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UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA

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11 DIANE STEELE,  
 12 Plaintiff,  
 13 v.  
 14 RASH CURTIS & ASSOCIATES,  
 15 Defendant.

Case No.: 2:17-CV-02626-JAM-AC  
**STIPULATED PROTECTIVE ORDER**

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 17

18 1. PURPOSES AND LIMITATIONS

19 Disclosure and discovery activity in this action are likely to involve production of confidential,  
 20 proprietary, or private information for which special protection from public disclosure and from use for  
 21 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby  
 22 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties  
 23 acknowledge that this Order does not confer blanket protections on all disclosures or responses to  
 24 discovery and that the protection it affords from public disclosure and use extends only to the limited  
 25 information or items that are entitled to confidential treatment under the applicable legal principles.  
 26 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective  
 27 Order does not entitle them to file confidential information under seal; Civil Local Rule 141 sets forth  
 28 the procedures that must be followed and the standards that will be applied when a party seeks

1 permission from the court to file material under seal.

2 2. DEFINITIONS

3 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information  
4 or items under this Order.

5 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
6 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
7 Civil Procedure 26(c).

8 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as  
9 their support staff).

10 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
11 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

12 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or  
13 manner in which it is generated, stored, or maintained (including, among other things, testimony,  
14 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery  
15 in this matter.

16 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
17 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
18 consultant in this action.

19 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel  
20 does not include Outside Counsel of Record or any other outside counsel.

21 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal  
22 entity not named as a Party to this action.

23 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action  
24 but are retained to represent or advise a party to this action and have appeared in this action on behalf  
25 of that party or are affiliated with a law firm which has appeared on behalf of that party.

26 2.10 Party: any party to this action, including all of its officers, directors, employees,  
27 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

28 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material

1 in this action.

2 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
3 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,  
4 or retrieving data in any form or medium) and their employees and subcontractors.

5 2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
6 “CONFIDENTIAL.”

7 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
8 Producing Party.

9 3. SCOPE

10 The protections conferred by this Stipulation and Order cover not only Protected Material (as  
11 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
12 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
13 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
14 However, the protections conferred by this Stipulation and Order do not cover the following  
15 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
16 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
17 publication not involving a violation of this Order, including becoming part of the public record  
18 through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure  
19 or obtained by the Receiving Party after the disclosure from a source who obtained the information  
20 lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected  
21 Material at trial shall be governed by a separate agreement or order.

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
24 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
25 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
26 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
27 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time  
28 limits for filing any motions or applications for extension of time pursuant to applicable law.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
3 Non-Party that designates information or items for protection under this Order must take care to limit  
4 any such designation to specific material that qualifies under the appropriate standards. The  
5 Designating Party must designate for protection only those parts of material, documents, items, or oral  
6 or written communications that qualify – so that other portions of the material, documents, items, or  
7 communications for which protection is not warranted are not swept unjustifiably within the ambit of  
8 this Order.

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

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

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
17 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
18 Discovery Material that qualifies for protection under this Order must be clearly so designated before  
19 the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic documents, but  
22 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
23 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion or  
24 portions of the material on a page qualifies for protection, the Producing Party also must clearly  
25 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

26 A Party or Non-Party that makes original documents or materials available for inspection  
27 need not designate them for protection until after the inspecting Party has indicated which material it  
28 would like copied and produced. During the inspection and before the designation, all of the material

1 made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has  
2 identified the documents it wants copied and produced, the Producing Party must determine which  
3 documents, or portions thereof, qualify for protection under this Order. Then, before producing the  
4 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page that  
5 contains Protected Material. If only a portion or portions of the material on a page qualifies for  
6 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
7 appropriate markings in the margins).

8 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
9 Designating Party identify on the record, before the close of the deposition, hearing, or other  
10 proceeding, all protected testimony.

11 (c) for information produced in some form other than documentary and for any other  
12 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
13 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion  
14 or portions of the information or item warrant protection, the Producing Party, to the extent practicable,  
15 shall identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
17 designate qualified information or items does not, standing alone, waive the Designating Party’s right  
18 to secure protection under this Order for such material. Upon timely correction of a designation, the  
19 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with  
20 the provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
23 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
24 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or  
25 a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
26 confidentiality designation by electing not to mount a challenge promptly after the original designation  
27 is disclosed.

