

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHERON COOK, on behalf of
herself and all others similarly
situated,

Plaintiff,

vs.

ENHANCED RECOVERY
COMPANY,

Defendant.

) CASE NO. 2:16-CV-00248-TLN-KJN

) **STIPULATED PROTECTIVE**
) **ORDER**

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles. The parties further acknowledge, as set forth
3 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
4 to file confidential information under seal; Local Rule 141 sets forth the
5 procedures that must be followed and the standards that will be applied when a
6 party seeks permission from the court to file material under seal.

7 **B. GOOD CAUSE STATEMENT**

8 This action is likely to involve trade secrets, confidential policies and
9 procedures, and other valuable research, development, commercial, financial,
10 technical and/or proprietary information for which special protection from public
11 disclosure and from use for any purpose other than prosecution of this action is
12 warranted. Such confidential and proprietary materials and information consist of,
13 among other things, confidential business or financial information, information
14 regarding confidential business practices, or other confidential research,
15 development, or commercial information (including information implicating
16 privacy rights of third parties), information otherwise generally unavailable to the
17 public, or which may be privileged or otherwise protected from disclosure under
18 state or federal statutes, court rules, case decisions, or common law. Accordingly,
19 to expedite the flow of information, to facilitate the prompt resolution of disputes
20 over confidentiality of discovery materials, to adequately protect information the
21 parties are entitled to keep confidential, to ensure that the parties are permitted
22 reasonable necessary uses of such material in preparation for and in the conduct of
23 trial, to address their handling at the end of the litigation, and serve the ends of
24 justice, a protective order for such information is justified in this matter. It is the
25 intent of the parties that information will not be designated as confidential for
26 tactical reasons and that nothing be so designated without a good faith belief that it
27 has been maintained in a confidential, non-public manner, and there is good cause
28 why it should not be part of the public record of this case.

1 **2. DEFINITIONS**

2 2.1 Action: this pending federal law suit.

3 2.2 Challenging Party: a Party or Non-Party that challenges the
4 designation of information or items under this Order.

5 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
6 how it is generated, stored or maintained) or tangible things that qualify for
7 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
8 the Good Cause Statement.

9 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
10 their support staff).

11 2.5 Designating Party: a Party or Non-Party that designates information or
12 items that it produces in disclosures or in responses to discovery as
13 “CONFIDENTIAL.”

14 2.6 Disclosure or Discovery Material: all items or information, regardless
15 of the medium or manner in which it is generated, stored, or maintained (including,
16 among other things, testimony, transcripts, and tangible things), that are produced
17 or generated in disclosures or responses to discovery in this matter.

18 2.7 Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve
20 as an expert witness or as a consultant in this Action.

21 2.8 House Counsel: attorneys who are employees of a party to this Action.
22 House Counsel does not include Outside Counsel of Record or any other outside
23 counsel.

24 2.9 Non-Party: any natural person, partnership, corporation, association,
25 or other legal entity not named as a Party to this action.

26 2.10 Outside Counsel of Record: attorneys who are not employees of a
27 party to this Action but are retained to represent or advise a party to this Action
28

1 and have appeared in this Action on behalf of that party or are affiliated with a law
2 firm which has appeared on behalf of that party, and includes support staff.

3 2.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation
9 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL.”

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16 **3. SCOPE**

17 The protections conferred by this Stipulation and Order cover not only
18 Protected Material (as defined above), but also (1) any information copied or
19 extracted from Protected Material; (2) all copies, excerpts, summaries, or
20 compilations of Protected Material; and (3) any testimony, conversations, or
21 presentations by Parties or their Counsel that might reveal Protected Material.

22 Any use of Protected Material at trial shall be governed by the orders of the
23 trial judge. This Order does not govern the use of Protected Material at trial.

24 **4. DURATION**

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees
27 otherwise in writing or a court order otherwise directs. Final disposition shall be
28 deemed to be the later of (1) dismissal of all claims and defenses in this Action,

1 with or without prejudice; and (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
3 including the time limits for filing any motions or applications for extension of
4 time pursuant to applicable law.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or Non-Party that designates information or items for protection under
8 this Order must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. The Designating Party must designate for
10 protection only those parts of material, documents, items, or oral or written
11 communications that qualify so that other portions of the material, documents,
12 items, or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations
15 that are shown to be clearly unjustified or that have been made for an improper
16 purpose (e.g., to unnecessarily encumber the case development process or to
17 impose unnecessary expenses and burdens on other parties) may expose the
18 Designating Party to sanctions.

19 If it comes to a Designating Party's attention that information or items that it
20 designated for protection do not qualify for protection, that Designating Party must
21 promptly notify all other Parties that it is withdrawing the inapplicable designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in
23 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
24 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
25 under this Order must be clearly so designated before the material is disclosed or
26 produced.

