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Attorney(s) for Defendant,  
DEMILEC, INC.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION**

H. BRAD DORKEN,

CASE NO.: 2:15-CV-01628-TLN-CMK

Plaintiff,

**AGREED CONFIDENTIALITY AND  
NON-DISCLOSURE PROTECTIVE  
ORDER**

vs.

DEMILEC, INC., Et Al.

Defendants.

**THIS MATTER** came to be heard upon the agreement and stipulation of the parties, the Court having reviewed said agreement and stipulation and being otherwise fully advised in the premises, does hereby finds as follows:

A. Plaintiff, H. Brad Dorken (hereinafter “Plaintiff”), and Defendant, Demilec Inc., (hereinafter “Defendant”), hereby stipulate to the following provisions regarding confidentiality of materials pursuant to Fed. R. Civ. P. 26(c), and request that the Court enter this Protective Order.

1 B. Discovery and trial in the above-captioned matter will require production of  
2 documents and testimony that contain trade secret or other confidential information  
3 requiring protection against unrestricted disclosure and use.

4 C. In the absence of a protective order governing the production and protection from  
5 disclosure of such information, the parties and the Court may be required to devote  
6 an undue amount of time and effort to issues regarding the confidentiality of specific  
7 information produced in discovery.

8 D. The parties have shown good cause for the entry of the following order pursuant to  
9 Rule 26(c) of the Federal Rules of Civil Procedure.

10 It is therefore **ORDERED AND ADJUDGED** as follows:

11 1. “Document” or “documents” means information, recordation and storage media  
12 *of any kind*, including, but not limited to, written, photographic, audio, video, magnetic,  
13 electronic, optical, or other media. This definition also includes, but is not limited to, written,  
14 audio, or video productions of oral statements or events; answers to requests for documents in  
15 lieu of submission of documents; and original versions and reproductions by whatever means.

16 2. The term “Producing Party” includes any party and any nonparty who produces  
17 information or documents incident to discovery in these proceedings, including, but not limited  
18 to, Berkeley Analytical.

19 3. The term “these proceedings” means the proceeding designated in the caption to  
20 this Order and all appeals, interlocutory proceedings and collateral or ancillary proceedings.

21 4. The term “Parties” means the Plaintiff and Defendant.

22 5. The term “Confidential Information” means any information or document  
23 produced by a Producing Party that in good faith the Producing Party believes constitutes a trade  
24 secret or other confidential or proprietary business, technical or financial information subject to  
25 protection under Rule 26(c) of the Federal Rules of Civil Procedure. The term also encompasses  
26 any other information the disclosure of which is likely to have the effect of causing significant  
27 competitive harm to the Producing Party or party from which the information was obtained.  
28 Under no circumstances will “Confidential Information” include any information or documents

1 obtained by a Party or its counsel from any source outside of this Case, including, but not limited  
2 to, by prior disclosure of a Party or its agents, representatives or employees. No Party or third  
3 party shall make the “Confidential Information” designation over documents or information it  
4 knows to have been so previously disclosed.

5 6. Confidential Information shall be classified as either “CONFIDENTIAL” or  
6 “FOR COUNSEL ONLY” by the Producing Party, whether it be a document, information  
7 contained in a document, information revealed during a deposition, information revealed in an  
8 interrogatory answer, information revealed in response to a non-party subpoena, or otherwise.  
9 Information or material which is available to the public, including catalogues, advertising  
10 materials, and the like, shall not be deemed “Confidential Information.”

11 7. Documents produced in this action may be designated by any party or third party  
12 as Confidential Information by marking each page of the document so designated as either  
13 “CONFIDENTIAL” or “FOR COUNSEL ONLY.”

14 8. All Confidential Information produced or exchanged by the parties or by third  
15 parties in the court of this proceeding shall be used solely for the purpose of conducting these  
16 proceedings and for no other purpose whatsoever, and shall not be disclosed to any person  
17 except in accordance with the terms of this Order.

