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11 UNITED STATES DISTRICT COURT
 12 EASTERN DISTRICT OF CALIFORNIA
 13 SACRAMENTO DIVISION

15 AMERICAN MULTI-CINEMA, INC., a
 Missouri corporation,
 16
 Plaintiff,
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 v.
 18 MANTECA LIFESTYLE CENTER, LLC,
 19 a Delaware limited liability company,
 20
 Defendant.

Case No. 2:16-CV-01066-TLN-KJN

**STIPULATION AND DISCOVERY
 CONFIDENTIALITY ORDER**

Action Filed: May 19, 2016
 Trial Date: None Set

1 It appearing that discovery in the above-captioned action is likely to involve the disclosure
2 of confidential information, and upon the agreement of Plaintiff American Multi-Cinema, Inc.
3 and Defendant Manteca Lifestyle Center, LLC (individually, each a “Party” and collectively, the
4 “Parties”), it is ORDERED as follows:

5 1. Any information produced or provided by or on behalf of any Party or non-party
6 as part of discovery in the above-captioned matter and any appeals thereof (the “Action”) that is
7 not already publicly available, may be designated as “Confidential” and shall be subject to this
8 Discovery Confidentiality Order. “Confidential” information consists of private or business
9 information that would be protected under the constitutional, statutory, or common law rights to
10 privacy, and it encompasses trade secrets, including, but not limited to, confidential business
11 information such as marketing plans or strategies, business plans, strategic plans, license
12 agreements or negotiations, engineering and manufacturing drawings, market research, research
13 and development relating to products not yet released or sold, correspondence and agreements
14 with actual or prospective customers or vendors, financial information or projections, including
15 without limitation, invoices, sales, licensing payments, licensing statements, budgets, statements
16 of revenue, profits, costs or liabilities, actual or prospective customer lists, or other information
17 that would put the producing person at a competitive disadvantage if the information became
18 known to the receiving party or a third party. “Confidential” information shall also consist of any
19 information, document, or thing, or portion of any document or thing that the producing party
20 otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G) of the Federal
21 Rules of Civil Procedure and Local Civil Rule 141.

22 2. Information designated “Confidential” may be used only in connection with this
23 Action, and not for any other purpose. Such information may not be disclosed to anyone except
24 as provided in this Discovery Confidentiality Order.

25 3. Any Party or non-party wishing to take advantage of the provisions of this
26 Discovery Confidentiality Order may designate as “Confidential” the documents or portions
27 thereof that such producing party considers confidential at the time the documents are produced.
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1 Each page of the document must be marked “Confidential” by the producing party. If any
2 documents or things cannot be reasonably labeled as described above, the producing party shall
3 instead inform the receiving Party in writing of the confidentiality designation. Originals shall be
4 preserved for inspection. Information disclosed at a deposition may be designated by any Party
5 as “Confidential” by indicating on the record at the deposition that the testimony is
6 “Confidential” and is subject to the provisions of this Discovery Confidential Order.

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8 4. Any documents or discovery responses labeled as “Confidential,” as well as any
9 copies or excerpts thereof or analyses or reports pertaining thereto, and any deposition testimony
10 marked as “Confidential,” (hereinafter, “Designated Materials”) may be made available only to:

11 (a) Outside counsel (herein defined as any attorney at the Parties’ outside law firms)
12 and relevant in-house counsel for a Party in connection with this action;

13 (b) any Party’s experts or consultants (and their staff); provided they have first signed
14 a non-disclosure agreement in the form attached hereto as Exhibit A;

15 (c) Secretarial, paralegal, clerical and data processing personnel of the foregoing;

16 (d) a witness at any deposition in this Action (including persons whom counsel in
17 good faith believe will testify at a deposition) and the witness’s counsel; provided that the witness
18 and the witness’s counsel are informed or instructed on the record that the Parties expect to
19 discuss information that is covered by a confidentiality order in the case, and that such
20 information cannot be disclosed for any purposes not in connection with the litigation;

21 (e) Potential witnesses, provided they have first signed a non-disclosure agreement in
22 the form attached hereto as Exhibit A;

23 (f) Vendors retained by or for the Parties to assist in preparing for pretrial discovery,
24 trial and/or hearings including, but not limit to, court reporters, litigation support personnel, jury
25 consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or
26 in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees
27 whose duties and responsibilities require access to such materials;

28 (g) the Parties or their officers, directors, or employees, to the extent that such

1 persons' review of the confidential information is in connection with the prosecution or defense
2 of this action;

3 (h) judges, magistrate judges, law clerks, and other clerical personnel of the Court
4 before which this Action is pending;

5 (i) mediators, settlement judges and clerical personnel of such neutrals; provided they
6 have signed a non-disclosure agreement in the form attached hereto as Exhibit A; and

7 (j) the jury, if any, in the trial of this Action.

