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Rollforming, Inc., a California Corporation; and  
7 Artesian Home Products, a California Corporation, dba  
Valor Gutter Guard

8  
9 UNITED STATES DISTRICT COURT

10  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12 GUTTERGLOVE, INC. a California  
13 corporation,

14 Plaintiff,

15 v.

16 WILLIAM LASELL, an individual;  
17 AMERICAN DIE and ROLLFORMING,  
INC., a California corporation; and  
18 ARTESIAN HOME PRODUCTS, a California  
Corporation, dba Valor Gutter Guard,

19 Defendants.  
20

Case No. 2:17-CV-01372-WBS-CKD

**STIPULATED PROTECTIVE ORDER  
FOR LITIGATION INVOLVING  
CONFIDENTIAL INFORMATION  
AND/OR TRADE SECRETS**

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Action Filed: June 30, 2017  
Judge: Hon. William B. Shubb

1 **I. PROTECTIVE ORDER**

2 **A. PURPOSES AND LIMITATIONS**

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

12 **B. GOOD CAUSE STATEMENT**

13  
14 This action is likely to involve trade secrets, customer and pricing lists and other valuable  
15 research, development, commercial, financial, technical and/or proprietary information for which  
16 special protection from public disclosure and from use for any purpose other than prosecution of  
17 this action is warranted. Such confidential and proprietary materials and information consist of,  
18 among other things, confidential business or financial information, information regarding  
19 confidential business practices, or other confidential research, development, or commercial  
20 information (including information implicating privacy rights of third parties), information  
21 otherwise generally unavailable to the public, or which may be privileged or otherwise protected  
22 from disclosure under state or federal statutes, court rules, case decisions, or common law.  
23 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes  
24 over confidentiality of discovery materials, to adequately protect information the parties are  
25 entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of  
26 such material in preparation for and in the conduct of trial, to address their handling at the end of  
27 the litigation, and serve the ends of justice, a protective order for such information is justified in  
28 this matter. It is the intent of the parties that information will not be designated as confidential for

1 tactical reasons and that nothing be so designated without a good faith belief that it has been  
2 maintained in a confidential, non-public manner, and there is good cause why it should not be  
3 part of the public record of this case.

4  
5 **C. ACKNOWLEDGEMENT OF PROCEDURE FOR FILING UNDER SEAL**

6 The parties further acknowledge, as set forth in Section XII., C., below, that this  
7 Stipulated Protective Order does not entitle them to file confidential information under seal; Local  
8 Civil Rule 141 of the Eastern District of California sets forth the procedures that must be  
9 followed and the standards that will be applied when a party seeks permission from the court to  
10 file material under seal.

11 There is a strong presumption that the public has a right of access to judicial proceedings  
12 and records in civil cases. In connection with non-dispositive motions, good cause must be shown  
13 to support a filing under seal. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172,  
14 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002),  
15 *Makar-Welbon v. Sony Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated  
16 protective orders require good cause showing), and a specific showing of good cause or  
17 compelling reasons with proper evidentiary support and legal justification, must be made with  
18 respect to Protected Material that a party seeks to file under seal. The parties' mere designation of  
19 Disclosure or Discovery Material as CONFIDENTIAL does not—without the submission of  
20 competent evidence by declaration, establishing that the material sought to be filed under seal  
21 qualifies as confidential, privileged, or otherwise protectable—constitute good cause.

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

1 application to file documents under seal must be provided by declaration.

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

## 8 **II. DEFINITIONS**

9  
10 2.1 Action: *Gutterglove, Inc. v. William Lasell, an individual, et al.*, Case No. 2:17-CV-  
11 01372-WBS-CKD.

12 2.2 Challenging Party: A Party or Non-Party that challenges the designation of  
13 information or items under this Order.

14 2.3 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “HIGHLY  
15 CONFIDENTIAL—ATTORNEYS’ EYES ONLY” Information or Items: information  
16 (regardless of how it is generated, stored or maintained) or tangible things that qualify for  
17 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good  
18 Cause Statement.

19 2.4 Counsel: Outside Counsel of Record (as well as their support staff).

20 2.5 Designating Party: A Party or Non-Party that designates information or items that it  
21 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY  
22 CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

23 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium  
24 or manner in which it is generated, stored, or maintained (including, among other things,  
25 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
26 responses to discovery in this matter.

