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12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF CALIFORNIA  
14 SACRAMENTO DIVISION  
15

16 RANDY M. CORDERO,  
17 Plaintiff,  
18 v.  
19 NICK GUZMAN, et al.  
20 Defendant.

Case No. 2:13-cv-01551 JAM KJN

**STIPULATION AND PROTECTIVE ORDER**

Trial Date: July 24, 2017  
Action Filed: July 16, 2013

1 Good cause appearing, and in conformance with the parties' agreement:

2 **IT IS HEREBY ORDERED** that this Protective Order pursuant to Rule 26(c) of the  
3 Federal Rules of Civil Procedure be, and is hereby, entered.

4 1. This Protective Order shall be applicable to and govern all depositions, documents  
5 produced in response to requests for production of documents, documents produced in response  
6 to subpoenas served on third parties, and all other discovery taken pursuant to the Federal Rules  
7 of Civil Procedure, and other information hereafter furnished, directly or indirectly, by or on  
8 behalf of any party or nonparty in connection with this action which any party or nonparty  
9 (whether or not it furnished the materials or information) designates as "CONFIDENTIAL,"  
10 "CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL –  
11 ATTORNEY'S EYES ONLY."

12 a. The designation of "CONFIDENTIAL" is intended to encompass  
13 materials and information of whatsoever nature that the designating party or nonparty in good  
14 faith believes compromise information that is not generally known and which the party or  
15 nonparty would normally not reveal to third parties or would cause third parties to maintain in  
16 confidence, including, without limitation, documents protected by any qualified privileges.

17 b. A party or nonparty may also designate their discovery materials and  
18 information provided in this litigation as "CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
19 when that party or nonparty has a good faith belief that such materials and information are  
20 particularly sensitive and therefore require a heightened level of protection.

21 c. A party or nonparty may also designate their discovery materials and  
22 information provided in this litigation as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
23 ONLY" when that party or nonparty has a good faith belief that such materials and information  
24 are particularly sensitive and therefore require the utmost level of protection.

25 2. Materials and information governed by this Protective Order shall be used by any  
26 recipients solely for the purpose of conducting this litigation, and not for any other purpose  
27 whatsoever, and such information shall not be disclosed to anyone except as provided herein.  
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1           3.       Any information or materials produced by any party or nonparty as part of  
2 discovery in this action may be designated by that party or nonparty pursuant to Paragraphs 4  
3 through 8 of this Protective Order.

4           4.       The designation of information or materials for purposes of this Protective Order  
5 shall be made in the following manner by the party or nonparty seeking protection:

6           a.       In the case of documents, exhibits, briefs, memoranda, or other materials  
7 (apart from depositions or other pretrial and trial testimony): by affixing a plainly visible  
8 confidentiality designation legend to: (i) the first page and each page containing any confidential  
9 information or materials; or (ii) physically on the outside of any media for storing electronic  
10 documents, if produced in native format, at the time such documents are produced or such  
11 information is disclosed, or as soon thereafter as the party or nonparty seeking protection  
12 becomes aware of the confidential nature of the information or materials disclosed and sought to  
13 be protected hereunder. The term “document,” as used in this Protective Order, shall have the  
14 broadest meaning permissible under the Federal Rules of Civil Procedure and shall include,  
15 without limitation, all “documents and electronically stored information” as defined in Rule 34  
16 of the Federal Rules of Civil Procedure, all “writings,” “recordings,” and “photographs” as  
17 defined in Rule 1001 of the Federal Rules of Evidence, and any information stored in or through  
18 any computer system or other electronic or optical data storage device.

19           b.       In the case of depositions or other pretrial testimony: (i) by a statement on  
20 the record, by counsel, during such deposition or other pretrial proceeding that the entire  
21 transcript or a portion thereof shall be designated hereunder; or (ii) by written notice of such  
22 designation sent by counsel to all parties within five (5) court days after the deposition. (For the  
23 elimination of doubt, email notification constitutes written notification under this Protective  
24 Order.) The parties shall treat all deposition and other pretrial testimony as “CONFIDENTIAL”  
25 under this Protective Order until the expiration of five (5) court days after the deposition. Unless  
26 designated as confidential pursuant to this Protective Order, any confidentiality is waived after  
27 the expiration of the 5-day period unless otherwise stipulated or ordered. The parties may modify  
28 this procedure for any particular deposition or proceeding through agreement on the record at

1 such deposition or proceeding or otherwise by written stipulation, without approval of the Court.  
2 If the contents of any document or information designated under this Protective Order are  
3 referenced during the course of a deposition, that portion of the deposition record reflecting such  
4 confidential information shall also be treated, without the need for additional designation, with  
5 the same confidential protection as that document or information.

