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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

CHRISTINA MITCHELL, DAWN WRIGHT )  
AND JERRY WRIGHT, Individually and on )  
behalf of all others similarly situated, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
SKYLINE HOMES, INC., )  
 )  
Defendant. )  
\_\_\_\_\_ )

No. 09-cv-02241 KJM  
  
STIPULATED PROTECTIVE ORDER  
  
ACTION FILED: June 29, 2009

1 **I. PURPOSES AND LIMITATIONS**

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

13 **II. DEFINITIONS**

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

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

19 4. Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
20 well as their support staff).

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

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

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

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

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

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

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

13          12.    Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
14 Material in this action.

15          13.    Professional Vendors: persons or entities that provide litigation support services  
16 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
17 storing, or retrieving data in any form or medium) and their employees and subcontractors.

18          14.    Protected Material: any Disclosure or Discovery Material that is designated as  
19 “CONFIDENTIAL.”

20          15.    Receiving Party: a Party that receives Disclosure or Discovery Material from a  
21 Producing Party.

### 22   **III.   SCOPE**

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

#### 8 **IV. DURATION**

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

#### 16 **V. DESIGNATING PROTECTED MATERIAL**

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

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

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

4           21.     Manner and Timing of Designations. Except as otherwise provided in this Order, or  
5 as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
6 under this Order must be clearly so designated before the material is disclosed or produced.

7           22.     Designation in conformity with this Order requires:

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

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

23                   (c)     for testimony given in deposition or in other pretrial or trial proceedings, that  
24 the Designating Party identify on the record, before the close of the deposition, hearing, or other  
25 proceeding, all protected testimony.

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

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

9 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

3           26.     Judicial Intervention. If the Parties cannot resolve a challenge without court  
4 intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21  
5 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and  
6 confer process will not resolve their dispute, whichever is earlier. Each such motion must be  
7 accompanied by a competent declaration affirming that the movant has complied with the meet and  
8 confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make  
9 such a motion including the required declaration within 21 days (or 14 days, if applicable) shall  
10 automatically waive the confidentiality designation for each challenged designation. In addition,  
11 the Challenging Party may file a motion challenging a confidentiality designation at any time if  
12 there is good cause for doing so, including a challenge to the designation of a deposition transcript  
13 or any portions thereof. In the event of a challenge to mass over-designation as CONFIDENTIAL  
14 by the Designating Party, the Challenging party may submit to the Court a representative sample of  
15 mass over-designations, and the Court's order relating to the confidentiality of such representative  
16 samples will apply to all similar documents produced by the Designating Party in this litigation.  
17 Any motion brought pursuant to this provision must be accompanied by a competent declaration  
18 affirming that the movant has complied with the meet and confer requirements imposed by the  
19 preceding paragraph. The burden of persuasion in any such challenge proceeding shall be on the  
20 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass  
21 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
22 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
23 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
24 material in question the level of protection to which it is entitled under the Producing Party's  
25 designation until the court rules on the challenge.

1 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

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

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

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
9 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
10 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
11 Bound” that is attached hereto as Exhibit A;

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

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

18 (d) the court and its personnel;

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

22 (f) during or in preparing for depositions, witnesses in the action to whom  
23 disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to  
24 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.  
25 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material  
26 must be separately bound by the court reporter and may not be disclosed to anyone except as  
27 permitted under this Stipulated Protective Order;

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1 (g) interviews of witnesses to whom it is reasonably necessary to disclose the  
2 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
3 Bound” that is attached hereto as Exhibit A; and

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

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

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

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

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

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

19 30. If the Designating Party timely seeks a protective order, the Party served with the  
20 subpoena or court order shall not produce any information designated in this action as  
21 “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued,  
22 unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear  
23 the burden and expense of seeking protection in that court of its confidential material – and nothing  
24 in these provisions should be construed as authorizing or encouraging a Receiving Party in this  
25 action to disobey a lawful directive from another court.  
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1 **IX. A NON-PARTY’S PROTECTED MATERIAL SOUGHT**  
2 **TO BE PRODUCED IN THIS LITIGATION**

3 31. The terms of this Order are applicable to information produced by a Non-Party in  
4 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in  
5 connection with this litigation is protected by the remedies and relief provided by this Order.  
6 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
7 additional protections.

8 32. In the event that a Party is required, by a valid discovery request, to produce a Non-  
9 Party’s confidential information in its possession, and the Party is subject to an agreement with the  
10 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

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

13 (b) promptly provide the Non-Party with a copy of the Stipulated Protective  
14 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
15 the information requested; and make the information requested available for inspection by the Non-  
16 Party.

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

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

25 34. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
26 Protected Material to any person or in any circumstance not authorized under this Stipulated  
27 Protective Order, the Receiving Party must immediately: (a) notify in writing the Designating  
28 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of

1 the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
2 made of all the terms of this Order, and (d) request such person or persons to execute the  
3 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

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

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

15 **XII. MISCELLANEOUS**

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

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

23 38. Filing Protected Material. Without written permission from the Designating Party  
24 or a court order secured after appropriate notice to all interested persons, a Party may not file in the  
25 public record in this action any Protected Material. A Party that seeks to file under seal any  
26 Protected Material must comply with Local Rule 141. Protected Material may only be filed under  
27 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.  
28 Pursuant to Local Rule 141, a sealing order will issue only upon a request establishing that the



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Attorneys for Plaintiffs

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Dated: October 18, 2010

TUCKER ELLIS & WEST LLP

By /s/ Daniel J. Kelly (as authorized on 10/14/10)  
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Attorney for Defendant Skyline Homes, Inc.

IT IS SO ORDERED.

DATED: October 18, 2010.

  
U.S. MAGISTRATE JUDGE

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 penalty of perjury that I have read in its entirety and  
5 understand the Stipulated Protective Order that was issued by the United States District Court for  
6 the Eastern District of California on \_\_\_\_\_ in the case of *Mitchell, et al. v. Skyline Homes, Inc.*,  
7 Case No. 09-cv-2241 KJM. I agree to comply with and to be bound by all the terms of this  
8 stipulated Protective Order and I understand and acknowledge that failure to so comply could  
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will  
10 not disclose in any manner any information or item that is subject to this stipulated Protective  
11 Order to any person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the  
13 Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective  
14 Order, even if such enforcement proceedings occur after termination of this action.

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

19  
20 Date: \_\_\_\_\_

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

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

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