27 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to  
28 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a

1 consultant in this Action.

2 2.8 Non-Party: any natural person, partnership, corporation, association or other legal  
3 entity not named as a Party to this action.

4 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this Action  
5 but are retained to represent or advise a party to this Action and have appeared in this Action on  
6 behalf of that party or are affiliated with a law firm that has appeared on behalf of that party and  
7 includes support staff.

8 2.10 Party: any party to this Action, including all of its officers, directors, employees,  
9 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10 2.11 Producing Party: A Party or Non-Party that produces Disclosure or Discovery  
11 Material in this Action.

12 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
13 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
14 storing, or retrieving data in any form or medium) and their employees and subcontractors.

15 2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
16 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL—  
17 ATTORNEYS’ EYES ONLY.”

18 2.14 Receiving Party: A Party that receives Disclosure or Discovery Material from a  
19 Producing Party.

### 20 **III. SCOPE**

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

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

28

1 **IV. DURATION**

2           Once a case proceeds to trial, information that was designated as CONFIDENTIAL,  
3 HIGHLY CONFIDENTIAL, or HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY or  
4 maintained pursuant to this protective order that is or introduced and admitted as an exhibit at  
5 trial becomes public and will be presumptively available to all members of the public, including  
6 the press, unless compelling reasons supported by specific factual findings to proceed otherwise  
7 are made to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81  
8 (distinguishing “good cause” showing for sealing documents produced in discovery from  
9 “compelling reasons” standard when merits-related documents are part of court record).  
10 Accordingly, the terms of this protective order do not extend beyond the commencement of the  
11 trial for materials that are admitted as an exhibit at trial. This protective order remains in effect  
12 for all materials that are not admitted as an exhibit at trial, unless superseded by a court order  
13 specific to that exhibit.  
14

15 **V. DESIGNATING PROTECTED MATERIAL**

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

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

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

27           If it comes to a Designating Party’s attention that information or items that it designated  
28

1 for protection do not qualify for protection that Designating Party must promptly notify all other  
2 Parties that it is withdrawing the inapplicable designation.

3  
4 **B. Manner and Timing of Designations**

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

9 Designation in conformity with this Order requires:

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

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

28 (b) for testimony given in depositions that the Designating Party identifies the Disclosure

1 or Discovery Material on the record, before the close of the deposition all protected testimony.

2 (c) for information produced in some form other than documentary and for any other  
3 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
4 or containers in which the information is stored the legend “CONFIDENTIAL,” “HIGHLY  
5 CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” If only a  
6 portion or portions of the information warrants protection, the Producing Party, to the extent  
7 practicable, shall identify the protected portion(s).

8  
9 **C. Inadvertent Failures to Designate**

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

15 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 **A. Timing of Challenges**

17  
18 Any Party or Non-Party may challenge a designation of confidentiality at any time that is  
19 consistent with the Court’s Scheduling Order.

20  
21 **B. Meet and Confer**

22 The Challenging Party shall meet and confer by telephone with the Non-Challenging  
23 Party and the Parties shall attempt to find a resolution. The source of the challenge may be  
24 outlined in a letter, but the letter alone will not satisfy the meet and confer requirement.

25 If, after a good faith effort, the parties have not resolved their dispute, they shall prepare a  
26 concise joint statement of five pages or less, stating the nature and status of their dispute, and  
27 certifying that they have met the meet-and-confer requirement.  
28



1           If a joint statement is not possible, each side may submit a brief individual statement of  
2 two pages or less. In addition to the certification of compliance with the meet-and-confer  
3 requirement, the individual statement shall include an explanation of why a joint statement was  
4 not possible. The joint statement or individual statements shall be filed or e-filed, if in an e-filing  
5 case, and courtesy copies submitted as provided by the Civil Local Rules. If, after the statements  
6 are filed, the Court orders motion briefing on the issues, any exhibits accompanying the briefs  
7 which include confidentiality designations shall be presented to the court as provided for herein.

9           **C.     Burden of Persuasion**

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

17           **VII.   ACCESS TO AND USE OF PROTECTED MATERIAL**

18           **A.     Basic Principles**

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

25           Protected Material must be stored and maintained by a Receiving Party at a location and  
26 in a secure manner that ensures that access is limited to the persons authorized under this Order.  
27  
28

1           **B. Disclosure of “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or**  
2           **“HIGHLY CONFIDENTIAL—ATTORNEY’S EYES ONLY” Information**  
3           **or Items**

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

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

9           (b) the officers, directors, and employees of the Receiving Party to whom disclosure is  
10           reasonably necessary for this Action;

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

14           (d) the court and its personnel;

15           (e) court reporters and their staff;

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

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

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

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

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

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

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

12 (l) the officers, directors, and employees of the Receiving Party to whom disclosure is  
13 reasonably necessary for this Action;

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

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

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

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

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

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

28 (r) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees

1 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
2 for this Action;

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

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

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

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

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

15 (x) any settlement conference officer or mediator to whom disclosure of "Highly  
16 Confidential -- Attorneys' Eyes Only" information is permitted by the parties in writing.

17 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
18 **OTHER LITIGATION**

19 If a Party is served with a subpoena or a court order issued in other litigation that compels  
20 disclosure of any information or items designated in this Action as "CONFIDENTIAL"  
21 "HIGHLY CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY,"  
22 that Party must:

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

25 (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
26 other litigation that some or all of the material covered by the subpoena or order is subject to this  
27 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and  
28

1 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
2 Designating Party whose Protected Material may be affected. If the Designating Party timely  
3 seeks a protective order, the Party served with the subpoena or court order shall not produce any  
4 information designated in this action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or  
5 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” before a determination by the  
6 court from which the subpoena or order issued, unless the Party has obtained the Designating  
7 Party’s permission. The Designating Party shall bear the burden and expense of seeking  
8 protection in that court of its confidential material and nothing in these provisions should be  
9 construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful  
10 directive from another court.

11 **IX. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
12 **THIS LITIGATION**

13 (a) The terms of this Order are applicable to information produced by a Non-Party in this  
14 Action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “HIGHLY  
15 CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties  
16 in connection with this litigation is protected by the remedies and relief provided by this Order.  
17 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
18 additional protections.

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

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

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

27 (3) make the information requested available for inspection by the Non-Party, if  
28

1 requested.

2 (c) If the Non-Party fails to seek a protective order from this court within 14 days of  
3 receiving the notice and accompanying information, the Receiving Party may produce the Non-  
4 Party's confidential information responsive to the discovery request. If the Non-Party timely  
5 seeks a protective order, the Receiving Party shall not produce any information in its possession  
6 or control that is subject to the confidentiality agreement with the Non-Party before a  
7 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the  
8 burden and expense of seeking protection in this court of its Protected Material.

9  
10 **X. PROTECTED MATERIAL PRODUCED IN CASE NO: 2:16-CV-02408**

11 (a) The terms of this Order are applicable to information produced in Case No. 2:16-CV-  
12 02408 (the "Patent Case") and designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL,"  
13 or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY." Such information produced  
14 in the Patent Case in connection with this litigation is protected by the remedies and relief  
15 provided by this Order. Likewise, any information produced in this Action and designated as  
16 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "HIGHLY CONFIDENTIAL—  
17 ATTORNEYS' EYES ONLY" and used in connection with the Patent Case is protected by this  
18 Order and by Protective Order (Dkt. No. 26) in the Patent Case.

19 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
21 Material to any person or in any circumstance not authorized under this Stipulated Protective  
22 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
23 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
24 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
25 made of all the terms of this Order, and (d) request such person or persons to execute the  
26 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.  
27  
28

1 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
2 **PROTECTED MATERIAL**

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

12 **XIII. MISCELLANEOUS**

13 **A. Right to Further Relief**  
14

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

17 **B. Right to Assert Other Objections**  
18

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

23 **C. Filing Protected Material**  
24

25 A Party that seeks to file under seal any Protected Material must comply with Local Civil  
26 Rule 141. Protected Material may only be filed under seal pursuant to a court order authorizing  
27 the sealing of the specific Protected Material at issue. If a Party's request to file Protected  
28 Material under seal is denied by the Court, then the Receiving Party and Producing Party should

1 work cooperatively, subject to the requirement that restraint be exercised, to create a redacted  
2 version of the Protected Material or a stipulated summary of the Protected Material that may be  
3 filed in the public record.

4  
5 **XIV. FINAL DISPOSITION**

6 After the final disposition of this Action, as defined in Section II, within 60 days of a  
7 written request by the Designating Party, each Receiving Party must return all Protected Material  
8 to the Producing Party or destroy such material. As used in this subdivision, “all Protected  
9 Material” includes all copies, abstracts, compilations, summaries, and any other format  
10 reproducing or capturing any of the Protected Material. Whether the Protected Material is  
11 returned or destroyed, the Receiving Party must submit a written certification to the Producing  
12 Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that  
13 (1) identifies (by category, where appropriate) all the Protected Material that was returned or  
14 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
15 compilations, summaries or any other format reproducing or capturing any of the Protected  
16 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
17 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
18 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
19 consultant and expert work product, even if such materials contain Protected Material. Any such  
20 archival copies that contain or constitute Protected Material remain subject to this Protective  
21 Order as set forth in Section IV (DURATION).

22  
23 **XV. VIOLATION**

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

26  
27 **IT IS SO STIPULATED**, through Counsel of Record.



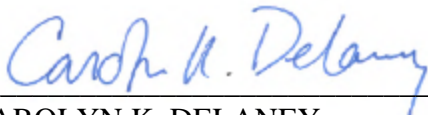
1 Date: February 27, 2018 /s/ Sara Weilert Gillette  
Counsel for Plaintiff

2 Date: February 27, 2018 /s/ John P. Costello  
3 Counsel for Defendant

4  
5 **IT IS ORDERED**, with the following amendments and clarifications.

- 6 1. The parties shall comply with the provisions and procedures of Local Rules 140 and  
7 141 with respect to sealing or redaction requests. To the extent that the parties'  
8 stipulation conflicts with the Local Rules, the Local Rules shall govern.
- 9
- 10 2. Prior to filing any motion related to this stipulated protective order or other discovery  
11 motion, the parties shall first exhaust informal meet-and-confer efforts and otherwise  
12 comply with Local Rule 251.
- 13
- 14 3. Nothing in this order limits the testimony of parties or non-parties, or the use of  
15 certain documents, at any court hearing or trial—such determinations will only be  
16 made by the court at the hearing or trial, or upon an appropriate motion.
- 17
- 18 4. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement  
19 of the terms of this stipulated protective order after the action is terminated.

20  
21 Dated: March 6, 2018

  
\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE  
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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], 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 Eastern District of California in the action captioned *Gutterglove, Inc. v. William Lasell, American Die and Rollforming, Inc., and Artesian Home Products (dba Valor Gutter Guard)*, No. 2:17-CV-01372-WBS-CKD. 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 would expose me to sanctions and punishment in the nature of contempt. In particular, I acknowledge that I am responsible for securing any and all documents and things in my possession protected under this Stipulated Protective Order from disclosure. This includes but is not limited to storing all protected documents in a location that can only be accessed by myself. 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 Eastern District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after the 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: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
City and State Where Sworn and Signed: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Signature: \_\_\_\_\_

1 **EXHIBIT 1**

2 **INDIVIDUAL ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_, declare under penalty of perjury that I have  
4 read in its entirety and understand the Stipulated Protective Order (the “Order”) issued by the  
5 United States District Court for the Eastern District of California on \_\_\_\_\_, 2018, in  
6 the action captioned *Gutterglove, Inc. v. William Lasell, American Die and Rollforming, Inc., and*  
7 *Artesian Home Products (dba Valor Gutter Guard)*, No. 2:17-CV-01372-WBS-CKD (the  
8 “Litigation”). I agree to comply with and to be bound by all the terms of the Order, and I  
9 understand and acknowledge that my failure to so comply could expose me to sanctions and  
10 punishment in the form of contempt. I solemnly promise that I will not disclose in any manner  
11 any matter or item that is subject to the Order to any person or entity except in strict compliance  
12 with the provisions of the Order.  
13  
14

15 For the purpose of enforcing the terms of this Order, I further agree to submit to the  
16 jurisdiction of the United States District Court for the Eastern District of California, solely with  
17 respect to any action to enforce the terms of the Order, even if such enforcement proceedings  
18 occur after termination of the Litigation.  
19

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

21 Home Address: \_\_\_\_\_

22 City and State Where  
23 Sworn and Signed: \_\_\_\_\_

24 Printed Name: \_\_\_\_\_

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

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