6 c. A party or nonparty furnishing documents and things to parties shall have  
7 the option to require that all or batches of documents and things be treated as confidential during  
8 inspection and to make its designations of particular documents and things at the time copies of  
9 documents and things are produced or furnished.

10 5. Information or materials designated as “CONFIDENTIAL” under this Protective  
11 Order, or copies or extracts therefrom and compilations thereof, may be disclosed, described,  
12 characterized, or otherwise communicated or made available in whole or in part only to the  
13 following persons:

14 a. Any party to the litigation.

15 b. Counsel of record in this litigation and staff and supporting personnel of  
16 such attorneys, such as paralegals, secretaries, stenographic and clerical employees and  
17 contractors, and outside copying, imaging and presentation services, who are working on this  
18 litigation under the direction of such attorneys and to whom it is necessary that the materials be  
19 disclosed for purposes of this litigation.

20 c. Subject to Paragraphs 8 and 9 herein, persons who are expressly retained  
21 or sought to be retained by a party or parties as consultants or testifying experts; provided that  
22 the disclosure of such material to any persons under this subparagraph shall only be to the extent  
23 necessary to perform their work in connection with this litigation.

24 d. Subject to Paragraph 9 herein, any person of whom testimony is taken, or  
25 is scheduled to be taken, in this action. No individual who is shown confidential information or  
26 materials or testimony pursuant to this subsection shall be permitted to retain or keep copies of  
27 the confidential material or testimony shown under any circumstances.

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1 e. The Court and Court personnel under seal if filed or lodged with the  
2 Court.

3 f. Subject to Paragraph 9 herein, court reporters, interpreters, and  
4 videographers employed in connection with this action.

5 6. Information or materials designated as “CONFIDENTIAL – ATTORNEYS’  
6 EYES ONLY” under this Protective Order, or copies or extracts therefrom and compilations  
7 thereof, may be disclosed, described, characterized, or otherwise communicated or made  
8 available in whole or in part only to the following persons:

9 a. Counsel of record in this litigation and staff and supporting personnel of  
10 such attorneys, such as paralegals, secretaries, stenographic and clerical employees and  
11 contractors, and outside copying, imaging and presentation services, who are working on this  
12 litigation under the direction of such attorneys and to whom it is necessary that the materials be  
13 disclosed for purposes of this litigation.

14 b. Subject to Paragraph 8 and 9 herein, persons who are expressly retained or  
15 sought to be retained by a party or parties as consultants or testifying experts; provided that the  
16 disclosure of “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or materials to  
17 any persons under this subparagraph shall only be to the extent necessary to perform their work  
18 on this litigation.

19 c. The Court and Court personnel under seal if filed or lodged with the  
20 Court.

21 d. Subject to Paragraph 9 herein, court reporters, interpreters, and  
22 videographers employed in connection with this action.

23 e. Any party to this action only if the information or materials designated as  
24 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” are introduced as exhibits at trial.

25 7. Information or materials designated as “HIGHLY CONFIDENTIAL –  
26 ATTORNEYS’ EYES ONLY” under this Protective Order, or copies or extracts therefrom and  
27 compilations thereof, may be disclosed, described, characterized, or otherwise communicated or  
28 made available in whole or in part only to the following persons:

1           a.       Counsel of record in this litigation and staff and supporting personnel of  
2 such attorneys, such as paralegals, secretaries, stenographic and clerical employees and  
3 contractors, and outside copying, imaging and presentation services, who are working on this  
4 litigation under the direction of such attorneys and to whom it is necessary that the materials be  
5 disclosed for purposes of this litigation.

6           b.       Subject to Paragraphs 8 and 9 herein, persons who are expressly retained  
7 or sought to be retained by a party or parties as consultants or testifying experts; provided that  
8 the disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or  
9 materials to any persons under this subparagraph shall only be to the extent necessary to perform  
10 their work on this litigation.

11           c.       The Court and Court personnel under seal if filed or lodged with the  
12 Court.

13           d.       Subject to Paragraph 9 herein, court reporters, interpreters, and  
14 videographers employed in connection with this action.

15           Any document designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
16 ONLY” may not be used as an exhibit at any hearing or trial or in a motion filed in the above-  
17 captioned litigation. While this restriction on use at a hearing or trial or in a motion shall apply  
18 to documents designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” it shall  
19 not apply to relevant information or material contained in such documents designated as  
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that is pertinent and necessary to  
21 the litigation.

22           8.       For the purposes of this Protective Order, a consultant or expert shall be restricted  
23 to a person who is retained or employed as a bona fide consultant or expert for purposes of this  
24 litigation, whether full or part time, by or at the direction of counsel for a party.

25           9.       Each person identified above in the subparts to Paragraphs 5, 6, 7 and 8 who is  
26 not (i) counsel for a party (or staff or supporting personnel of counsel for a party, as defined in  
27 subparagraphs 5(a) and 6(a)) or (ii) the Court or Court personnel to whom information or  
28 materials designated under this Protective Order are to be disclosed, shall, prior to receiving such

1 information or materials, be furnished with a copy of this Protective Order and a copy of the  
2 Non-Disclosure Agreement attached hereto as Exhibit A-1, which the person shall read and sign.  
3 Counsel for the party seeking to disclose material designated under this Protective Order to any  
4 such person pursuant to this paragraph shall be responsible for retaining the executed originals of  
5 all such Non-Disclosure Agreements. Copies of any such Non-Disclosure Agreements (except  
6 for those signed by non-testifying experts or consultants who need not be disclosed under Rule  
7 26) shall be provided to counsel for the designating parties or nonparties upon request at any  
8 point after both plaintiff's and defendant's experts have been disclosed in accordance with Rule  
9 26. Counsel shall retain copies of Non-Disclosure Agreements signed by all experts and  
10 consultants they have retained, including non-testifying experts or consultants, for a period of  
11 two years following the initial conclusion of this action in the district court.

12           10. All information and material designated under this Protective Order shall be kept  
13 in secure facilities in a manner intended to preserve confidentiality. Access to those facilities  
14 shall be permitted only to those persons set forth in Paragraphs 5, 6, 7 and 8 above as persons  
15 properly having access thereto. The recipient of any information or materials designated under  
16 this Protective Order shall use its best efforts, but at no time less than reasonable efforts under  
17 the circumstances, to maintain the confidentiality of such information or materials.

18           11. In the event that any information or material designated under this Protective  
19 Order is used, described, characterized, excerpted, or referenced in, or attached to, any court  
20 proceeding or submission in connection with this litigation: (i) it shall not lose its confidential  
21 status through such use; (ii) the parties shall take all steps reasonably required to protect its  
22 confidentiality during such proceedings; and (iii) the party seeking to disclose any confidential  
23 information or material shall seek leave of the Court to file such material under seal, otherwise  
24 no disclosure may be had. Envelopes used to seal such material shall carry the notation:  
25 "SUBJECT TO PROTECTIVE ORDER – FILED UNDER SEAL" and shall comply with all  
26 requirements of the Court for filing material under seal. If the material in the envelope contains  
27 information or materials that have been designated "attorneys' eyes only," then the sealed  
28 envelope shall also be stamped with the notation "CONFIDENTIAL – ATTORNEYS' EYES

1 ONLY” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as appropriate.  
2 Envelopes so marked shall be delivered sealed to the Clerk of the Court and the contents thereof  
3 shall not be made available for public inspection. Counsel for the designating party shall have the  
4 opportunity to oppose any request for public inspection.

5 12. A party shall not be obligated to challenge the propriety of the confidentiality  
6 designation of any material under this Protective Order at the time the designation is made, and  
7 failure to do so shall not preclude a subsequent challenge thereto. A party or any other person  
8 objecting to the designation of confidential information shall provide written notice of the  
9 objection to the designating party, specifying the materials that are the subject of the objection  
10 and detailed grounds for the objection. Within five (5) business days after such objection, the  
11 parties and any other objecting person(s) shall confer in good faith in an effort to resolve the  
12 objections. If such conference does not resolve the objection or does not take place within five  
13 (5) business days, then the designating person may apply to the Court, by motion, for a ruling  
14 that material designated by a party as Confidential Information shall be treated as Confidential  
15 Information. The designating party shall have the burden of demonstrating the propriety of that  
16 designation. Pending determination by the Court, material designated by a party as confidential  
17 shall be treated as initially designated and provided in this Order. Failure of the designating party  
18 to apply for a ruling within ten (10) business days after such conference or after the expiration of  
19 the conference time frame waives its right to confidentiality for such documents unless this time  
20 is extended by mutual consent of the parties.

21 13. Nothing in this Protective Order shall prevent disclosure beyond the terms of this  
22 Protective Order if the party that designated the materials or information consents in writing to  
23 such disclosure, or if a court orders such disclosure. A party requested to disclose information or  
24 materials designated under this Protective Order to a nonparty pursuant to a subpoena, civil  
25 investigative demand, discovery procedure permitted under the Federal Rules of Civil Procedure,  
26 or other formal discovery request shall object to its production to the extent permitted by  
27 applicable law and notify the requesting nonparty of the existence of this Protective Order and  
28 that the information or materials requested by the nonparty has been designated under this



1 Protective Order, and shall further give notice of such request, by facsimile and next business  
2 day delivery, upon the party which designated the information or materials as soon as is  
3 reasonably possible, but in all instances reasonably prior to the date on which such material  
4 designated under this Protective Order is requested to be produced to the nonparty.

5 14. If a party inadvertently fails to designate information or materials, when  
6 producing or otherwise disclosing such information or materials, it shall not be deemed a waiver  
7 in whole or in part of a party's claim of confidentiality. As soon as the receiving party is  
8 informed by the producing or designating party that it is designating previously produced  
9 information or materials as "CONFIDENTIAL," "CONFIDENTIAL – ATTORNEYS' EYES  
10 ONLY," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the information  
11 must be treated as if it had been timely designated under this Protective Order, and the receiving  
12 party must endeavor in good faith to obtain all copies of the information or materials that it  
13 distributed or disclosed to persons not authorized to access such information or materials by  
14 Paragraphs 5, 6, 7 or 8 above, as well as any copies made by such persons. This provision shall  
15 not affect the waiver provisions in Paragraph 4(b) above with respect to testimony.

16 15. All counsel for the parties who have access to information or material designated  
17 under this Protective Order acknowledge they are bound by this Protective Order and submit to  
18 the jurisdiction of this Court for purposes of enforcing this Protective Order.

19 16. Within sixty (60) days after the final termination of litigation between the parties,  
20 all information or materials designated under this Protective Order and all copies thereof  
21 (including summaries and excerpts) shall be either returned to the party that produced it or  
22 destroyed and a certification of destruction supplied to the producing party.

23 17. This Protective Order may be modified by the Court at any time for good cause  
24 shown following notice to all parties and an opportunity for them to be heard.

25 18. Both parties reserve the right to further modify this Order upon showing of good  
26 cause.

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IT IS SO STIPULATED.

Dated: March 7, 2017

Respectfully submitted,

LATHAM & WATKINS LLP

By: /s/ Kala Sherman-Presser  
Kala Sherman-Presser

*Attorney for Plaintiff*  
Randy M. Cordero

Dated: March 7, 2017

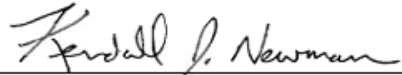
XAVIER BECERRA  
Attorney General of California  
CHRISTOPHER J. BECKER  
Supervising Deputy Attorney General

By: /s/ Diana Esquivel (as authorized on March 7, 2017)  
Diana Esquivel  
Deputy Attorney General

*Attorneys for Defendant*  
Nick Guzman

**PURSUANT TO STIPULATION, IT IS SO ORDERED:**

Dated: March 31, 2017

  
\_\_\_\_\_  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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**EXHIBIT A-1**

**NON-DISCLOSURE AGREEMENT**

I, \_\_\_\_\_, do solemnly swear that I have read and am fully familiar with the terms of the Stipulation and Protective Order regarding confidentiality of discovery documents and information entered in *Cordero v. Guzman*, Case No. 2:13-cv-01551 JAM KJN in the United States District Court for the Eastern District of California. I hereby agree to comply with and be bound by the terms and conditions of that Protective Order unless and until modified by further Order of that Court. I hereby consent to the jurisdiction of that Court for the purposes of enforcing that Protective Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_.

Signed: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_