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17
18 **IN THE UNITED STATES DISTRICT COURT**
19 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

20 Rillito River Solar LLC dba EcoFasten Solar,
21 an Arizona limited liability company,

22 Plaintiff,

23 v.

24 Bamboo Industries LLC dba SolarHooks, a
25 Delaware limited liability company,

26 Defendant.

Case No. 2:17-cv-00181-TLN-CKD

STIPULATED PROTECTIVE ORDER

27 Subject to the approval of the Court, Plaintiff Rillito River Solar LLC, doing
28 business as EcoFasten Solar, and Defendant Bamboo Industries LLC, doing business as

1 SolarHooks, by and through their undersigned counsel, do hereby agree and stipulate to
2 the entry by the Court of a protective order as follows:

3 1. In connection with discovery proceedings in this action, the parties
4 hereby designate documents as “CONFIDENTIAL” or “ATTORNEYS’ EYES
5 ONLY” under the terms of this Stipulation for Protective Order. The documents
6 protected under this Order have not been made public and the disclosure of said
7 documents would have the effect of causing harm.

8 2. The documents eligible for protection under this order specifically
9 include:

- 10 a. Contracts and evidence of actual and prospective dealings with third
11 parties, which if disclosed to competitors (including the opposing
12 party), customers, or vendors, would cause the parties competitive and
13 business harms and would violate the third parties’ right to privacy;
- 14 b. Financial information of the parties, which if disclosed to competitors
15 (including the opposing party), customers, or vendors, would cause the
16 parties competitive and business harms and is subject to a right of
17 privacy;
- 18 c. Trade secret and proprietary information including product
19 development activities, which if disclosed to competitors (including
20 the opposing party), customers, or vendors, would cause the parties
21 competitive and business harms

22 3. Pursuant to this Order, any person or entity, whether or not a party to
23 this action, may designate as “CONFIDENTIAL” or “ATTORNEYS’ EYES
24 ONLY” any material that any person or entity produces in this action. All such
25 designated material, all copies, excerpts and summaries thereof, and all information
26 contained therein or derived therefrom shall hereinafter be referred to as
27 “Confidential Material.” All designations of “CONFIDENTIAL” or
28 “ATTORNEYS’ EYES ONLY” shall be made in good faith.

1 4. The receipt of documents or information designated as Confidential
2 Material is not a concession, admission, or representation by the receiving party that
3 such material, or any information contained therein, is in fact a trade secret or
4 confidential information under applicable law. Furthermore, the designation of
5 Confidential Material may not be used against any party in any proceeding and is
6 made solely for the purposes of maintaining the confidentiality of such material, to
7 the extent necessary for purposes of this litigation. A party shall not be deemed to
8 have waived any privilege provided by law (including but not limited to a trade-
9 secret privilege) by entering into this Order or marking information as Confidential
10 Material under this Order.

11 5. Any designation of Confidential Material pursuant to this Order shall
12 be accomplished by employing the legend “CONFIDENTIAL” or “ATTORNEYS’
13 EYES ONLY” as follows:

14 a. in the case of documents, the legend shall be placed on or attached
15 to each page of the document prior to its production in a manner not to
16 interfere with the legibility of any information thereon (or in the case of
17 materials produced in this matter before the effective date of this Order,
18 within five (5) business days of the Court’s entry of this Order);

19 b. in the case of electronically stored information, the legend shall be
20 placed on each page of the document in a manner not to interfere with the
21 legibility of any information thereon, provided, however, that documents
22 produced in native format may be appropriately designated in the data upon
23 production;

24 c. in the case of things, the legend shall be placed on or attached to the
25 things;

26 d. in the case of information incorporated in answers to
27 interrogatories, the legend shall be placed on the designated pages of the
28 interrogatory answers; and

1 e. in the case of depositions, designations of the portions of the
2 deposition transcript (including exhibits) shall be made as follows:

3 i. by a statement to such effect on the record during the
4 deposition;

5 ii. for depositions that are not taken on an expedited basis
6 and/or in advance of a preliminary injunction hearing, by the
7 designating party in writing within twenty-one (21) calendar days of
8 the receipt of the deposition transcript by notifying all parties to the
9 matter in writing (including specific page and line numbers to be
10 designated); or

11 iii. for depositions taken by the parties on an expedited basis in
12 advance of a preliminary injunction hearing, by the designating party
13 in writing within three (3) calendar days of the receipt of the
14 deposition transcript by notifying all parties to the matter in writing
15 (including specific page and line numbers to be designated).

