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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION

AGK SIERRA de MONTSERRAT,
 L.P., a Delaware limited partnership,

Plaintiff,

vs.

COMERICA BANK, a Texas
 corporation; and DOES 1 through 10,
 inclusive,

Defendants.

Case No. 2:15-cv-01280-KJM-AC

Honorable Kimberly J. Mueller

**AMENDED ORDER TO PROTECT
 CONFIDENTIAL INFORMATION**

Complaint Filed: April 29, 2015
 Trial Date: July 17, 2017



1 Pursuant to the Stipulation filed by Plaintiff AGK Sierra de Montserrat, LP
2 (“AGK”), on the one hand, and Defendant Comerica Bank (“Comerica”), on the other,
3 the parties agree to this amended discovery protective order limiting the use and
4 dissemination of certain information and materials designated by the parties as
5 “Confidential Information” (as defined below). Accordingly, this Amended Protective
6 Order (“Order”) shall govern the handling of documents (as defined below), responses
7 to interrogatories, depositions, exhibits and all other information exchanged by the
8 parties in this action through initial disclosures or discovery, or provided by or obtained
9 from non-parties in this action.

10 The Court finds that good cause exists to enter this Order because the parties may
11 obtain through initial disclosures or discovery certain documents and information (*e.g.*,
12 financial records, etc.), which, if disclosed to the public, would unnecessarily invade
13 the protectable interests of the parties and nonparties who will potentially produce
14 documents or provide testimony in this action, including, without limitation, such
15 parties’ protectable interests in maintaining the confidentiality of trades secrets, internal
16 policies and procedures, and other proprietary business and financial information.
17 Moreover, there is no valid reason any of the parties to this action should be allowed to,
18 or need to, release such information to the public. Thus, this information requires
19 special protection from disclosure.

20 As set forth below in Section 11, this Stipulated Protective Order does not entitle
21 the parties to file confidential information under seal; Local Rules 141 and 141.1 set
22 forth the procedures that must be followed and the standards that will be applied when a
23 party seeks permission from the court to file material under seal.

24 1. ***Applicability of This Protective Order.*** All testimony, information,
25 documents and things filed with the Court or produced by any party or nonparty in
26 discovery in this action shall be governed by this Order. This Order is entered solely
27 for the purpose of facilitating the exchange of material without unnecessarily involving
28 the Court in the process.

1 2. ***Pretrial Order Only.*** This Order is strictly a pretrial order and does not
2 govern the use or disclosure of information and materials at the trial in this action.

3 3. ***Confidential Information.*** “Confidential Inform ation” shall mean
4 information and materials related to the businesses of the parties or third parties that are
5 unique to the Designating Party (as defined below), that is, not already well known or
6 reasonably discoverable upon research by a person outside of the such Designating
7 Party, including, without limitation, trade secrets as defined by California Civil Code
8 Section 3426, et seq., and such Designating Party’s sales and financial information,
9 compensation information, personnel files, marketing plans, business plans and
10 strategies, research information, internal policies and procedures, system s, and
11 methods, contracts and other form s, and all information and materials generally
12 regarded as confidential in the industry or business in which the Designating Party is
13 engaged.

14 4. ***Confidential Information Designation.*** A party or nonparty may
15 designate as “confidential” any document, discovery response, m aterial, item,
16 deposition testimony, or i nformation that is otherwise produced through init ial
17 disclosures or in discovery inthis action and which containstrade secret or commercial
18 information, including proprietary business or fi nancial information, nonpublic
19 contracts, or sales information (“Confidential Material”). For purposes of this Order,
20 the party or nonpart y designating testimony, information, things or documents as
21 Confidential Material is define d as the “Designating Party.” The designation of
22 Confidential Material shall be made only wlen counsel of record believes in good faith
23 that the designated material actually qualifies for such protedion and shall notbe made:
24 (a) to impose burden or delay on an opposing party; or (b) for any tactical or other
25 advantage in litigation.

26 5. ***Procedure for Designating and Marking Confidential Material.***
27 Confidential Material shall be designated and marked as follows:

28 a. A document is to be designated as Confidential Material by stamping or

1 writing on it the following legend, or an equivalent thereof: “CONFIDENTIAL –
2 SUBJECT TO PROTECTIVE ORDER.” The legend shall be placed on the first page
3 of the document and on each page that the Designating Party claims to contain
4 Confidential Material.

5 b. Information or material produced in an electronic medium (*e.g.*, CD, DVD
6 or tape) is to be designated as Confidential Material by marking or labeling the medium
7 container with the legend specified in subsection 5(a) above. If any person or entity
8 who receives such a designated electronic medium prints or otherwise transfers to
9 another medium any of the information contained on the electronic medium, any
10 resulting document or other medium shall be marked by that person or entity as
11 Confidential Material in accordance with subsection 5(a), above, or this subsection
12 5(b).

13 c. A physical item or exhibit is to be designated as Confidential Material by
14 affixing to it a label with the legend specified in section 5(a), above.