28 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by

1 providing written notice of each designation it is challenging and describing the basis for each  
2 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite  
3 that the challenge to confidentiality is being made in accordance with this specific paragraph of the  
4 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the  
5 process by conferring directly (in voice to voice dialogue; other forms of communication are not  
6 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must  
7 explain the basis for its belief that the confidentiality designation was not proper and must give the  
8 Designating Party an opportunity to review the designated material, to reconsider the circumstances,  
9 and, if no change in designation is offered, to explain the basis for the chosen designation. A  
10 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this  
11 meet and confer process first or establishes that the Designating Party is unwilling to participate in the  
12 meet and confer process in a timely manner.

13       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
14 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
15 Local Rule 133 (and in compliance with Civil Local Rule 141, if applicable) within 21 days of the  
16 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process  
17 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
18 competent declaration affirming that the movant has complied with the meet and confer requirements  
19 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including  
20 the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the  
21 confidentiality designation for each challenged designation. In addition, the Challenging Party may file  
22 a motion challenging a confidentiality designation at any time if there is good cause for doing so,  
23 including a challenge to the designation of a deposition transcript or any portions thereof. Any motion  
24 brought pursuant to this provision must be accompanied by a competent declaration affirming that the  
25 movant has complied with the meet and confer requirements imposed by the preceding paragraph.

26       The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
27 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary  
28 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the

1 Designating Party has waived the confidentiality designation by failing to file a motion to retain  
2 confidentiality as described above, all parties shall continue to afford the material in question the level  
3 of protection to which it is entitled under the Producing Party's designation until the court rules on the  
4 challenge.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
7 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
8 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the  
9 categories of persons and under the conditions described in this Order. When the litigation has been  
10 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
11 DISPOSITION).

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

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by  
15 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
16 information or item designated "CONFIDENTIAL" only to:

17 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of  
18 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
19 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached  
20 hereto as Exhibit A;

21 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
22 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
23 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

27 (d) the court and its personnel;

28 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and

1 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
2 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
4 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
5 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
6 deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound  
7 by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated  
8 Protective Order.

9 (g) the author or recipient of a document containing the information or a custodian or other  
10 person who otherwise possessed or knew the information.

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

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

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

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

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

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

1 from another court.

2 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
3 LITIGATION

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

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

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

13 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in  
14 this litigation, the relevant discovery request(s), and a reasonably specific description of the  
15 information requested; and

16 (3) make the information requested available for inspection by the Non-Party.

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

24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
26 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,  
27 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
28 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)

1 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
2 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be  
3 Bound” that is attached hereto as Exhibit A.

4 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
5 MATERIAL

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

14 12. MISCELLANEOUS

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
16 its modification by the court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no  
18 Party waives any right it otherwise would have to object to disclosing or producing any information or  
19 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any  
20 right to object on any ground to use in evidence of any of the material covered by this Protective  
21 Order.

22 12.3 Filing Protected Material. Without written permission from the Designating Party or a  
23 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
24 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material  
25 must comply with Civil Local Rule 141. Protected Material may only be filed under seal pursuant to a  
26 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local  
27 Rule 141, a sealing order will issue only upon a request establishing that the Protected Material at issue  
28 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. However,

1 if the court denies a Party's Motion to Seal pursuant to Civil Local Rule 141, the Protected Material  
2 may be filed on the docket.

3 13. FINAL DISPOSITION

4 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
5 Receiving Party must destroy all Protected Material. As used in this subdivision, "all Protected  
6 Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or  
7 capturing any of the Protected Material. After the Protected Material is destroyed, the Receiving Party  
8 must submit a written certification to the Producing Party (and, if not the same person or entity, to the  
9 Designating Party) within 14 days of a written request to do so, that (1) identifies (by category, where  
10 appropriate) all the Protected Material that was destroyed and (2) affirms that the Receiving Party has  
11 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
12 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain  
13 an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
14 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
15 consultant and expert work product, even if such materials contain Protected Material. Any such  
16 archival copies that contain or constitute Protected Material remain subject to this Protective Order as  
17 set forth in Section 4 (DURATION).

18 IT IS SO STIPULATED, BY AND THROUGH COUNSEL OF RECORD.

19  
20 Dated: February 7, 2018

MARTIN & BONTRAGER, A.P.C.

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22  
23 By /s/ Nicholas J. Bontrager (as authorized on 02/06/18)  
24 Nicholas J. Bontrager  
25 Attorney for Plaintiff  
26 DIANE STEELE  
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1 Dated: February 7, 2018

ELLIS LAW GROUP LLP

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By /s/ Anthony P. J. Valenti  
Anthony P. J. Valenti  
Attorney for Defendant  
RASH CURTIS & ASSOCIATES

IT IS SO ORDERED.

Dated: 2/7/2018

/s/ John A. Mendez  
U. S. District Court Judge