8 (hereinafter collectively referred to as "Qualified Persons")

9 5. The outside counsel for the Party that has disclosed Confidential information to a
10 non-party pursuant to subparagraphs 4(b) and 4(e) will maintain copies of all non-disclosure
11 agreements executed by such parties.

12 6. With respect to any depositions that involve a disclosure of Confidential
13 information of a Party to this action, such Party shall have until thirty (30) days after receipt of
14 the deposition transcript within which to inform all other parties that portions of the transcript are
15 to be designated Confidential, which period may be extended by agreement. No such deposition
16 transcript shall be disclosed to any individual other than the deponent or another Qualified Person
17 during these thirty (30) days, and no individual attending such a deposition shall disclose the
18 contents of the deposition, to any individual other than the deponent or another Qualified Person
19 during these thirty (30) days. Upon being informed that certain portions of a deposition are to be
20 designated as Confidential, all parties shall immediately cause each copy of the transcript in its
21 custody or control to appropriately mark and limit disclosure of that transcript in accordance with
22 the terms of this Discovery Confidentiality Order.

23 7. The restrictions set forth in this Discovery Confidentiality Order shall not apply to
24 information which is known to the public before the date of its transmission to the receiving
25 Party, or which becomes known to the public after the date of its transmission to the receiving
26 Party, provided that such information does not become publicly known by any act or omission of
27 the receiving Party or such Party's employees or agents which would be in violation of this
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1 Discovery Confidentiality Order. Information previously designated as confidential in another
2 legal proceeding does not qualify as “known to the public.”

3 8. Any document including Designated Materials that is filed with the Court must be
4 filed in compliance with Rule 141 of the Local Rules for the Eastern District of California.

5 9. If, at any time during this Action, any Party believes that any other Party or
6 nonparty has improperly designated information as “Confidential” or believes that it is necessary
7 to disclose designated information to persons other than those permitted by this Discovery
8 Confidentiality Order, and the producing party does not agree to change the designation or to
9 allow the disclosure, the objecting Party may make a motion to the Court requesting that the
10 specifically identified Designated Material be excluded from the provisions of this Discovery
11 Confidentiality Order or be available to specified other persons. It shall be the burden of the
12 party who makes the designation to demonstrate that the Designated Material at issue was
13 properly designated.

14 10. In the event that any Party (for purposes of this paragraph, the “Subpoenaed
15 Party”) is served with a subpoena, discovery request, or other demand by any person, firm,
16 corporation, or other entity who is not a party to this Action, is not a signatory to this Discovery
17 Confidentiality Order, or is otherwise not bound by this Discovery Confidentiality Order, which
18 seeks to compel production of any Designated Materials, the Subpoenaed Party shall give written
19 notice of the subpoena or demand to the Party or non-party (for purposes of this paragraph, the
20 “Designating Party”) who has asserted that the information or documents requested are
21 “Confidential.” The written notice required by this paragraph shall be given no later than five
22 court days after receipt of the subpoena or other demand, or seven court days before the
23 production date set forth in the subpoena or other demand, whichever is earlier. The Designating
24 Party shall have the responsibility to obtain an order from the Court quashing the subpoena,
25 granting a protective order, and/or granting such other relief as will protect the alleged
26 confidential nature of the subject information or documents. If such a motion is filed before the
27 requested production date, the Subpoenaed Party shall not produce the subject information or
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1 documents until after such time as the Court rules on the Designating Party’s motion. If an order
2 quashing the subpoena or other protective order is obtained, the Subpoenaed Party shall comply
3 with the order. If no motion to quash or motion for protective order is filed before the scheduled
4 production date set forth in the subpoena or other demand, or if the motion to quash the subpoena
5 or motion for protective order is denied, the Subpoenaed Party may comply with the same
6 without being deemed to have violated this Discovery Confidentiality Order.

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8 11. This Discovery Confidentiality Order shall not apply to any document or
9 information obtained by a Party through discovery in this action which:

- 10 (a) was already a matter of public record or knowledge before its receipt through
11 discovery;
12 (b) became a matter of public record or knowledge after its production in discovery; or
13 (c) was previously produced without a confidentiality restriction.

14 12. This Discovery Confidentiality Order may only be modified in a writing signed by
15 the Parties and approved by an order of the Court.

