

1 David S. Poole (Bar. No. 94690)
Poole & Shaffery, LLP
 2 25350 Magic Mountain Parkway, Second Floor
 Santa Clarita, CA 91355
 3 Telephone: (661) 290-2991
 Facsimile: (661) 290-3338

4 Lynn H. Murray, *pro hac vice*
 5 Justin R. Donoho, *pro hac vice*
Grippe & Elden LLC
 6 111 South Wacker Drive, Ste 5100
 Chicago, IL 60606
 7 Telephone: (312) 704-7700
 Facsimile: (312) 558-1195

8 Attorneys for Defendant,
 9 **ILLINOIS TOOL WORKS INC.**

10 Jeffrey W. Shopoff (Bar No. 46278)
 Gregory S. Cavallo (Bar No. 173270)
 11 Paul F. Kirsch (Bar No. 127446)
 James M. Robinson (Bar No. 238063)
 12 SHOPOFF CAVALLO & KIRSCH LLP
 100 Pine Street, Suite 750
 13 San Francisco, CA 94111
 Telephone: (415) 984-1975
 14 Facsimile: (415) 984-1978

15 Attorneys for Plaintiff,
California Natural Products

17 **UNITED STATES DISTRICT COURT**
 18 **EASTERN DISTRICT OF CALIFORNIA**

19 CALIFORNIA NATURAL PRODUCTS
 (d/b/a POWER AUTOMATION SYSTEMS),
 20 a California Corporation,

21 Plaintiff,

22 vs.

23 ILLINOIS TOOL WORKS INC.
 (d/b/a HARTNESS INTERNATIONAL, INC.),
 24 a Delaware Corporation,

25 Defendant.

CASE NO. 2:12-CV-00593-JAM-GGH
AGREED PROTECTIVE ORDER

1 WHEREAS, this Court required that a protective order relating to the pending Motion for
2 Preliminary Injunction be submitted to the Court for approval, *see* Order of Mar. 15, 2012, Re
3 Plaintiff's Motion for Expedited Discovery;

4 WHEREAS, discovery relating to the Motion for Preliminary Injunction will involve the
5 disclosure of trade secrets or other confidential proprietary, technical, business or financial
6 information;

7 WHEREAS, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the parties
8 hereby stipulate to the entry of this Order limiting the disclosure of certain information produced
9 or otherwise discovered for purposes of the Motion for Preliminary Injunction and agree to be
10 bound by the restrictions of this Order limiting the use of such information as provided;

11 IT IS HEREBY STIPULATED, AGREED AND ORDERED that the following protective
12 provisions shall govern any discovery conducted by the parties in this action:

13 1. This agreement applies only to materials produced for the purpose of preparing for
14 and conducting a hearing regarding the Motion for Preliminary Injunction, and the parties agree
15 that it is not intended to apply other materials produced in the context of the Litigation in the
16 absence of an additional agreement. The parties agree to negotiate in good faith to reach
17 agreement on the terms of a protective order to govern (1) the later use of materials produced in
18 regard to Motion for Preliminary Injunction and (2) the use of any other materials produced in the
19 Litigation.

20 2. In responding to discovery requests from a party in this action relating to the
21 Motion for Preliminary Injunction (the "Requesting Entity"), any party or non-party responding
22 to the discovery requests (the "Responding Entity") may designate documents, information or
23 material as "CONFIDENTIAL." A Responding Entity may designate any documents,
24 information or material as "CONFIDENTIAL" that the Responding Entity believes contains
25 proprietary information, trade secrets, confidential research, confidential financial information, or
26 commercial or sensitive information. This includes, but is not limited to proprietary financial
27 information, technical or marketing information or other business information, the disclosure of

1 that would tend to cause substantial harm to the Responding Entity’s legitimate business interests,
2 competitive interests, privacy interests, or privacy interests of the Responding Entity’s employees
3 or customers.

4 3. Prior to physical production of copies of documents, the Responding Entity shall
5 conspicuously mark the copies of documents that contain confidential information as
6 “CONFIDENTIAL.” All court filings that disclose information designated as
7 “CONFIDENTIAL” shall also be marked in this manner.