18 9. Confidential Information classified as “CONFIDENTIAL” shall not be disclosed  
19 or communicated to anyone other than the following persons:

- 20 a. The Parties, including their insurers, employees, officers, and directors,  
21 provided that such persons execute a copy of the Agreement To Be Bound by  
22 and Comply with Protective Order in the form attached as Exhibit A prior to  
23 any disclosure. A copy of the signed Agreement To Be Bound by and  
24 Comply with Protective Order must be retained by counsel for the party  
25 making such disclosure so that it may be shown to counsel for the Producing  
26 Party if the Producing Party so requests;
- 27 b. Attorneys of record for the parties in this proceeding including the respective  
28 partners, of counsel, associates and employees of such attorney to whom it is

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- necessary that the material be shown for purposes of this proceeding;
- c. In-house counsel for the respective Parties, including necessary secretarial, clerical and litigation support or copy service personnel assisting such counsel;
  - d. Independent experts and consultants retained by a party to testify or perform other services in connection with these proceedings, provided that such expert or consultant first executes a copy of the Agreement To Be Bound by and Comply with Protective Order in the form attached as Exhibit A prior to any disclosure. A copy of the signed Agreement To Be Bound by and Comply with Protective Order must be retained by counsel for the party making such disclosure so that it may be shown to counsel for the Producing Party if the Producing Party so requests;
  - e. Court reporters in connection with their duties in providing recording and transcription services for depositions conducted in connection with these proceedings, so long as any portion of recording, transcription, or deposition referring or using such document is designated as confidential;
  - f. Personnel of any Court, including judges, official reporters, law clerks, and other authorized personnel, to the extent necessary for them to perform their duties in connection with these proceedings.
  - g. Third-party and Party witnesses deposed in this action and their counsel, if separate from counsel to the Parties, provided that such witnesses and counsel shall be provided copies of this Protective Order prior to or at the outset of the deposition and that such witnesses, on the record at the deposition, shall be informed that he, she, or it (and the witness's counsel, if any), must agree to be bound by the terms of this Protective Order, and shall be requested to execute the Agreement To Be Bound by and Comply with Protective Order in the form attached as Exhibit A prior to any disclosure. A copy of the signed Agreement To Be Bound by and Comply with Protective Order must be

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retained by counsel for the party making such disclosure so that it may be shown to counsel for the Producing Party if the Producing Party so requests.

10. Confidential Information classified as “FOR COUNSEL ONLY” shall not be disclosed or communicated to anyone other than the following persons:

- a. Attorneys of record for the parties in this proceeding including the respective partners, of counsel, associates and employees of such attorney to whom it is necessary that the material be shown for purposes of this proceeding;
- b. In-house counsel for the respective Parties, including necessary secretarial, clerical and litigation support or copy service personnel assisting such counsel;
- c. Outside counsel for the Parties’ insurers, provided that such persons execute a copy of the Agreement To Be Bound by and Comply with Protective Order in the form attached as Exhibit A prior to any disclosure. A copy of the signed Agreement To Be Bound by and Comply with Protective Order must be retained by counsel for the party making such disclosure so that it may be shown to counsel for the Producing Party if the Producing Party so requests;
- d. Independent experts and consultants retained by a party to testify or perform other services in connection with these proceedings, provided that (i) no such expert or consultant is a director, officer, or employee of any other Party or a current employee of entities that are competitors of any Defendant and (ii) such expert or consultant first executes a copy of the Agreement To Be Bound by and Comply with Protective Order in the form attached as Exhibit A. A copy of the signed Agreement To Be Bound by and Comply with Protective Order must be retained by counsel for the party making such disclosure so that it may be shown to counsel for the Producing Party if the Producing Party so requests;
- e. Court reporters in connection with their duties in providing recording and transcription services for depositions conducted in connection with these

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proceedings, so long as any portion of recording, transcription, or deposition referring or using such document is designated as confidential;

f. Personnel of any Court, including judges, official reporters, law clerks, and other authorized personnel, to the extent necessary for them to perform their duties in connection with these proceedings.