27 Designation in conformity with this Order requires:
28

1 (a) for information in documentary form (e.g., paper or electronic
2 documents, but excluding transcripts of depositions or other pretrial or trial
3 proceedings), that the Producing Party affix at a minimum, the legend
4 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
5 contains protected material. If only a portion or portions of the material on a page
6 qualifies for protection, the Producing Party also must clearly identify the
7 protected portion(s) (e.g., by making appropriate markings in the margins).

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

20 (b) for testimony given in depositions that the Designating Party
21 identify the Disclosure or Discovery Material within 30 days after the receipt of the
22 deposition transcript.

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

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party's right to secure protection under this Order for such
4 material. Upon timely correction of a designation, the Receiving Party must make
5 reasonable efforts to assure that the material is treated in accordance with the
6 provisions of this Order.

7 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality at any time that is consistent with the Court's Pretrial
10 Scheduling Order.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
12 resolution process under Local Rule 251 or the assigned Magistrate Judge's
13 Chambers Rules and Orders, as applicable.

14 6.3 The burden of persuasion in any such challenge proceeding shall be
15 on the Designating Party. Frivolous challenges, and those made for an improper
16 purpose (e.g., to harass or impose unnecessary expenses/burdens on other parties)
17 may expose the Challenging Party to sanctions. Unless the Designating Party has
18 waived or withdrawn the confidentiality designation, all parties shall continue to
19 afford the material in question the level of protection to which it is entitled under
20 the Producing Party's designation until the Court rules on the challenge.

21 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is
23 disclosed or produced by another Party or by a Non-Party in connection with this
24 Action only for prosecuting, defending, or attempting to settle this Action. Such
25 Protected Material may be disclosed only to the categories of persons and under
26 the conditions described in this Order. When the Action has been terminated, a
27 Receiving Party must comply with the provisions of section 13 below (FINAL
28 DISPOSITION).

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated
7 “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this Action,
9 as well as employees of said Outside Counsel of Record to whom it is reasonably
10 necessary to disclose the information for this Action;

11 (b) the officers, directors, and employees (including House
12 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
13 this Action;

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

17 (d) the court and its personnel;

18 (e) court reporters and their staff;

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

23 (g) the author or recipient of a document containing the
24 information or a custodian or other person who otherwise possessed or knew the
25 information;

26 (h) during their depositions, witnesses, and attorneys for witnesses,
27 in the Action to whom disclosure is reasonably necessary provided: (1) the
28 deposing party requests that the witness sign the form attached as Exhibit 1 hereto;

1 and (2) they will not be permitted to keep any confidential information unless they
2 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
3 otherwise agreed by the Designating Party or ordered by the court. Pages of
4 transcribed deposition testimony or exhibits to depositions that reveal Protected
5 Material may be separately bound by the court reporter and may not be disclosed
6 to anyone except as permitted under this Stipulated Protective Order; and

7 (i) any mediator or settlement officer, and their supporting
8 personnel, mutually agreed upon by any of the parties engaged in settlement
9 discussions.

10 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
11 **PRODUCED IN OTHER LITIGATION**

12 If a Party is served with a subpoena or a court order issued in other litigation
13 that compels disclosure of any information or items designated in this Action as
14 “CONFIDENTIAL,” that Party must:

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

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

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

23 If the Designating Party timely seeks a protective order, the Party served
24 with the subpoena or court order shall not produce any information designated in
25 this action as “CONFIDENTIAL” before a determination by the court from which
26 the subpoena or order issued, unless the Party has obtained the Designating Party’s
27 permission. The Designating Party shall bear the burden and expense of seeking
28 protection in that court of its confidential material and nothing in these provisions

1 should be construed as authorizing or encouraging a Receiving Party in this Action
2 to disobey a lawful directive from another court.

3 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
4 **PRODUCED IN THIS LITIGATION**

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

10 (b) In the event that a Party is required, by a valid discovery request, to
11 produce a Non-Party’s confidential information in its possession, and the Party is
12 subject to an agreement with the Non-Party not to produce the Non-Party’s
13 confidential information, then the Party shall:

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

17 (2) promptly provide the Non-Party with a copy of the Stipulated
18 Protective Order in this Action, the relevant discovery request(s), and a reasonably
19 specific description of the information requested; and

20 (3) make the information requested available for inspection by the
21 Non-Party, if requested.

22 (c) If the Non-Party fails to seek a protective order from this court within 14
23 days of receiving the notice and accompanying information, the Receiving Party
24 may produce the Non-Party’s confidential information responsive to the discovery
25 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
26 not produce any information in its possession or control that is subject to the
27 confidentiality agreement with the Non-Party before a determination by the court.
28

1 Absent a court order to the contrary, the Non-Party shall bear the burden and
2 expense of seeking protection in this court of its Protected Material.

3 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a Receiving Party learns that, by inadvertence or otherwise, it has
5 disclosed Protected Material to any person or in any circumstance not authorized
6 under this Stipulated Protective Order, the Receiving Party must immediately (a)
7 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
8 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
9 the person or persons to whom unauthorized disclosures were made of all the terms
10 of this Order, and (d) request such person or persons to execute the
11 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
12 A.

13 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
14 **OTHERWISE PROTECTED MATERIAL**

15 When a Producing Party gives notice to Receiving Parties that certain
16 inadvertently produced material is subject to a claim of privilege or other
17 protection, the obligations of the Receiving Parties are those set forth in Federal
18 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
19 whatever procedure may be established in an e-discovery order that provides for
20 production without prior privilege review. Pursuant to Federal Rule of Evidence
21 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
22 of a communication or information covered by the attorney-client privilege or
23 work product protection, the parties may incorporate their agreement in the
24 stipulated protective order submitted to the court.

25 **12. MISCELLANEOUS**

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
27 person to seek its modification by the Court in the future.
28

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on
5 any ground to use in evidence of any of the material covered by this Protective
6 Order.

7 12.3 Filing Protected Material. A Party that seeks to file under seal any
8 Protected Material must comply with Local Rule 141. Protected Material may only
9 be filed under seal pursuant to a court order authorizing the sealing of the specific
10 Protected Material at issue. If a Party's request to file Protected Material under seal
11 is denied by the court, then the Receiving Party may file the information in the
12 public record unless otherwise instructed by the court.

13 **13. FINAL DISPOSITION**

14 After the final disposition of this Action, as defined in paragraph 4, within
15 60 days of a written request by the Designating Party, each Receiving Party must
16 return all Protected Material to the Producing Party or destroy such material. As
17 used in this subdivision, “all Protected Material” includes all copies, abstracts,
18 compilations, summaries, and any other format reproducing or capturing any of the
19 Protected Material. Whether the Protected Material is returned or destroyed, the
20 Receiving Party must submit a written certification to the Producing Party (and, if
21 not the same person or entity, to the Designating Party) by the 60 day deadline that
22 (1) identifies (by category, where appropriate) all the Protected Material that was
23 returned or destroyed and (2) affirms that the Receiving Party has not retained any
24 copies, abstracts, compilations, summaries or any other format reproducing or
25 capturing any of the Protected Material. Notwithstanding this provision, Counsel
26 are entitled to retain an archival copy of all pleadings, motion papers, trial,
27 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
28 and trial exhibits, expert reports, attorney work product, and consultant and expert

1 work product, even if such materials contain Protected Material. Any such archival
2 copies that contain or constitute Protected Material remain subject to this
3 Protective Order as set forth in Section 4 (DURATION).

4 14. Any violation of this Order may be punished by any and all appropriate
5 measures including, without limitation, contempt proceedings and/or monetary
6 sanctions.

7
8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9
10 DATED: September 23, 2016 BURSOR & FISHER, P.A.

11
12 By: s/L. Timothy Fisher
13 L. Timothy Fisher
14 Annick M. Persinger
15 Yeremey O. Krivoshey
16 Attorneys for Plaintiff
17 SHERON COOK

18
19 DATED: September 23, 2016 CARLSON & MESSER LLP

20 By: s/David J. Kaminski
21 Charles R. Messer
22 David J. Kaminski
23 Martin Schannong
24 Attorneys for Defendant
25 ENHANCED RECOVERY
26 COMPANY

27
28 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: October 11, 2016


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

1
2 **EXHIBIT A**

3 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under
6 penalty of perjury that I have read in its entirety and understand the Stipulated
7 Protective Order that was issued by the United States District Court for the Eastern
8 District of California on [date] in the case of *Sheron Cook, on behalf of herself and*
9 *all others similarly situated v. Enhanced Recovery Company*, Case No. 2:16-cv-
10 00248-TLN-KJN. I agree to comply with and to be bound by all the terms of this
11 Stipulated Protective Order and I understand and acknowledge that failure to so
12 comply could expose me to sanctions and punishment in the nature of contempt. I
13 solemnly promise that I will not disclose in any manner any information or item
14 that is subject to this Stipulated Protective Order to any person or entity except in
15 strict compliance with the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District
17 Court for the Eastern District of California for the purpose of enforcing the terms
18 of this Stipulated Protective Order, even if such enforcement proceedings occur
19 after termination of this action. I hereby appoint _____
20 [print or type full name] of _____ [print
21 or type full address and telephone number] as my California agent for service of
22 process in connection with this action or any proceedings related to enforcement of
23 this Stipulated Protective Order.

24
25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____