8 4. The designation of any document or information as “CONFIDENTIAL” pursuant
9 to the terms of this Order shall constitute the verification of counsel for the producing party that
10 the documents have been reviewed for compliance with the criteria of this Order and that the
11 designation “CONFIDENTIAL” is, in the good faith judgment of counsel, consistent with the
12 terms of this Order.

13 5. Material designated as “CONFIDENTIAL” (“Confidential Information”) may be
14 used by persons other than the Responding Entity only for the purpose of preparing for and
15 conducting any hearing relating to the Motion for Preliminary Injunction in the action styled as
16 California Natural Products v. Illinois Tool Works Inc., No. 2:12-CV-00593-JAM-GGH (E.D.
17 CA) (“the Litigation”) and for no other purpose.

18 6. Counsel for each party shall take all reasonable precautions necessary to prevent
19 the unauthorized or inadvertent disclosure of any Confidential Information. If any Confidential
20 Information produced in accordance with the terms of this Order is disclosed to any person other
21 than in the manner authorized by this Order, the party responsible for the disclosure must
22 immediately bring all pertinent facts relating to such disclosure to the attention of the other party
23 and, without prejudice to other rights and remedies of the other parties, must make every effort to
24 prevent further disclosure by the person who received Confidential Information.

25 7. A party shall not be obligated to challenge the propriety of designation of
26 Confidential Information at the time it is produced, and failure to do so shall not preclude
27 subsequent challenge thereto. At any stage of these proceedings or thereafter, any party may

1 challenge a designation of certain materials as Confidential Information. If any party objects to
2 the designation of any document as Confidential Information, such party shall state the objection
3 by letter to counsel for the entity (whether a party or non-party) making the designation. Grounds
4 for such objections would include, but are not limited to, the fact that the challenged materials or
5 information (a) is in the public domain; (b) was known or possessed by the Responding Party at
6 the time of disclosure; (c) was received from a third-party under no obligation of confidentiality;
7 or (d) was derived or obtained independently of the disclosure from a third-party under no
8 obligation of confidentiality.

9 8. The parties shall attempt to resolve any disagreement as to the protected nature of
10 the information on an informal basis before seeking relief from the Court. Until an objection to
11 the designation of a document has been resolved by agreement of counsel or by order of the
12 Court, the document shall be treated as Confidential Information and subject to this Order.
13 Nothing herein shall affect the Responding Entity's obligation to show good cause for the
14 protection of the information in the event any person files a motion disputing the Responding
15 Entity's designation of discovery material as "CONFIDENTIAL."

16 9. Except as the Court may otherwise expressly direct and subject to the further
17 conditions imposed by this Order, material that is "CONFIDENTIAL" may be disclosed only to
18 the following persons:

- 19 (a) Up to two client representatives of the Parties to this Order including the
20 parties' employees (not including inside counsel) as well as employees of
21 affiliates of the party receiving Confidential Information, but only to the
22 extent counsel determines in good faith that the employee's assistance is
23 reasonably necessary to the conduct of the litigation in which the
24 information is disclosed. The parties agree that Rodney Tipton, Bern
25 McPheely and Doug Stambaugh are acceptable client representatives
26 pursuant to this paragraph. In addition, PAS will identify one additional
27 party representative under this Paragraph. Before that representative

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receives any Confidential Information, ITW shall have two business days in which to object to that individual's selection. The parties will work in good faith to resolve any dispute regarding the party representative;

(b) Outside trial counsel of record for the parties to this action and in-house counsel with responsibility for this action, and to paralegal assistants, office clerks, secretaries and other such personnel working under such counsel's supervision;

(c) Expert witnesses consulted, employed or designated by a party (including any interpreters or translators), as well as associates, assistants, and other personnel employed directly by such experts who have read and agree in writing to be bound by the terms of this Order by executing the "Agreement of Confidentiality" set forth in ¶ 10 herein. If any expert witnesses is affiliated with, or in actual or potential (evaluated under a good faith standard) competition, with the parties, the identity and relationship of that potential expert witness must be provided to the opposing party two business days prior to any disclosure of Confidential Information to allow for objection to that expert witness's receipt of Confidential Information. The parties will work in good faith to resolve any dispute regarding this paragraph;

(d) The Court, court personnel and court reporters;

(e) Persons who authored, were an addressee, or were copied on the Confidential Information;

(f) Such other persons as may be agreed by written stipulation of the Responding Entity and the party seeking to make the disclosure, or by further order of the Court.