g. Witnesses where at least one of the following conditions applies: (i) the witness is a current employee of the Producing Party and Confidential Information was produced by the Producing Party; (ii) the attorney taking the deposition and showing the witness the Confidential Information represents the Producing Party and the Confidential Information was produced by the Producing Party; (iii) the witness's name appears in the Confidential Information as a person who has previously seen or had access to the material or it is otherwise established that the witness has previously seen or had access to the material or knows the information contained within it; (iv) the Producing Party has consented on the record of the deposition to the showing of the Confidential Information to the witness; (v) if the witness if not an employee of the Producing Party, at least ten (10) days before the deposition, a Party wishing to show the witness the Confidential Information notifies the Producing Party of that intent, with a specific listing of the material to be shown and the Producing Party fails to object in writing to such showing within a seven (7) day period, but if an objection in writing is made, such material will not be shown to the witness until and unless the Party wishing to show such material to the witness moves for and obtains appropriate relief from the Court upon good cause shown.

h. Nothing herein shall preclude the attorneys of record from discussing with their respective clients Confidential Information designated "FOR COUNSEL ONLY" in the rendition of advice as contemplated by paragraph 20 below, so

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long as the documents and information so designated are not shown to the clients unless otherwise allowed by this paragraph 8 and its subparts.

11. Any Party or third party may designate deposition testimony as Confidential Information by indicating on the record at the deposition that the testimony is Confidential Information, along with the appropriate classification, and is disclosed subject to the provisions of this Order. The reporter shall mark all copies of the transcript “CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER,” and shall include a notice of the pages and lines of the transcript that should be treated as Confidential Information, including the classification.

- a. Any party or third party also may designate information disclosed at such deposition as Confidential Information by notifying all of the parties in writing within thirty days of receipt of the transcript of the deposition, of the specific pages and lines of the transcript that should be treated as Confidential Information. Each party shall attach a copy of the written notice to the face of each copy of the transcript in his/her possession, custody or control.
- b. If a document that has previously been designated as Confidential Information is made an exhibit to a deposition, the excerpts of the deposition transcripts discussing such exhibit shall be marked “CONFIDENTIAL,” and the list of exhibits included by the reporter with any transcript shall indicate which exhibits have been designated as Confidential Information.
- c. If the Court’s rules require the filing of depositions with the Court or if such filing is required in a particular instance, any deposition transcript or exhibits containing Confidential Information shall be marked “CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER” and filed under seal.
- d. It shall be the obligation of the Party seeking protection of deposition testimony or exhibits to ensure compliance with the provisions of this paragraph 11 and its subparts.

12. The failure to challenge the propriety of a designation of Confidential Information at the time made shall not preclude a subsequent challenge. If counsel for any party

1 disagrees with the designation of Confidential Information by a Producing Party, counsel shall  
2 try first to resolve their dispute informally and in good faith. If counsel cannot resolve the  
3 dispute within three business days, the objecting party may seek appropriate relief from the  
4 Court in the form of a discovery motion as provided in this jurisdiction's Local Rule 251. The  
5 information that is the subject of dispute or motion under this paragraph shall be treated as  
6 Confidential Information pending resolution of the objection by the Court and for thirty (30)  
7 days after any Court order removing a designation of Confidential Information to allow the  
8 Producing Party to seek appellate review, and while appellate review is pending.

9 13. If counsel for a Party refers to or includes Confidential Information in motions,  
10 briefs, affidavits or other written pleadings, motions, or material filed with the Court, counsel for  
11 that party shall give notice of the intent to so use Confidential Information to the Producing  
12 Party, including the description of the specific Confidential Information to be used, 15 days prior  
13 to filing such Confidential Information with the Court. This is to allow the Producing Party an  
14 opportunity to seek a sealing order pursuant to the procedures set forth in this jurisdiction's  
15 Local Rule 141. If no such sealing order is sought within 15 days, the Party seeking to file the  
16 Confidential Information with the Court may do so and not be in violation of this Protective  
17 Order. If a sealing order is sought by the Producing Party, the party seeking to file the  
18 Confidential Information with the Court shall not file the Confidential Information with the  
19 Court until the Court has ruled on the request for the sealing order. If the Court enters a sealing  
20 order, each such written submission shall bear in prominent form on the first page of the  
21 submission the following legend:

22 **FILED UNDER SEAL; CONTAINS MATERIAL SUBJECT TO A PROTECTIVE**  
23 **ORDER OF THE COURT WHICH LIMITS DISCLOSURE AND USE. ACCESS**  
24 **LIMITED TO PERSONS AUTHORIZED BY THE PROTECTIVE ORDER**  
25 **UNLESS OTHERWISE ORDERED BY THE COURT.**

- 26  
27 a. To the extent practicable, counsel filing such written material shall segregate  
28 the portions containing Confidential Information so as to limit the extent to

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which material must be maintained under seal.

b. Copies of written material containing Confidential Information filed with the Court as provided in paragraph 13 may not be provided to any person or entity other than those set forth in paragraphs 9 and 10, except that copies of such written material may be provided to parties to these proceedings if all Confidential Information is first redacted from the copies provided.

14. The provisions of this Order, or any designation or failure to designate particular information as Confidential Information pursuant to this Order, shall not be construed in any other context or proceeding before any other court, agency or tribunal as a waiver or admission that such information is or is not confidential or proprietary.

15. A Producing Party shall make a good faith effort to designate discovery material as confidential at the time of production. Inadvertent or unintentional disclosure by any Producing Party of confidential discovery material, regardless of whether the material was so designated at the time of disclosure, shall not be deemed a waiver of a party's claim of confidentiality, as to either a specific document or any information contained therein, and the parties shall, upon notice, thereafter treat such discovery material as Confidential Information. A receiving party shall make a good faith effort to locate and mark as "CONFIDENTIAL" or "FOR COUNSEL ONLY" any copies of such discovery material.

16. If information that is subject to a claim of privilege or of protection as trial-preparation material is disclosed in discovery, the party making the claim of privilege may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. Nothing in this paragraph shall prevent the receiving party from challenging the propriety of the attorney-client privilege or work product immunity or other applicable privilege or immunity designation by submitting a written challenge to the Court, although all parties agree not to argue that disclosure itself constitutes a waiver of any applicable privilege or protection.

1           17.     Within thirty (30) days of the conclusion of these proceedings, all Confidential  
2 Information shall be either: (1) returned to the Producing Party, or (2) destroyed under the  
3 supervision of counsel of record for the recipient, with a certificate of destruction furnished to  
4 counsel for the Producing Party. It is the responsibility of the Producing Party to request the  
5 Party in possession of the Confidential Information to follow the requirements of this paragraph,  
6 and failure to do so within 60 days after the conclusion of this lawsuit shall constitute a waiver  
7 by the Producing Party of the requirements of this paragraph.

8           18.     The obligations imposed by this Order shall remain in effect after these  
9 proceedings have concluded.

10          19.     Nothing in this Order may be construed to restrict any Party's right to challenge  
11 the admissibility or use of Confidential Information on any ground other than confidentiality,  
12 including but not limited to competence, relevance, or privilege (other than trade secret  
13 privilege).

14          20.     This Order shall not bar any attorney of record in these proceedings in the course  
15 of rendering advice to his client with respect to these proceedings from conveying to any party to  
16 these proceedings his general evaluation of any Confidential Information produced or exchanged  
17 in these proceedings; provided, however, that in rendering such advice and otherwise  
18 communicating with his/her client, the attorney shall not disclose the specific contents of any  
19 Confidential Information produced by another party or third party which disclosure would be  
20 contrary to the terms of this Order.

21          21.     If Confidential Information in the possession of a Party is sought by subpoena or  
22 any other form of compulsory process of any court, administrative or legislative body, or of any  
23 person or tribunal purporting to have authority to seek such Confidential Information by  
24 compulsory process, the Party to whom the process is directed shall promptly give written notice  
25 of such process to the Party designating the information as confidential (the "Designating  
26 Person"), cooperate to the extent necessary to permit the Designating Person to quash such  
27 process, and shall not make production of such information until 10 days after the Designating  
28 Person has received written notice of such process as required herein (unless otherwise ordered

1 to do so by the court, administrative or legislative body, in which case the Party to whom such  
2 process is directed shall provide the Designating Person as much notice as reasonably possible  
3 while not violating such order).

4 22. If any Confidential Information is disclosed to any person other than in a manner  
5 authorized by this Protective Order, the Party responsible for the disclosure or knowledgeable of  
6 such disclosure shall, upon discovery of the disclosure, immediately inform the Producing Party  
7 of all facts pertinent to the disclosure that, after due diligence and prompt investigation, are  
8 known to the Party responsible for the disclosure or knowledgeable of the disclosure (including,  
9 without limitation, the name, address, and employer of the person to whom the disclosure was  
10 made), and shall immediately make all reasonable efforts to prevent further disclosure by each  
11 unauthorized person who received such information. The Producing Party shall be entitled to  
12 seek all remedies available under the law.

13 23. In the event that this action is transferred to another court, the Protective Order  
14 will remain in full force and effect. The Parties agree to present this Protective Order (or another  
15 protective order mutually agreed by the Parties) to the transferee court for entry as necessary.

16 24. In the event additional parties join or are joined in this action, they shall not have  
17 access to any Confidential Information until the newly-joined party or its counsel has executed  
18 and, at the request of any Party, filed with the Court, its agreement to join and be fully bound by  
19 this Protective Order.

20  
21 Dated: March 9, 2017

Respectfully submitted,

22 FOR PLAINTIFF H. BRAD DORKEN

23 /s/ James T. Phillips  
24 Cantey Hangar, LLP  
25 1999 Bryan Street, Suite 3300  
26 Dallas, Texas 75201  
27 (214) 978-4100 / (214) 978-1450 (fax)

23 /s/ Wayne H. Maire  
24 Maire & Deedon  
25 Post Office Drawer 994607  
26 Redding, California 96099  
27 (530) 246-6050 / (530) 246-6060 (fax)

1 FOR DEFENDANT DEMILEC, INC.

2 /s/ Alex Tirado-Luciano

3 Lydecker | Diaz

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6 Miami, Florida 33131

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/s/ Jill J. Lifter

Ryan & Lifter

2000 Crow Canyon Pl.

Suite 400

San Ramon, California 94583

(925) 884-2080 / (925) 884-2090 (fax)

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9 **DONE AND ORDERED** this 8<sup>th</sup> day of March, 2017.

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12 **CRAIG M. KELLISON**  
13 **UNITED STATES MAGISTRATE JUDGE**  
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**EXHIBIT "A"**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION**

H. BRAD DORKEN,

CASE NO.: 2:15-CV-01628-TLN-CMK

Plaintiff,

vs.

DEMILEC, INC., Et Al.

Defendants.

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**AGREEMENT TO BE BOUND BY AND COMPLY WITH PROTECTIVE ORDER**

1. I have been advised by counsel for a party in the captioned proceedings that it will be necessary for me to receive access to information that has been designated as Confidential Information pursuant to a protective order in the proceedings.

2. I have been furnished and have reviewed a copy of the Protective Order Governing Confidentiality of Documents and Information (the "Protective Order") and counsel has further informed me of the obligations that it imposes upon those who receive Confidential Information. I understand that the Protective Order, among other things, prohibits the use of any information designated as confidential for any purpose other than these proceedings, and further that I am prohibited from disclosing Confidential Information (or any copies, extracts, summaries or information otherwise derived from such information) to any other person except as specifically provided for in the Protective Order.

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3. In consideration of my being furnished Confidential Information, I agree to be bound by the terms of the Protective Order and to comply with those terms. I further acknowledge and agree that the terms of the Protective Order are enforceable against me as a contract by any party both during and after the conclusion of this proceeding. I submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of ensuring compliance with the Protective Order.

Date: \_\_\_\_\_

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

Type or Print  
Name: \_\_\_\_\_