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11 CHAMPION HOME BUILDERS, INC.

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14 FRESNO DIVISION

15 ROBERT NAVARRO, an individual, 16 Plaintiff, 17 vs. 18 CHAMPION HOME BUILDER, INC., a California corporation and DOES 1 through 100, inclusive, Defendants.	CASE NO.1:19-CV-00002-DAD-EPG STIPULATED PROTECTIVE ORDER (TCSC CASE NO. 276303) (ECF NO. 7)
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19 1. A. PURPOSES AND LIMITATIONS

20 Discovery in this action is likely to involve production of confidential,
21 proprietary or private information for which special protection from public
22 disclosure and from use for any purpose other than prosecuting this litigation may
23 be warranted. Accordingly, the parties hereby stipulate to and petition the Court
24 to enter the following Stipulated Protective Order. The parties acknowledge that
25 this Order does not confer blanket protections on all disclosures or responses to
26 discovery and that the protection it affords from public disclosure and use extends
27 only to the limited information or items that are entitled to confidential treatment
28 under the applicable legal principles. This stipulation and order is submitted

1 pursuant to Local Rule 141.1(b).

2 B. GOOD CAUSE STATEMENT

3 This action is likely to involve trade secrets, financial, and/or proprietary
4 information for which special protection from public disclosure and from use for
5 any purpose other than prosecution of this action is warranted. Such confidential
6 and proprietary materials and information consist of, among other things,
7 confidential business or financial information, information regarding confidential
8 business practices, information otherwise generally unavailable to the public, or
9 which may be privileged or otherwise protected from disclosure under state or
10 federal statutes, court rules, case decisions, or common law. This includes, but is
11 not limited to, proprietary documents related to employment policies and
12 procedures, payroll information, financial records, employment information, and
13 documents relating to medical and psychological issues. There is a particularized
14 need for the protection as to these documents as this order will expedite the flow
15 of information, to facilitate the prompt resolution of disputes over confidentiality
16 of discovery materials, to adequately protect information the parties are entitled to
17 keep confidential, to ensure that the parties are permitted reasonable necessary
18 uses of such material in preparation for and in the conduct of trial, to address their
19 handling at the end of the litigation, and serve the ends of justice. Protection
20 should be addressed via a Court Order as opposed to a private agreement between
21 the parties because the order will provide a detailed mechanism for resolution of
22 disputes over the nature of the documents and information produced where a
23 private agreement will not. Additionally, the order will provide a mechanism for
24 enforcement of the private agreement. It is the intent of the parties that information
25 will not be designated as confidential for tactical reasons and that nothing be so
26 designated without a good faith belief that it has been maintained in a confidential,
27 non-public manner, and there is good cause why it should not be part of the public
28 record of this case.

1 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
2 SEAL

3 The parties further acknowledge, as set forth in Section 12.3, below, that
4 this Stipulated Protective Order does not entitle them to file confidential
5 information under seal; Local Civil Rule 141 sets forth the procedures that must
6 be followed and the standards that will be applied when a party seeks permission
7 from the court to file material under seal.

8 There is a strong presumption that the public has a right of access to judicial
9 proceedings and records in civil cases. In connection with non-dispositive
10 motions, good cause must be shown to support a filing under seal. *See Kamakana*
11 *v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v.*
12 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v.*
13 *Sony Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
14 protective orders require good cause showing), and a specific showing of good
15 cause or compelling reasons with proper evidentiary support and legal
16 justification, must be made with respect to Protected Material that a party seeks to
17 file under seal. The parties' mere designation of Disclosure or Discovery Material
18 as CONFIDENTIAL does not—without the submission of competent evidence by
19 declaration, establishing that the material sought to be filed under seal qualifies as
20 confidential, privileged, or otherwise protectable—constitute good cause.

21 Further, if a party requests sealing related to a dispositive motion or trial,
22 then compelling reasons, not only good cause, for the sealing must be shown, and
23 the relief sought shall be narrowly tailored to serve the specific interest to be
24 protected.

25 *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010).
26 For each item or type of information, document, or thing sought to be filed or
27 introduced under seal in connection with a dispositive motion or trial, the party
28 seeking protection must articulate compelling reasons, supported by specific facts

1 and legal justification, for the requested sealing order. Again, competent evidence
2 supporting the application to file documents under seal must be provided by
3 declaration.

4 Any document that is not confidential, privileged, or otherwise protectable
5 in its entirety will not be filed under seal if the confidential portions can be
6 redacted.

7 If documents can be redacted, then a redacted version for public viewing,
8 omitting only the confidential, privileged, or otherwise protectable portions of the
9 document, shall be filed. Any application that seeks to file documents under seal
10 in their entirety should include an explanation of why redaction is not feasible.

11 2. DEFINITIONS

12 2.1 Action: This pending federal lawsuit: Navarro v. Champion Home
13 Builder, Inc. Case No: 1:19-cv-00002-DAD-EPG

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

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

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

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

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

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve
3 as an expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

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 that has appeared on behalf of that party, and includes support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and
15 their support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits
20 or demonstrations, and organizing, storing, or retrieving data in any form or
21 medium) and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL.”

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
2 compilations of Protected Material; and (3) any testimony, conversations, or
3 presentations by Parties or their Counsel that might reveal Protected Material.

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

6 4. DURATION

7 Once a case proceeds to trial, information that was designated as
8 CONFIDENTIAL or maintained pursuant to this protective order used or
9 introduced as an exhibit at trial becomes public and will be presumptively
10 available to all members of the public, including the press, unless compelling
11 reasons supported by specific factual findings to proceed otherwise are made to
12 the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81
13 (distinguishing “good cause” showing for sealing documents produced in
14 discovery from “compelling reasons” standard when merits-related documents are
15 part of court record). Accordingly, the terms of this protective order do not extend
16 beyond the commencement of the trial.

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

26 Mass, indiscriminate or routinized designations are prohibited.
27 Designations that are shown to be clearly unjustified or that have been made for
28 an improper purpose (e.g., to unnecessarily encumber the case development

1 process or to impose unnecessary expenses and burdens on other parties) may
2 expose the Designating Party to sanctions.

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

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

12 Designation in conformity with this Order requires:

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

20 A Party or Non-Party that makes original documents available for
21 inspection need not designate them for protection until after the inspecting Party
22 has indicated which documents it would like copied and produced. During the
23 inspection and before the designation, all of the material made available for
24 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
25 identified the documents it wants copied and produced, the Producing Party must
26 determine which documents, or portions thereof, qualify for protection under this
27 Order. Then, before producing the specified documents, the Producing Party must
28 affix the "CONFIDENTIAL legend" to each page that contains Protected Material.

1 If only a portion of the material on a page qualifies for protection, the Producing
2 Party also must clearly identify the protected portion(s) (e.g., by making
3 appropriate markings in the margins).

4 (b) for testimony given in depositions that the Designating Party identifies
5 the Disclosure or Discovery Material on the record, before the close of the
6 deposition all protected testimony.

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

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
14 failure to designate qualified information or items does not, standing alone, waive
15 the Designating Party's right to secure protection under this Order for such
16 material.

17 Upon timely correction of a designation, the Receiving Party must make
18 reasonable efforts to assure that the material is treated in accordance with the
19 provisions of this Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
22 designation of confidentiality at any time that is consistent with the Court's
23 Scheduling Order.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
25 resolution process under Local Rule 251(b) et seq.

26 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
27 joint stipulation pursuant to Local Rule 251(c).

28 6.4 The burden of persuasion in any such challenge proceeding shall be

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

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that
10 is disclosed or produced by another Party or by a Non-Party in connection with
11 this Action only for prosecuting, defending or attempting to settle this Action.
12 Such Protected Material may be disclosed only to the categories of persons and
13 under the conditions described in this Order. When the Action has been
14 terminated, a Receiving Party must comply with the provisions of section 13 below
15 (FINAL DISPOSITION).

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

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

- 23 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
24 well as employees of said Outside Counsel of Record to whom it is reasonably
25 necessary to disclose the information for this Action;
- 26 (b) the officers, directors, and employees (including House Counsel) of
27 the Receiving Party to whom disclosure is reasonably necessary for this Action;
- 28 (c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters and their staff;

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

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

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

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
22 PRODUCED IN OTHER LITIGATION

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

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

28 (b) promptly notify in writing the party who caused the subpoena or order

1 to issue in the other litigation that some or all of the material covered by the
2 subpoena or order is subject to this Protective Order. Such notification shall
3 include a copy of this Stipulated Protective Order; and

4 (c) cooperate with respect to all reasonable procedures sought to be
5 pursued by the Designating Party whose Protected Material may be affected. If the
6 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
8 as “CONFIDENTIAL” before a determination by the court from which the
9 subpoena or order issued, unless the Party has obtained the Designating Party’s
10 permission. The Designating Party shall bear the burden and expense of seeking
11 protection in that court of its confidential material and nothing in these provisions
12 should be construed as authorizing or encouraging a Receiving Party in this Action
13 to disobey a lawful directive from another court.

