

1 Jacob Song (SBN 265371)
 2 KUTAK ROCK LLP
 3 5 Park Plaza, Suite 1500
 4 Irvine, CA 92614
 5 Telephone: (949) 417-0999
 6 Facsimile: (949)-417-5394
 7 Email: jacob.song@kutakrock.com

8 Sean P. Connolly, Pro Hac Vice
 9 Jason S. Jackson, Pro Hac Vice
 10 KUTAK ROCK LLP
 11 1650 Farnam Street
 12 Omaha, NE 98102-2186
 13 Telephone: (402) 346-6000
 14 Facsimile: (402) 346-1148
 15 Email: sean.connolly@kutakrock.com
 16 jason.jackson@kutakrock.com

17 Attorneys for Plaintiff GUTTERGLOVE, INC.

18 UNITED STATES DISTRICT COURT

19 EASTERN DISTRICT OF CALIFORNIA

20 GUTTERGLOVE, INC. a California
21 corporation,

22 Plaintiff,

23 v.

24 AMERICAN DIE and
25 ROLLFORMING, INC., a California
26 corporation; and VALOR GUTTER
27 GUARD,

28 Defendants.

Case No. 2:16-cv-02408-WHO

Judge: Hon. William H. Orrick III
Courtroom:

**STIPULATED PROTECTIVE
ORDER FOR LITIGATION
INVOLVING PATENTS, HIGHLY
SENSITIVE CONFIDENTIAL
INFORMATION AND/OR TRADE
SECRETS**

1 **I. PROTECTIVE ORDER**

2 **A. PURPOSES AND LIMITATIONS**

3
4 Discovery in this action is likely to involve production of confidential,
5 proprietary or private information for which special protection from public
6 disclosure and from use for any purpose other than prosecuting this litigation may
7 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
8 enter the following Stipulated Protective Order. The parties acknowledge that this
9 Order does not confer blanket protections on all disclosures or responses to
10 discovery and that the protection it affords from public disclosure and use extends
11 only to the limited information or items that are entitled to confidential treatment
12 under the applicable legal principles.

13 **B. GOOD CAUSE STATEMENT**

14
15 This action is likely to involve trade secrets, customer and pricing lists and
16 other valuable research, development, commercial, financial, technical and/or
17 proprietary information for which special protection from public disclosure and
18 from use for any purpose other than prosecution of this action is warranted. Such
19 confidential and proprietary materials and information consist of, among other
20 things, confidential business or financial information, information regarding
21 confidential business practices, or other confidential research, development, or
22 commercial information (including information implicating privacy rights of third
23 parties), information otherwise generally unavailable to the public, or which may be
24 privileged or otherwise protected from disclosure under state or federal statutes,
25 court rules, case decisions, or common law. Accordingly, to expedite the flow of
26 information, to facilitate the prompt resolution of disputes over confidentiality of
27 discovery materials, to adequately protect information the parties are entitled to
28 keep confidential, to ensure that the parties are permitted reasonable necessary uses

1 of such material in preparation for and in the conduct of trial, to address their
2 handling at the end of the litigation, and serve the ends of justice, a protective order
3 for such information is justified in this matter. It is the intent of the parties that
4 information will not be designated as confidential for tactical reasons and that
5 nothing be so designated without a good faith belief that it has been maintained in a
6 confidential, non-public manner, and there is good cause why it should not be part
7 of the public record of this case.

8
9 **C. ACKNOWLEDGEMENT OF PROCEDURE FOR FILING
UNDER SEAL**

10 The parties further acknowledge, as set forth in Section XII., C., below, that
11 this Stipulated Protective Order does not entitle them to file confidential
12 information under seal; L.R. 141 sets forth the procedures that must be followed
13 and the standards that will be applied when a party seeks permission from the court
14 to file material under seal.