10. Prior to giving possession of any "CONFIDENTIAL" material to any person permitted under this Order other than those identified in paragraphs 6(d) and 6(e), counsel for the

1 party that receives such material that is “CONFIDENTIAL” shall first provide the intended
2 recipient with a copy of this Order, and shall cause him or her to execute the following written
3 Agreement of Confidentiality, which counsel shall thereafter retain:

4 Agreement of Confidentiality

5 I understand that I am being given access to Confidential
6 Information pursuant to a Protective Order entered in the matter
7 California Natural Products v. Illinois Tool Works Inc., No. 2:12-
8 CV-00593-JAM-GGH (E.D. CA). I have read the Protective Order
9 and agree to be bound by its terms with respect to the handling, use
10 and disclosure of such Confidential Information. I further agree and
11 attest to my understanding that, in the event that I fail to abide by the
12 terms of the Protective Order, I may be subject to sanctions,
13 including sanctions by way of contempt of court, imposed by the
14 Court for such failure. In consideration for me being allowed access
15 to said information and documents in connection with this litigation,
16 I further agree to be contractually bound by the terms of the
17 Protective Order and I agree and attest to my understanding that, in
18 the event that I fail to abide by the terms of the Protective Order, I
19 may be subject to financial liability for any loss or damage caused on
20 account thereof.

21 Upon written request of counsel for a party not later than thirty days following ruling on the
22 Motion for Preliminary Injunction, copies of all executed Agreement of Confidentiality forms
23 shall be provided to counsel for the other parties within seven days of such request.

24 11. Anything in this Order to the contrary notwithstanding, any party may use the
25 services of a photocopying service, printing and binding service, or computer input service with
26 regard to Confidential Information, provided such services are advised of the confidential nature
27 of the documents and agree to maintain their confidentiality.

12. If a party produces documents or information that that party believes to be
confidential but the party inadvertently fails to designate the documents or information as
“CONFIDENTIAL,” the party may designate or re-designate the documents or information with
the appropriate designation. Disclosure or production of documents or information without
appropriate marking or redaction shall not constitute a waiver of the right by any party to seek
protection under this Order and compliance with the procedures of this paragraph shall not

1 prejudice the right of any party to challenge the designation of documents or information as
2 “CONFIDENTIAL.”

3 13. All Confidential Information that is filed with the Court, and any pleadings,
4 motions or other papers filed with the Court disclosing any Confidential Information shall be filed
5 under seal and kept under seal until further ordered by the Court. Where possible, only
6 confidential, highly confidential or otherwise protected portions of filings with the Court shall be
7 filed under seal. The procedure for sealing documents shall adhere to Local Rule 141 of the
8 United States District Court for the Eastern District of California.

9 14. Any Confidential Information designated by any party to be introduced at trial or
10 as part of the record on appeal may be offered into evidence in open court unless the Responding
11 Entity that produced the material or obtained the Confidential Information designation for
12 material produced by others obtains an appropriate protective order from this Court or the
13 appellate court. The Responding Entity must be given notice and a sufficient opportunity to seek
14 such a protective order.

15 15. If a party in possession of Confidential Information receives a subpoena or other
16 request seeking production or other disclosure of Confidential Information, that party shall
17 immediately give written notice to counsel for the party that initially produced the Confidential
18 Information, stating the nature and type of Confidential Information that has been sought and the
19 date and time proposed for production or disclosure of the material. Any party objecting to the
20 production or disclosure shall have the obligation to take timely action in the appropriate court or
21 courts. In the event that such action is taken (*e.g.*, a motion is filed), no Confidential Information
22 that is the subject of said action to prevent disclosure shall be produced or disclosed without
23 written approval by counsel of the objecting party or by further order of the appropriate court(s).

24 16. In addition to any other remedies set forth herein, any party violating this Order
25 and thereby causing damage to the interests of the Responding Entity may be liable to the
26 Responding Entity for all damages so caused.
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1 17. Nothing contained in this Order shall prejudice in any way or waive in any respect
2 the right of any Responding Entity (including non-parties) to assert any privilege as to any
3 documents, whether or not designated as Confidential Information pursuant to this Order.
4 Counsel for a Responding Entity may redact or mask documentary material constituting financial
5 or technical terms relating to a bid, or proprietary information of a third party covered by a non-
6 disclosure agreement, that the parties believe in good faith to be non-responsive to the requesting
7 parties' requests, or information subject to a privilege. Upon request, the producing party shall
8 provide additional description of the materials redacted. The parties shall work together in good
9 faith to resolve any dispute regarding information redacted materials.

10 18. With respect to any 30(b)(6) or party deposition, the deposing party agrees that it
11 will not send a corporate representative (including in-house counsel) to the deposition. The
12 responding party shall have 2 business days following receipt of the rough transcript to designate
13 any portion of the deposition for redaction on the basis that the testimony includes (1) financial or
14 technical terms relating to a bid, (2) proprietary information of a third party covered by a non-
15 disclosure agreement, or (3) information protected by a privilege. The parties shall work together
16 in good faith to resolve any dispute regarding redactions from the deposition transcription
17 materials.

18 19. This Order shall be binding upon the parties and their attorneys.

19 20. Nothing contained in this Order shall prejudice in any way the right of any party to
20 seek, by way of consent of all parties or by motion to the Court,

21 (a) Additional protection for specific items of Confidential Information; or

22 (b) Relief from the provisions of this Order with respect to specific items or
23 categories of Confidential Information. Moreover, if a party does not
24 comply with the terms of this Order, the complaining party may petition
25 the Court for sanctions, or other appropriate relief.

26 21. Pursuant to the Federal Rules of Civil Procedure, if information produced in
27 discovery is subject to a claim of privilege or of protection as trial-preparation material, the party

1 making the claim may notify the receiving party, including the basis for the claim. After being
2 notified, the receiving party must promptly return, sequester, or destroy the specified information
3 and any copies it has; must not use or disclose the information until the claim is resolved; must
4 take reasonable steps to retrieve the information if the party disclosed it before being notified; and
5 may promptly present the information to the court under seal for a determination of the claim.
6 The producing party must preserve the information until the claim is resolved.

7 22. This Protective Order is entered solely for the purpose of facilitating the exchange
8 of documents and information between the parties to this action without involving the Court
9 unnecessarily in the process. Nothing in this Order nor the production of any information or
10 document under the terms of this Order nor any proceedings pursuant to this Order shall be
11 deemed to have the effect of an admission or waiver by either party or of altering the
12 confidentiality or nonconfidentiality of any such document or information.

13 23. This Order shall survive the final termination of this action to the extent that the
14 information contained in the Confidential Information is not or does to become known to the
15 public, and the Court shall retain jurisdiction to resolve any dispute concerning the use of
16 information disclosed hereunder.

17 Entered this 21st day of March, 2012.

18 /s/ John A. Mendez
19 Honorable John A. Mendez
20 United States District Court Judge
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PROPOSED BY:

/s/ Gregory S. Cavallo
One of Its Attorneys

Jeffrey W. Shopoff (Bar No. 46278)
Gregory S. Cavallo (Bar No. 173270)
Paul F. Kirsch (Bar No. 127446)
James M. Robinson (Bar No. 238063)
SHOPOFF CAVALLO & KIRSCH LLP
100 Pine Street, Suite 750
San Francisco, CA 94111
Telephone: (415) 984-1975
Facsimile: (415) 984-1978

Attorneys for Plaintiff
CALIFORNIA NATURAL PRODUCTS

/s/ Lynn S. Murray
One of Its Attorneys

David S. Poole (Bar. No. 94690)
Poole & Shaffery, LLP
25350 Magic Mountain Parkway
Second Floor
Santa Clarita, CA 91355
Telephone: (661) 290-2991
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Grippe & Elden LLC
111 South Wacker Drive, Ste 5100
Chicago, IL 60606
Telephone: (312) 704-7700
Facsimile: (312) 558-1195

Attorneys for Defendant,
ILLINOIS TOOL WORKS INC.