15 d. A discovery response is to be designated as Confidential Material by
16 placing, on the first page of the set of responses and on each page that contains
17 information that the Designating Party claims to be Confidential Material, the legend
18 specified in subsection 5(a), above, and specifically denoting in the document which
19 response or responses the party deems to be “Confidential Material” subject to this
20 Order.

21 e. Whenever a deposition involves a disclosure of materials or information
22 that any party asserts should be designated as Confidential Material, the deposition
23 shall be designated in accordance with this Protective Order. Such designation shall be
24 made at the deposition and/or within ten (10) days after the Designating Party has
25 received the written copy of the deposition transcript from the court reporter. All
26 Confidential Material produced at a deposition will be separately bound from the non-
27 confidential portions of that deposition.

28 6. ***Inadvertent Failure to Designate By Producing Party.*** A Designating

1 custody, use, and dissemination of such material, to avoid any intentional or inadvertent
2 disclosure to persons to whom disclosure is not permitted under this Order.

3 10. *Use of Information Produced Pursuant to This Order.* Confidential
4 Material shall be used by the party or parties to whom the information is produced
5 solely for the purpose of litigating the present lawsuit between the parties, including
6 appeals, unless otherwise agreed in writing by the Designating Party or so ordered by a
7 court. Confidential Material shall not be made available to any person or entity except
8 as authorized under this Order. However, nothing in this Order limits a Designating
9 Party from showing its own Confidential Material to whomever the Designating Party
10 may deem appropriate or using its own Confidential Material for any purpose.
11 Furthermore, nothing in this Order limits a party's ability to show items designated by
12 another party as Confidential Material to the Designating Party, including any present
13 officer, director, employee, or representative thereof.

14 Confidential Material may be disseminated only to the following persons, all of
15 whom shall be bound by this Protective Order:

16 a. Counsel of record and in-house counsel working on this action on behalf
17 of any party and counsel's partners and associates;

18 b. Named parties to the action, and those employees, agents and consultants
19 of those parties necessary for the prosecution or defense of this action;

20 c. Expert witnesses and consultants retained by counsel of record who are
21 directly participating in this action; and

22 d. Paralegals and secretarial and clerical employees of counsel of record who
23 are directly participating in the action, including necessary secretarial, clerical, and
24 litigation support or copy service personnel assisting such counsel.

25 e. Counsel of record and in-house counsel working on the civil action
26 entitled *Westwood Montserrat, Ltd. v. AGK Sierra de Monserrat, L.P. et al.*, in the
27 Superior Court of the State of California, in and for the County of Placer, Case No.
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1 SCV0032447 (the “State Court Action”) on behalf of any party and such counsel’s
2 partners and associates;

3 f. Named parties to the State Court Action, and those employees, agents and
4 consultants of those parties necessary for the prosecution or defense of the State Court
5 Action;

6 g. Expert witnesses and consultants retained by counsel of record who are
7 directly participating in the State Court Action; and

8 h. Paralegals and secretarial and clerical employees of counsel of record who
9 are directly participating in the State Court Action, including necessary secretarial,
10 clerical, and litigation support or copy service personnel assisting such counsel.

11 Prior to providing any protected information to any person, including any use in
12 the course of discovery (depositions, requests for admissions of authenticity of
13 documents, etc.) counsel of record shall provide such person with a copy of this Order
14 and such person shall have to agree to be bound hereunder prior to such disclosure or
15 use.

16 11. ***Submitting Confidential Materials to the Court.*** If any Confidential
17 Material is to be filed with the Court, the party seeking to file such material shall
18 comply with Local Rules 141 and 141.1 of this Court prior to filing such material with
19 the Court. The parties agree that they shall avoid, as much as possible, the inclusion of
20 Confidential Material in briefs and other documents filed with the Court so as to
21 minimize the need to seal records or otherwise burden the Court.

22 12. ***Return of Confidential Material.*** Upon termination of this action and the
23 expiration of any rights of appeal, counsel for the parties shall, within thirty (30) days,
24 assemble and return to the producing parties all Confidential Material and all copies of
25 the same, or shall certify the destruction thereof to the supplying parties; provided,
26 however, that outside counsel may retain one copy of each document solely for the
27 purpose of reference in the event of any dispute concerning the use or disclosure of
28 information so designated and may retain copies of such materials to the extent that

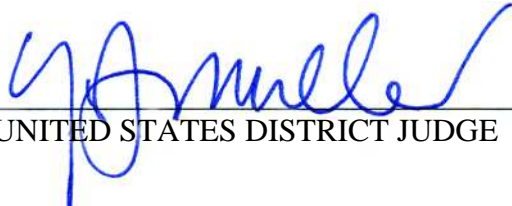
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they contain, include, or affect attorney work product of the receiving attorney.

13. **Modification of Protective Order.** This Order is without prejudice to the right of AGK and Comerica to seek modification thereof.

IT IS SO ORDERED

DATED: July 22, 2016



UNITED STATES DISTRICT JUDGE