15 There is a strong presumption that the public has a right of access to judicial
16 proceedings and records in civil cases. In connection with non-dispositive motions,
17 good cause must be shown to support a filing under seal. See *Kamakana v. City and*
18 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
19 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics,*
20 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders
21 require good cause showing), and a specific showing of good cause or compelling
22 reasons with proper evidentiary support and legal justification, must be made with
23 respect to Protected Material that a party seeks to file under seal. The parties' mere
24 designation of Disclosure or Discovery Material as CONFIDENTIAL does not—
25 without the submission of competent evidence by declaration, establishing that the
26 material sought to be filed under seal qualifies as confidential, privileged, or
27 otherwise protectable—constitute good cause.
28

1 Further, if a party requests sealing related to a dispositive motion or trial,
2 then compelling reasons, not only good cause, for the sealing must be shown, and
3 the relief sought shall be narrowly tailored to serve the specific interest to be
4 protected. See *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir.
5 2010). For each item or type of information, document, or thing sought to be filed
6 or introduced under seal in connection with a dispositive motion or trial, the party
7 seeking protection must articulate compelling reasons, supported by specific facts
8 and legal justification, for the requested sealing order. Again, competent evidence
9 supporting the application to file documents under seal must be provided by
10 declaration.

11 Any document that is not confidential, privileged, or otherwise protectable in
12 its entirety will not be filed under seal if the confidential portions can be redacted.
13 If documents can be redacted, then a redacted version for public viewing, omitting
14 only the confidential, privileged, or otherwise protectable portions of the document,
15 shall be filed. Any application that seeks to file documents under seal in their
16 entirety should include an explanation of why redaction is not feasible.

17 **II. DEFINITIONS**

18 2.1 Action: *Gutterglove, Inc. v. American Die and Rollforming, Inc. et al.*,
19 Case No. 2:16-cv-02408-WHO.
20

21 2.2 Challenging Party: a Party or Non-Party that challenges the designation
22 of information or items under this Order.
23

24 2.3 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “HIGHLY
25 CONFIDENTIAL—ATTORNEYS’ EYES ONLY” Information or Items:
26 information (regardless of how it is generated, stored or maintained) or tangible
27 things that qualify for protection under Federal Rule of Civil Procedure 26(c), and
28 as specified above in the Good Cause Statement.

1 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
2 support staff).

3 2.5 Designating Party: a Party or Non-Party that designates information or
4 items that it produces in disclosures or in responses to discovery as
5 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “HIGHLY
6 CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

7 2.6 Disclosure or Discovery Material: all items or information, regardless of
8 the medium or manner in which it is generated, stored, or maintained (including,
9 among other things, testimony, transcripts, and tangible things), that are produced
10 or generated in disclosures or responses to discovery in this matter.

11 2.7 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its counsel to serve as
13 an expert witness or as a consultant in this Action.

14 2.8 House Counsel: attorneys who are employees of a party to this Action.
15 House Counsel does not include Outside Counsel of Record or any other outside
16 counsel.

17 2.9 Non-Party: any natural person, partnership, corporation, association or
18 other legal entity not named as a Party to this action.

19 2.10 Outside Counsel of Record: attorneys who are not employees of a party
20 to this Action but are retained to represent or advise a party to this Action and have
21 appeared in this Action on behalf of that party or are affiliated with a law firm that
22 has appeared on behalf of that party, and includes support staff.

23 2.11 Party: any party to this Action, including all of its officers, directors,
24 employees, consultants, retained experts, and Outside Counsel of Record (and their
25 support staffs).

26 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
27 Discovery Material in this Action.

28 2.13 Professional Vendors: persons or entities that provide litigation support

1 services (e.g., photocopying, videotaping, translating, preparing exhibits or
2 demonstrations, and organizing, storing, or retrieving data in any form or medium)
3 and their employees and subcontractors.

4 2.14 Protected Material: any Disclosure or Discovery Material that is
5 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “HIGHLY
6 CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

7 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
8 from a Producing Party.

9
10 **III. SCOPE**

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

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

18
19 **IV. DURATION**

20 Once a case proceeds to trial, information that was designated as
21 CONFIDENTIAL, HIGHLY CONFIDENTIAL, or HIGHLY CONFIDENTIAL—
22 ATTORNEYS’ EYES ONLY or maintained pursuant to this protective order used
23 or introduced as an exhibit at trial becomes public and will be presumptively
24 available to all members of the public, including the press, unless compelling
25 reasons supported by specific factual findings to proceed otherwise are made to the
26 trial judge in advance of the trial. See *Kamakana*, 447 F.3d at 1180-81
27 (distinguishing “good cause” showing for sealing documents produced in discovery
28 from “compelling reasons” standard when merits-related documents are part of

1 court record). Accordingly, the terms of this protective order do not extend beyond
2 the commencement of the trial.

3
4 **V. DESIGNATING PROTECTED MATERIAL**

5 **A. Exercise of Restraint and Care in Designating Material for
6 Protection**

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

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

27 Designation in conformity with this Order requires:
28

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

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

22 (b) for testimony given in depositions that the Designating Party identifies
23 the Disclosure or Discovery Material on the record, before the close of the
24 deposition all protected testimony.

25 (c) for information produced in some form other than documentary and for
26 any other tangible items, that the Producing Party affix in a prominent place on the
27 exterior of the container or containers in which the information is stored the legend
28 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “HIGHLY

1 CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” If only a portion or portions
2 of the information warrants protection, the Producing Party, to the extent
3 practicable, shall identify the protected portion(s).

4
5 **C. Inadvertent Failures to Designate**

6 If timely corrected, an inadvertent failure to designate qualified information
7 or items does not, standing alone, waive the Designating Party’s right to secure
8 protection under this Order for such material. Upon timely correction of a
9 designation, the Receiving Party must make reasonable efforts to assure that the
10 material is treated in accordance with the provisions of this Order.

11 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 **A. Timing of Challenges**

13
14 Any Party or Non-Party may challenge a designation of confidentiality at any
15 time that is consistent with the Court’s Scheduling Order.

16 **B. Meet and Confer**

17
18 The Challenging Party shall initiate the dispute resolution process under
19 Judge Orrick’s Joint Discovery Letter procedure, described in detail in his Standing
20 Order.

21 **C. Burden of Persuasion**

22
23 The burden of persuasion in any such challenge proceeding shall be on the
24 Designating Party. Frivolous challenges, and those made for an improper purpose
25 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
26 expose the Challenging Party to sanctions. Unless the Designating Party has waived
27 or withdrawn the confidentiality designation, all parties shall continue to afford the
28 material in question the level of protection to which it is entitled under the

1 Producing Party’s designation until the Court rules on the challenge.

2
3 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 **A. Basic Principles**

5 A Receiving Party may use Protected Material that is disclosed or produced
6 by another Party or by a Non-Party in connection with this Action only for
7 prosecuting, defending or attempting to settle this Action. Such Protected Material
8 may be disclosed only to the categories of persons and under the conditions
9 described in this Order. When the Action has been terminated, a Receiving Party
10 must comply with the provisions of Section XIII below (FINAL DISPOSITION).

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

14 **B. Disclosure of “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,”**
15 **or “HIGHLY CONFIDENTIAL—ATTORNEY’S EYES ONLY”**
16 **Information or Items**

17 Unless otherwise ordered by the court or permitted in writing by the
18 Designating Party, a Receiving Party may disclose any information or item
19 designated “CONFIDENTIAL” only to:

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

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

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

28 (d) the court and its personnel;

1 (e) court reporters and their staff;
2 (f) professional jury or trial consultants, mock jurors, and Professional
3 Vendors to whom disclosure is reasonably necessary for this Action and who have
4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

7 (h) during their depositions, witnesses, and attorneys for witnesses, in the
8 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
9 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they
10 will not be permitted to keep any confidential information unless they sign the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
12 agreed by the Designating Party or ordered by the court. Pages of transcribed
13 deposition testimony or exhibits to depositions that reveal Protected Material may
14 be separately bound by the court reporter and may not be disclosed to anyone
15 except as permitted under this Stipulated Protective Order; and

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

18 Unless otherwise ordered by the court or permitted in writing by the
19 Designating Party, a Receiving Party may disclose any information or item
20 designated “HIGHLY CONFIDENTIAL” only to:

21 (j) the Receiving Party’s Outside Counsel of Record in this Action, as well as
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to
23 disclose the information for this Action;

24 (k) counsel of the law firms of Costello Law Corporation and Kutak Rock
25 LLP, working on this action on behalf of their respective clients and such counsel’s
26 paralegal, secretarial, and clerical employees who are assisting such counsel in the
27 preparation and trial of this action;

28 (l) the officers, directors, and employees (including House Counsel) of the

1 Receiving Party to whom disclosure is reasonably necessary for this Action;

2 (m) court reporters and other persons involved in recording or transcribing
3 the action;

4 (n) copying or microfilming services retained to handle or reproduce
5 discovery materials in this action;

6 (o) experts and consultants retained or consulted by outside litigation counsel
7 and/or their counsel concerning the preparation and trial of this action and the
8 employees or independent contractors of any such experts or consultants who are
9 assisting in the work for which the experts or consultants are engaged; and

10 (p) the Court and any persons employed by the Court whose duties require
11 access to any information lodged or filed in connection with this action; and

12 (q) any settlement conference officer or mediator to whom disclosure of
13 “Highly Confidential” information is permitted by the parties in writing.

14 Unless otherwise ordered by the court or permitted in writing by the
15 Designating Party, a Receiving Party may disclose any information or item
16 designated “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” only to:

17 (r) the Receiving Party’s Outside Counsel of Record in this Action, as well as
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to
19 disclose the information for this Action;

20 (s) counsel of the law firms of Costello Law Corporation and Kutak Rock
21 LLP, working on this action on behalf of their respective clients and such counsel’s
22 paralegal, secretarial, and clerical employees who are assisting such counsel in the
23 preparation and trial of this action;

24 (t) court reporters and other persons involved in recording or transcribing the
25 action;

26 (u) copying or microfilming services retained to handle or reproduce
27 discovery materials in this action;

28 (v) experts and consultants retained or consulted by outside litigation counsel

1 and/or their counsel concerning the preparation and trial of this action and the
2 employees or independent contractors of any such experts or consultants who are
3 assisting in the work for which the experts or consultants are engaged; and

4 (w) the Court and any persons employed by the Court whose duties require
5 access to any information lodged or filed in connection with this action; and

6 (x) any settlement conference officer or mediator to whom disclosure of
7 “Highly Confidential -- Attorneys’ Eyes Only” information is permitted by the
8 parties in writing.

9
10 **VIII. 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,” “HIGHLY CONFIDENTIAL,” or “HIGHLY
15 CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” that Party must:

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

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

22 (c) cooperate with respect to all reasonable procedures sought to be pursued
23 by the Designating Party whose Protected Material may be affected. If the
24 Designating Party timely seeks a protective order, the Party served with the
25 subpoena or court order shall not produce any information designated in this action
26 as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “HIGHLY
27 CONFIDENTIAL—ATTORNEYS’ EYES ONLY” before a determination by the
28 court from which the subpoena or order issued, unless the Party has obtained the

1 Designating Party's permission. The Designating Party shall bear the burden and
2 expense of seeking protection in that court of its confidential material and nothing
3 in these provisions should be construed as authorizing or encouraging a Receiving
4 Party in this Action to disobey a lawful directive from another court.

5
6 **IX. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION**

7
8 (a) The terms of this Order are applicable to information produced by a Non-
9 Party in this Action and designated as "CONFIDENTIAL," "HIGHLY
10 CONFIDENTIAL," or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES
11 ONLY." Such information produced by Non-Parties in connection with this
12 litigation is protected by the remedies and relief provided by this Order. Nothing in
13 these provisions should be construed as prohibiting a Non-Party from seeking
14 additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to
16 produce a Non-Party's confidential information in its possession, and the Party is
17 subject to an agreement with the Non-Party not to produce the Non-Party's
18 confidential information, then the Party shall:

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

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

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

27 (c) If the Non-Party fails to seek a protective order from this court within 14
28 days of receiving the notice and accompanying information, the Receiving Party

1 may produce the Non-Party's confidential information responsive to the discovery
2 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
3 not produce any information in its possession or control that is subject to the
4 confidentiality agreement with the Non-Party before a determination by the court.
5 Absent a court order to the contrary, the Non-Party shall bear the burden and
6 expense of seeking protection in this court of its Protected Material.

7
8 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

17
18 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL**

19 When a Producing Party gives notice to Receiving Parties that certain
20 inadvertently produced material is subject to a claim of privilege or other
21 protection, the obligations of the Receiving Parties are those set forth in Federal
22 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
23 whatever procedure may be established in an e-discovery order that provides for
24 production without prior privilege review. Pursuant to Federal Rule of Evidence
25 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
26 of a communication or information covered by the attorney-client privilege or work
27 product protection, the parties may incorporate their agreement in the stipulated
28

1 protective order submitted to the court.

2
3 **XII. MISCELLANEOUS**

4 **A. Right to Further Relief**

5 Nothing in this Order abridges the right of any person to seek its
6 modification by the Court in the future.

7
8 **B. Right to Assert Other Objections**

9 By stipulating to the entry of this Protective Order, no Party waives any right
10 it otherwise would have to object to disclosing or producing any information or
11 item on any ground not addressed in this Stipulated Protective Order. Similarly, no
12 Party waives any right to object on any ground to use in evidence of any of the
13 material covered by this Protective Order.

14
15 **C. Filing Protected Material**

16 A Party that seeks to file under seal any Protected Material must comply with
17 L.R. 141. Protected Material may only be filed under seal pursuant to a court order
18 authorizing the sealing of the specific Protected Material at issue. If a Party's
19 request to file Protected Material under seal is denied by the court, then the
20 Receiving Party may file the information in the public record unless otherwise
21 instructed by the court.

22
23 **XIII. FINAL DISPOSITION**

24 After the final disposition of this Action, as defined in Section II, within 60
25 days of a written request by the Designating Party, each Receiving Party must
26 return all Protected Material to the Producing Party or destroy such material. As
27 used in this subdivision, "all Protected Material" includes all copies, abstracts,
28 compilations, summaries, and any other format reproducing or capturing any of the

1 Protected Material. Whether the Protected Material is returned or destroyed, the
2 Receiving Party must submit a written certification to the Producing Party (and, if
3 not the same person or entity, to the Designating Party) by the 60 day deadline that
4 (1) identifies (by category, where appropriate) all the Protected Material that was
5 returned or destroyed and (2) affirms that the Receiving Party has not retained any
6 copies, abstracts, compilations, summaries or any other format reproducing or
7 capturing any of the Protected Material. Notwithstanding this provision, Counsel
8 are entitled to retain an archival copy of all pleadings, motion papers, trial,
9 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
10 and trial exhibits, expert reports, attorney work product, and consultant and expert
11 work product, even if such materials contain Protected Material. Any such archival
12 copies that contain or constitute Protected Material remain subject to this Protective
13 Order as set forth in Section IV (DURATION).

14 **XIV. VIOLATION**

15
16 Any violation of this Order may be punished by appropriate measures
17 including, without limitation, contempt proceedings and/or monetary sanctions.

18
19 **IT IS SO STIPULATED**, through Counsel of Record.

20 Date: June 6, 2017 /s/ Jacob Song
21 Counsel for Plaintiff

22 Date: June 6, 2017 /s/ John Costello
23 Counsel for Defendant

24 **IT IS ORDERED** that the forgoing Agreement is approved.

25 Dated: June 16, 2017

26 

27 HON. WILLIAM ORRICK

28 UNITED STATES DISTRICT JUDGE

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

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I have read
in its entirety and understand the Stipulated Protective Order that was issued by the United States
District Court for the Central District of California on [date] in the case of _____ [insert
formal name of the case and the number and initials assigned to it by the court]. I agree to comply
with and to be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

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

Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____