principles. As set forth in Section
8 14.4 below, this Protective Order does not entitle the Parties to file confidential information
9 under seal; Civil Local Rule 141 (a)-(d) sets forth the procedures that must be followed and the
10 standards that will be applied when a party seeks permission from the court to file material
11 under seal.

12 **DEFINITIONS**

13 2.1 **Challenging Party**: a Party or Non-Party that challenges the designation of
14 information or items under this Order.

15 2.2 **“CONFIDENTIAL” Information or Items**: information (regardless of how it is
16 generated, stored or maintained) or tangible things that qualify for protection under Federal
17 Rule of Civil Procedure 26(c).

18 2.3 **Counsel (without qualifier)**: Outside Counsel of Record and House Counsel (as
19 well as their support staff).

20 2.4 **Designated House Counsel**: House Counsel who seek access to “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

22 2.5 **Designating Party**: a Party or Non-Party that designates information or items that
23 it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” or “HIGHLY
24 CONFIDENTIAL – ATTORNEYS' EYES ONLY”

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

1 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent
2 to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness
3 or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
4 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
5 or of a Party's competitor.

6 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
7 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
8 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
9 less restrictive means.

10 2.9 House Counsel: attorneys who are employees of a party to this action. House
11 Counsel does not include Outside Counsel of Record or any other outside counsel.

12 2.10 Non-Party: any natural person, partnership, corporation, association, or other
13 legal entity not named as a Party to this action.

14 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
15 action but are retained to represent or advise a party to this action and have appeared in this
16 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
17 that party.

18 2.12 Party: any party to this action, including all of its officers, directors, employees,
19 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

20 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
21 Material in this action.

22 2.14 Professional Vendors: persons or entities that provide litigation support services
23 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
24 organizing, storing, or retrieving data in any form or medium) and their employees and
25 subcontractors.

26 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
27 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
28

1 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
2 Producing Party.

3 3. SCOPE

4 The protections conferred by this Order cover not only Protected Material (as defined
5 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
6 excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
7 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
8 However, the protections conferred by this Order do not cover the following information: (a)
9 any information that is in the public domain at the time of disclosure to a Receiving Party or
10 becomes part of the public domain after its disclosure to a Receiving Party as a result of
11 publication not involving a violation of this Order, including becoming part of the public record
12 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
13 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
14 the information lawfully and under no obligation of confidentiality to the Designating Party.
15 Any use of Protected Material at trial shall be governed by a separate agreement or order.

16 4. DURATION

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

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
26 or Non-Party that designates information or items for protection under this Order must take
27 care to limit any such designation to specific material that qualifies under the appropriate
28 standards. To the extent it is practical to do so, the Designating Party must designate for

1 protection only those parts of material, documents, items, or oral or written communications
2 that qualify – so that other portions of the material, documents, items, or communications for
3 which protection is not warranted are not swept unjustifiably within the ambit of this Order.
4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to
5 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
6 encumber or retard the case development process or to impose unnecessary expenses and
7 burdens on other parties) expose the Designating Party to sanctions.

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

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

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic documents, but
18 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
19 Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’
20 EYES ONLY” to each page that contains protected material. If only a portion or portions of the
21 material on a page qualifies for protection, the Producing Party also must clearly identify the
22 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify,
23 for each portion, the level of protection being asserted.

24 A Party or Non-Party that makes original documents or materials available for
25 inspection need not designate them for protection until after the inspecting Party has indicated
26 which material it would like copied and produced. During the inspection and before the
27 designation, all of the material made available for inspection shall be deemed “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified

1 the documents it wants copied and produced, the Producing Party must determine which
2 documents, or portions thereof, qualify for protection under this Order. Then, before producing
3 the specified documents, the Producing Party must affix the appropriate legend
4 (“CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to
5 each page that contains Protected Material. If only a portion or portions of the material on a
6 page qualifies for protection, the Producing Party also must clearly identify the protected
7 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
8 portion, the level of protection being asserted.

9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
10 Designating Party identify on the record, before the close of the deposition, hearing, or other
11 proceeding, all protected testimony and specify the level of protection being asserted. When it
12 is impractical to identify separately each portion of testimony that is entitled to protection and it
13 appears that substantial portions of the testimony may qualify for protection, the Designating
14 Party may invoke on the record (before the deposition, hearing, or other proceeding is
15 concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
16 which protection is sought and to specify the level of protection being asserted. Only those
17 portions of the testimony that are appropriately designated for protection within the 21 days
18 shall be covered by the provisions of this Protective Order. Alternatively, a Designating Party
19 may specify, at the deposition or up to 21 days afterwards if that period is properly invoked,
20 that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

22 Parties shall give the other parties notice if they reasonably expect a deposition, hearing,
23 or other proceeding to include Protected Material so that the other parties can ensure that only
24 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
25 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a
26 deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
28

1 Transcripts containing Protected Material shall have an obvious legend on the title page
2 that the transcript contains Protected Material, and the title page shall be followed by a list of
3 all pages (including line numbers as appropriate) that have been designated as Protected
4 Material and the level of protection being asserted by the Designating Party. The Designating
5 Party shall inform the court reporter of these requirements. Any transcript that is prepared
6 before the expiration of a 21-day period for designation shall be treated during that period as if
7 it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its
8 entirety unless otherwise agreed. After the expiration of that period, the transcript shall be
9 treated only as actually designated.