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

16 (a) The terms of this Order are applicable to information produced by a
17 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
18 produced by Non-Parties in connection with this litigation is protected by the
19 remedies and relief provided by this Order. Nothing in these provisions should be
20 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
22 produce a Non-Party’s confidential information in its possession, and the Party is
23 subject to an agreement with the Non-Party not to produce the Non-Party’s
24 confidential information, then the Party shall:

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

28 (2) promptly provide the Non-Party with a copy of the Stipulated

1 Protective Order in this Action, the relevant discovery request(s), and a
2 reasonably specific description of the information requested; and

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

5 (c) If the Non-Party fails to seek a protective order from this court within
6 14 days of receiving the notice and accompanying information, the Receiving
7 Party may produce the Non-Party's confidential information responsive to the
8 discovery request. If the Non-Party timely seeks a protective order, the Receiving
9 Party shall not produce any information in its possession or control that is subject
10 to the confidentiality agreement with the Non-Party before a determination by the
11 court.

12 Absent a court order to the contrary, the Non-Party shall bear the burden
13 and expense of seeking protection in this court of its Protected Material.

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
25 OTHERWISE PROTECTED MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other
28 protection, the obligations of the Receiving Parties are those set forth in Federal

1 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
2 whatever procedure may be established in an e-discovery order that provides for
3 production without prior privilege review. Pursuant to Federal Rule of Evidence
4 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
5 of a communication or information covered by the attorney-client privilege or
6 work product protection, the parties may incorporate their agreement in the
7 stipulated protective order submitted to the court.

8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order, no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in
14 this Stipulated Protective Order. Similarly, no Party waives any right to object on
15 any ground to use in evidence of any of the material covered by this Protective
16 Order.

17 12.3 Filing Protected Material. A Party that seeks to file under seal any
18 Protected Material must comply with Local Civil Rule 141. Protected Material
19 may only be filed under seal pursuant to a court order authorizing the sealing of
20 the specific Protected Material at issue. If a Party's request to file Protected
21 Material under seal is denied by the court, then the Receiving Party may file the
22 information in the public record unless otherwise instructed by the court.

23 13. FINAL DISPOSITION

24 After the final disposition of this Action, as defined in paragraph 4, within
25 60 days of a written request by the Designating Party, each Receiving Party must
26 return all Protected Material to the Producing Party or destroy such material. As
27 used in this subdivision, "all Protected Material" includes all copies, abstracts,
28 compilations, summaries, and any other format reproducing or capturing any of

1 the Protected Material. Whether the Protected Material is returned or destroyed,
2 the Receiving Party must submit a written certification to the Producing Party
3 (and, if not the same person or entity, to the Designating Party) by the 60-day
4 deadline that (1) identifies (by category, where appropriate) all the Protected
5 Material that was returned or destroyed and (2) affirms that the Receiving Party
6 has not retained any copies, abstracts, compilations, summaries or any other
7 format reproducing or capturing any of the Protected Material. Notwithstanding
8 this provision, Counsel are entitled to retain an archival copy of all pleadings,
9 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
10 correspondence, deposition and trial exhibits, expert reports, attorney work
11 product, and consultant and expert work product, even if such materials contain
12 Protected Material. Any such archival copies that contain or constitute Protected
13 Material remain subject to this Protective Order as set forth in Section 4
14 (DURATION).

15 14. VIOLATION

16 Any violation of this Order may be punished by appropriate measures
17 including, without limitation, contempt proceedings and/or monetary sanctions.

18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19
20 DATED: April 4, 2019

21 /s/ Thomas H. Schelly
22 Attorneys for Plaintiff

23
24 DATED: April 4, 2019

25 /s/ Ryan P. McGuire
26 Attorneys for Defendant

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ORDER

Pursuant to the stipulation of the parties (ECF No. 7) and for good cause shown,

IT IS SO ORDERED.

Dated: April 8, 2019

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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 Navarro v. Champion Home Builder, Inc. Case
No: 1:19-cv-00002-DAD-EPG. 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 Central District of California for 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: _____