16 As to any portions of the deposition transcript and exhibits designated as
17 prescribed in subsections (d)(ii) or (iii), the designating party shall list on a separate
18 piece of paper the specific page and line number of the transcript containing
19 Confidential Material and whether such portions are designated as
20 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” and shall furnish a copy of
21 the list to the non-designating party.

22 The parties shall direct the reporter attending each deposition to place the
23 following legend in bold type on the covers of all deposition transcripts: NOTICE:
24 This deposition is subject to a Stipulated Protective Order and may contain
25 CONFIDENTIAL or ATTORNEYS’ EYES ONLY testimony and/or exhibits.

26 Whenever Confidential Material (whether designated “CONFIDENTIAL” or
27 “ATTORNEYS’ EYES ONLY”) is to be discussed or disclosed in a deposition, the
28 designating party for such Confidential Material shall have the right to require the

1 exclusion from the room of any person who is not entitled to access to such
2 Confidential Material. Any party's introduction or other use of Confidential
3 Material in a deposition shall not be deemed to waive the continued designation and
4 treatment of such Confidential Material as "CONFIDENTIAL" or "ATTORNEYS'
5 EYES ONLY."

6 6. All properly designated portions of deposition transcripts (including
7 exhibits) shall be treated as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY,"
8 and access to any portion thereof shall be limited to those persons set forth in
9 section 8 below until the expiration of the period for "CONFIDENTIAL" or
10 "ATTORNEYS' EYES ONLY" designations to be made as prescribed in sections
11 5(d)(ii) or (iii). Except as otherwise provided in this Order, all Confidential Material
12 and all copies, excerpts and summaries thereof and all material containing
13 information derived therefrom, shall be used solely for purposes of this litigation
14 and shall not be used for any other purposes including, without limitation, any
15 business, commercial or competitive purpose. All documents or materials marked
16 under this Order shall be carefully maintained in secure facilities and access to such
17 information, document, thing, or material shall be permitted only to persons
18 properly having access thereto under the terms of this Order. The file rooms and
19 electronic databases secured by appropriate passwords used by counsel in the
20 ordinary course of business are considered to be "secure facilities" under this
21 provision.

22 7. Confidential Material designated as "CONFIDENTIAL" may be
23 disclosed, summarized, described, revealed or otherwise made available, in whole or
24 in part, only in accordance with the terms of this Order and only to the following
25 persons:

- 26 a. representatives of the parties directly involved in the prosecution or
27 defense of this action, including managers, directors, officers, and employees
28

1 of the parties, but solely for the purpose of assisting counsel in the conduct of
2 this litigation;

3 b. counsel for the parties in this action, whether outside or in-house,
4 and regular and temporary employees of such counsel to the extent necessary
5 to assist counsel in the conduct of this litigation;

6 c. any consultant or expert (including both testifying experts and
7 consulting experts) retained or consulted by any party for the purpose of
8 testifying or rendering assistance or providing opinions in this action
9 including, but not limited to, independent experts and consultants, but only to
10 the extent necessary to assist counsel in the conduct of this litigation;

11 d. any former employee of a party or any other person who is
12 participating in the litigation as a deponent, witness or potential witness,
13 where it appears on the face of the Confidential Material or from other
14 documents or testimony that the witness had lawfully generated or received
15 the Confidential Material prior to and apart from this litigation;

16 e. the Court and its employees;

17 f. any mediator engaged in this matter;

18 g. court reporters and videographers; and

19 h. vendors involved in copying, organizing, converting, storing, or
20 retrieving Confidential Material.

21 8. Confidential Material designated as “ATTORNEYS’ EYES ONLY”
22 shall be limited to the parties’ information that they allege to be trade secret,
23 confidential, or business information, or other information protected by a legal
24 privilege (but all parties reserve the right to seek production of this information as
25 merely confidential or public in this lawsuit). Confidential Material designated as
26 “ATTORNEYS’ EYES ONLY” may be disclosed, summarized, described, revealed
27 or otherwise made available, in whole or in part, only in accordance with the terms
28 of this Order and only to individuals described in sections 7(b) through (h).

1 9. The parties shall in good faith avoid filing Confidential Material with
2 the Court to the extent possible. However, if a party reasonably determines that it is
3 necessary to file or seek admission of Confidential Material with the Court, or is
4 required to file or seek admission of any Confidential Material in any pleading,
5 chart, brief, affidavit, motion, exhibit, transcript or other document containing such
6 Confidential Material, the party shall do so in compliance with the Court's rules for
7 filing documents under seal. Rule 141 sets forth the procedures that must be
8 followed and reflects the standards that will be applied when a Party seeks
9 permission from the court to file material under seal. This Order does not authorize
10 the filing of any document under seal.

11 10. This Order has no effect upon, and shall not apply to (i) any producing
12 party's use of its own Confidential Material for any purpose or (ii) any person's use
13 of documents or other information properly obtained or developed independently of
14 discovery in this action.

15 11. A non-party witness (including retained or consulted with experts)
16 shall not be given access to Confidential Material unless and until such person
17 agrees in writing, in the form attached hereto as Exhibit "A," that he/she is aware of
18 the existence of contents of this Order and that he/she agrees to be bound by its
19 terms. Counsel for the party giving such person access to the Confidential Material
20 shall be responsible for securing such a writing and shall be the custodian of the
21 writing.

22 12. If the non-designating party objects to the designation of a document
23 or information as Confidential Material, the non-designating party shall serve a
24 written objection on the designating party. The designating party may apply to the
25 Court for protection within fourteen (14) calendar days of receiving such objection.
26 The burden rests upon the designating party to demonstrate that the designation is
27 proper. Until the Court enters an order changing the document's designation,
28 however, the document shall be treated as Confidential Material as provided in this

1 Order. None of the parties to this action is obliged to challenge the designation of
2 any Confidential Material at the time of receipt, disclosure, or designation thereof,
3 and a failure to do so shall not preclude a subsequent challenge and shall not
4 constitute a concession, admission, or representation that such material, or any
5 information contained therein, is in fact a trade secret or confidential information
6 under applicable law.

7 13. Inadvertent failure to designate any material that a producing party
8 claims should be Confidential Material will not be deemed as a waiver of the right
9 to make that designation. The party to whom such inadvertent disclosure is made
10 shall, upon written request by the producing party, thereafter treat such material as
11 Confidential Material in accordance with this Order. Upon receipt of such written
12 notice, the party who received the previously undesignated Confidential Material
13 shall make reasonable efforts to prevent further use or disclosure of the information
14 contained in the previously undesignated Confidential Material by persons other
15 than those authorized in accordance with sections 7 and 8 hereof for access to such
16 information.

17 14. In the event of inadvertent disclosure of any Confidential Material to a
18 person not authorized for access to such material in accordance with section 7 or 8
19 of this Order, the party responsible for having made, and any party with knowledge
20 of, such disclosure shall immediately inform counsel for the party whose
21 Confidential Material has been disclosed of all known relevant information
22 concerning the nature and circumstances of the disclosure. The responsible party
23 also shall promptly take all reasonable measures to: (i) ensure that no further or
24 greater unauthorized disclosure or use of such information or materials is made; and
25 (ii) retrieve the material from the person or persons not authorized to receive such
26 material and inform that person of this Order. Each party shall cooperate in good
27 faith in that effort. Nothing shall prevent disclosure beyond the terms of this Order if
28 the party designating the Confidential Material expressly consents to such disclosure

1 in a particular instance, either in writing or on the record of any proceeding in this
2 action, or if the Court, following notice to all parties, orders such disclosure.

3 15. Nothing in this Order shall prohibit counsel for a party from disclosing
4 Confidential Material to any person who was an author, addressee, or carbon copy
5 recipient of such document. Regardless of any designation under this Protective
6 Order, if a document or testimony makes reference to the actual or alleged conduct
7 or statements of a person who is a potential witness, counsel may discuss such
8 conduct or statements with such witness without revealing any portion of the
9 document or testimony other than that which specifically refers to such conduct or
10 statement, and such discussion shall not constitute disclosure in violation of this
11 Protective Order.

12 16. On good cause shown, the Court may amend or modify any of the
13 tenets of this Order so as to further the ends of justice or to resolve any problems
14 which may arise stemming from or relating to this Order. The parties by stipulation
15 may provide for exceptions to this Order. The existence of this Order shall not be
16 used as a basis to compel the disclosure of information. Nor shall the existence of
17 this Order be used as a basis to prevent another party from seeking greater
18 protection than the protection provided by this Order.

19 17. The provisions of this Order shall continue to be binding throughout
20 and after the conclusion of this action and shall not terminate at the conclusion of
21 this action.

22 18. Within thirty (30) calendar days after receiving notice of the final
23 disposition of this action, all parties and persons bound by this Order shall either (a)
24 return all Confidential Material designated as "ATTORNEYS' EYES ONLY" or
25 "CONFIDENTIAL," including all copies thereof and information stored in
26 computers and on computer disks and tapes, computer extracts, computer entries,
27 notes, memoranda, and other papers containing information therefrom, upon written
28 request by the producing party; or (b) certify that all Confidential Material

1 designated as “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL” in their
2 possession has been destroyed. However, outside counsel for the parties shall be
3 entitled to retain their respective litigation files, including all court papers,
4 deposition transcripts, trial transcripts, exhibits used in affidavits, exhibits used at
5 depositions, exhibits used at trial, and all attorney work product containing, quoting,
6 discussing or analyzing Confidential Material designated as “CONFIDENTIAL” or
7 “ATTORNEYS’ EYES ONLY”, provided that such counsel, and the employees of
8 such counsel, shall not disclose such transcripts, exhibits or attorney work product
9 to any person except as provided in this Order. The Confidential Material designated
10 as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” kept by counsel pursuant
11 to this section shall be maintained in accordance with the terms of this Order. “Final
12 disposition of this action,” as used above, means after all appeal periods have
13 expired or after the execution of a settlement agreement among the parties and the
14 filing of pleadings necessary to finally dispose of all claims in this action.

15 19. With regard to Confidential Material filed with the Court pursuant to
16 the terms of this Order, such material shall be disposed of in conformance with the
17 Court rules.

18 20. Should any person who received Confidential Material subject to this
19 Protective Order receive any request for such information, whether through formal
20 compulsory process or lawful authority of this Court or any other Court or duly
21 empowered authority or tribunal, prior to responding thereto, such person shall
22 promptly serve written notice of the receipt of such request on counsel for all parties
23 hereto in order to allow such parties to move an appropriate court, authority, or
24 tribunal for a ruling regarding the necessity of compliance therewith. Absent a
25 ruling from the appropriate court, authority, or tribunal on said motion, the person or
26 party receiving the request shall not disclose Confidential Material in response
27 thereto and shall thereafter do so only insofar as the court, authority, or tribunal may
28 direct.

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21. The provisions of this Order shall be deemed binding on the parties upon their execution of the stipulation for this Order’s entry to facilitate the exchange of Confidential Material before this Order has been signed and entered.

22. Any party may apply to the Court for additional protection in respect of Confidential Material beyond that provided for herein. Entry of this Protective Order is without prejudice to the right of the parties to apply for future modifications of this Protective Order.

EXHIBIT A

ACKNOWLEDGMENT OF CONFIDENTIALITY DESIGNATIONS AND AGREEMENT TO BE BOUND BY TERMS OF COURT ORDER

I, _____, hereby acknowledge that I may receive confidential information in connection with the following case:

Rillito River Solar LLC v. Bamboo Industries LLC, Case No. 2:17-cv-00181-TLN-CKD, currently pending in the United States District Court for the Eastern District of California.

I hereby certify my understanding that if I receive designated confidential information it is being provided to me pursuant to the terms and restrictions of the Protective Order entered on _____, _____, in this case. I further certify that I have been given a copy of and have read the terms of that Protective Order, that I agree to be bound by its terms, and that I submit to the jurisdiction of the Court for purposes of enforcing that Protective Order.

Dated this _____ day of _____, _____.

Signature

Printed Name

1 SO STIPULATED this 27th day of July, 2017.

2 KERCSMAR & FELTUS PLLC

3
4 By: /s/ Sean J. O'Hara

5 Gregory B. Collins
6 Sean J. O'Hara
7 7150 East Camelback Road, Suite 285
8 Scottsdale, Arizona 85251
9 *Attorneys for Plaintiff*

10 LEE & HAYES PLLC

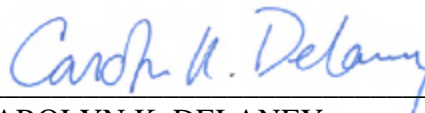
11 By: /s/Andrew Strickland (as authorized on 7/27/17)

12 Andrew G. Strickland
13 William B. Dyer III
14 1175 Peachtree Street NE
15 100 Colony Square, Georgia 30361
16 *Attorneys for Defendant*

17 **ORDER**

18 **IT IS SO ORDERED:**

19 Dated: July 28, 2017

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21 CAROLYN K. DELANEY
22 UNITED STATES MAGISTRATE JUDGE

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