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

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

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
24 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
25 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
26 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
27 challenge a confidentiality designation by electing not to mount a challenge promptly after the
28 original designation is disclosed.

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

15 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
16 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
17 Civil Local Rule 251 (and in compliance with Civil Local Rule 141 (a)-(d), if applicable)
18 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that
19 the meet and confer process will not resolve their dispute, whichever is earlier. Each such
20 motion must be accompanied by a competent declaration affirming that the movant has
21 complied with the meet and confer requirements imposed in the preceding paragraph. Failure
22 by the Designating Party to make such a motion including the required declaration within 21
23 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for
24 each challenged designation. In addition, the Challenging Party may file a motion challenging a
25 confidentiality designation at any time if there is good cause for doing so, including a challenge
26 to the designation of a deposition transcript or any portions thereof. Any motion brought
27 pursuant to this provision must be accompanied by a competent declaration affirming that the
28

1 movant has complied with the meet and confer requirements imposed by the preceding
2 paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the Designating
4 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
5 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
6 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
7 file a motion to retain confidentiality as described above, all parties shall continue to afford the
8 material in question the level of protection to which it is entitled under the Producing Party's
9 designation until the court rules on the challenge.

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
20 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
21 disclose any information or item designated "CONFIDENTIAL" only to:

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

25 (b) the officers, directors, and employees (including House Counsel) of the Receiving
26 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);
28

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

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, and Professional
6 Vendors to whom disclosure is reasonably necessary for this litigation and who agree to be
7 bound by this Protective Order;

8 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
9 necessary. Pages of transcribed deposition testimony or exhibits to depositions that reveal
10 Protected Material must be separately bound by the court reporter and may not be disclosed to
11 anyone except as permitted under this Protective Order;

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

14 (h) any other person with the prior written consent of the Designating Party

15 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
16 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
17 Designating Party, a Receiving Party may disclose any information or item designated
18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

22 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in
23 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,
24 (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as
25 to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

26 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for
27 this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
28

1 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have
2 been followed;

3 (d) the court and its personnel;

4 (e) court reporters and their staff, professional jury or trial consultants, and Professional
5 Vendors to whom disclosure is reasonably necessary for this litigation and who agree to be
6 bound by this Protective Order;

7 (f) the author or recipient of a document containing the information or a custodian or
8 other person who otherwise possessed or knew the information; and

9 (g) any other person with the prior written consent of the Designating Party.

10 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated House
12 Counsel or Experts.

13 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
14 Party, a Party that seeks to disclose to Designated House Counsel any information or item that
15 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
16 paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth
17 the full name of the Designated House Counsel and the city and state of his or her residence
18 and (2) describes the Designated House Counsel’s current and reasonably foreseeable future
19 primary job duties and responsibilities in sufficient detail to determine if House Counsel is
20 involved, or may become involved, in any competitive decision-making.

21 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
22 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or
23 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
24 pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1)
25 identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
26 ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2)
27 sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
28 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s),

1 (5) identifies each person or entity from whom the Expert has received compensation or
2 funding for work in his or her areas of expertise or to whom the expert has provided
3 professional services, including in connection with a litigation, at any time during the preceding
4 five years,² and (6) identifies (by name and number of the case, filing date, and location of
5 court) any litigation in connection with which the Expert has offered expert testimony,
6 including through a declaration, report, or testimony at a deposition or trial, during the
7 preceding five years.

8 (b) A Party that makes a request and provides the information specified in the preceding
9 respective paragraphs may disclose the subject Protected Material to the identified Designated
10 House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a
11 written objection from the Designating Party. Any such objection must set forth in detail the
12 grounds on which it is based.

13 (c) A Party that receives a timely written objection must meet and confer with the
14 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
15 agreement within seven days of the written objection. If no agreement is reached, the Party
16 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as
17 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
18 seeking permission from the court to do so. Any such motion must describe the circumstances
19 with specificity, set forth in detail the reasons why disclosure to Designated House Counsel or
20 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
21 suggest any additional means that could be used to reduce that risk. In addition, any such
22 motion must be accompanied by a competent declaration describing the parties' efforts to
23 resolve the matter by agreement (i.e., the extent and the content of the meet and confer
24 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to
25 approve the disclosure.

26 _____
27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party,
28 then the Expert should provide whatever information the Expert believes can be disclosed without
violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be
available to meet and confer with the Designating Party regarding any such engagement.

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

5 8. PROSECUTION BAR

6 Absent written consent from the Producing Party, any individual who receives access to
7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information shall not be
8 involved in the prosecution of patents or patent applications relating to the subject matter of this
9 action, including without limitation the patents asserted in this action and any patent or
10 application claiming priority to or otherwise related to the patents asserted in this action, before
11 any foreign or domestic agency, including the United States Patent and Trademark Office ("the
12 Patent Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly
13 drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims.
14 To avoid any doubt, "prosecution" as used in this paragraph does not include representing a
15 party challenging a patent before a domestic or foreign agency (including, but not limited to, a
16 reissue protest, *ex parte* reexamination, *inter partes* review, or post-grant proceeding). This
17 Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL – ATTORNEYS'
18 EYES ONLY" information is first received by the affected individual and shall end one (1)
19 year after final termination of this action.

20 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
21 LITIGATION

22 If a Party is served with a subpoena or a court order issued in other litigation that
23 compels disclosure of any information or items designated in this action as
24 "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that
25 Party must:

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

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

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
5 Designating Party whose Protected Material may be affected.³

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

14 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
15 THIS LITIGATION

16 (a) The terms of this Order are applicable to information produced by a Non-Party in
17 this action and designated as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with
19 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
20 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

25
26
27 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective
28 Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality
interests in the court from which the subpoena or order issued.

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

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

7 3. make the information requested available for inspection by the Non-Party.

8 (c) If the Non-Party fails to object or seek a protective order from this court within
9 14 days of receiving the notice and accompanying information, the Receiving Party may
10 produce the Non-Party's confidential information responsive to the discovery request. If the
11 Non-Party timely seeks a protective order, the Receiving Party shall not produce any
12 information in its possession or control that is subject to the confidentiality agreement with the
13 Non-Party before a determination by the court.⁴ Absent a court order to the contrary, the Non-
14 Party shall bear the burden and expense of seeking protection in this court of its Protected
15 Material.

16 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

24
25
26
27 _____
28 ⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights
of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this
court.

1 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

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

12 13. MISCELLANEOUS

13 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
14 seek its modification by the court in the future.

15 13.2 Right to Assert Other Objections. No Party waives any right it otherwise would
16 have to object to disclosing or producing any information or item on any ground not addressed
17 in this Protective Order. Similarly, no Party waives any right to object on any ground to use in
18 evidence of any of the material covered by this Protective Order.

19 13.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
20 laws and regulations relating to the export of technical data contained in such Protected
21 Material, including the release of such technical data to foreign persons or nationals in the
22 United States or elsewhere. The Producing Party shall be responsible for identifying any such
23 controlled technical data, and the Receiving Party shall take measures necessary to ensure
24 compliance.

25 13.4 Filing Protected Material. Without written permission from the Designating Party
26 or a court order secured after appropriate notice to all interested persons, a Party may not file in
27 the public record in this action any Protected Material. A Party that seeks to file under seal any
28 Protected Material must comply with Civil Local Rule 141. Protected Material may only be

1 filed under seal pursuant to a court order authorizing the sealing of the specific Protected
2 Material at issue. Pursuant to Civil Local Rule 141, a sealing order will issue only upon a
3 request establishing that the Protected Material at issue is privileged, protectable as a trade
4 secret, or otherwise entitled to protection under the law. .

5 14. FINAL DISPOSITION

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

21
22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

23
24 DATED: September 17, 2018

/S/ Andrew S. Dallmann

Attorneys for Plaintiff, Vertical Tank, Inc.

25
26
27 DATED: September 17, 2018

/S/ Gregory S. Cordrey

Attorneys for Defendant, BakerCorp

1 IT IS SO ORDERED.

2
3 Dated: September 21, 2018

/s/ Jennifer L. Thurston
4 UNITED STATES MAGISTRATE JUDGE
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United State District Court for the Eastern District of California
7 on _____ [date] in the case of *Vertical Tank, Inc. v. BakerCorp*, Case No. 1:18-CV-
8 00145-LJO-JLT. I agree to comply with and to be bound by all the term of tis Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose
10 me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
11 disclose in any manner any information or item that is subject to this Stipulated Protective
12 Order to any person or entity except in 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
14 Eastern District of California for enforcing the terms of this Stipulated Protective Order,
15 even if such enforcement proceeding occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone
18 number] as my California agent for service of process in connection with this action or any
19 proceeding related to enforcement of this Stipulated Protective Order.

20
21 Date: _____

22
23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____

28