16 13. The inadvertent or unintentional production of documents, materials, testimony or
17 information containing, or other disclosure of, private, confidential, proprietary, or trade secret
18 information that is not designated “Confidential” at the time of the production or disclosure shall
19 not be deemed a waiver in whole or in part of a producing party’s claim of confidentiality or
20 secrecy, either as to the specific information disclosed or as to any information that is related or
21 involves the same or related subject matter. Promptly upon discovering that the material was not
22 designated “Confidential,” the producing party shall request the return of the material in writing
23 and simultaneously produce the same material with the applicable confidentiality designation, and
24 the receiving party shall promptly return the undesignated material to the producing party.

25 Compliance with this procedure by the receiving party shall not waive that party’s right to contest
26 the confidentiality designation in accordance with the provisions of this Discovery Confidentiality
27 Order. Any error in designation or production shall be corrected as soon as reasonably possible
28 after the producing party becomes aware of the error.

1 14. If information subject to a claim of attorney-client privilege or work-product
2 immunity or any other privilege or immunity is inadvertently or mistakenly produced, such
3 production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any
4 claim of privilege or work-product immunity for such information. If a Party has inadvertently or
5 mistakenly produced information subject to a claim of immunity or privilege, upon written
6 request made by the producing party within twenty-one (21) days of discovery, all copies of such
7 information shall be returned to the producing party within seven (7) business days of such
8 request, unless the receiving party intends to challenge the producing party's assertion of
9 privilege or immunity. If a receiving party objects to the return of such information within the
10 seven (7) day period described above, the producing party may move the Court for an order
11 compelling the return of such information. Pending the Court's ruling, a receiving party may
12 retain the inadvertently or mistakenly produced documents in a sealed envelope and shall not
13 make any use of such information.

14 15. This Discovery Confidentiality Order shall not affect the right of any Party to
15 object to the production of any document or other information or to demand more stringent
16 restrictions upon the treatment and disclosure of any document or other information, on the
17 ground that such document or information contains particularly sensitive information, or
18 otherwise.

19 16. This Discovery Confidentiality Order shall not prejudice the right of any Party or
20 non-party to oppose production of any information on the ground of attorney-client privilege,
21 work product immunity, or any other protection provided under the law.

22 17. Nothing in this Discovery Confidentiality Order shall be deemed either a waiver of
23 any objection that any Party may have to the production of any document or information, nor an
24 admission of the relevancy of any document or information requested. Furthermore, the
25 production by a Party of documents or other tangible things pursuant to a request for production
26 shall not be deemed a waiver of any right by such Party to object to the admissibility of such
27 document or other thing on grounds of relevancy, materiality, privilege, or any other ground.
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18. All provisions of this Discovery Confidentiality Order restricting the use, disclosure or communication of any Designated Materials shall continue to be binding on the Parties and their successors, assigns, heirs, and attorneys, after the conclusion of this Action.

19. This Discovery Confidentiality Order shall survive the final termination of this Action, and the Court shall retain jurisdiction to resolve any dispute concerning the use of any information disclosed hereunder.

20. Except as this Court may otherwise order, within one hundred and twenty (120) days after the final conclusion of this litigation (the "Retention Period"), each Party or other individual subject to the terms of this Discovery Confidentiality Order shall either assemble and return to the originating source, or destroy and provide the originating source with confirmation of the destruction of, all originals and unmarked copies of documents and things containing Confidential information and provide the originating source with confirmation of the destruction of this Confidential information; provided, however, that counsel may retain complete copies of all transcripts, pleadings, motion papers, legal memoranda, correspondence or other attorney work product, including any exhibits attached thereto, even if such materials contain or constitute Confidential information. Any such archival copies that contain or constitute Confidential information remain subject to the provisions of this Discovery Confidentiality Order. To the extent a Party requests the return of Confidential information from the Court after the final conclusion of the litigation, including the exhaustion of all appeals therefrom and all related proceedings, the Party shall file a motion seeking such relief.

21. This Order shall have an effective date of October 10, 2016.

STIPULATED AND AGREED TO:

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Dated: May 4, 2017

MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Robert H. Platt
Robert H. Platt
Attorneys for Plaintiff
American Multi-Cinema, Inc.

Dated: May 4, 2017

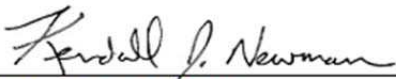
WONG FLEMING

By: /s/ Dan Fleming [auth. on May 4, 2017]
Dan Fleming
Attorneys for Defendant
Manteca Lifestyle Center, LLC

IT IS SO ORDERED, except that:

1. Nothing in this order limits the testimony of parties or non-parties, or the use of certain documents, at any court hearing or trial—such determinations will only be made by the court at the hearing or trial, or upon an appropriate motion.
2. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement of the terms of this stipulated protective order after the action is terminated.
3. The court will not have an obligation to return any confidential materials filed or lodged with the court upon termination of the action.

Dated: June 5, 2017



KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE