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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN P. FIFER,
Plaintiff,
v.
ROHM AND HAAS COMPANY, et al,
Defendant.

Case No. CV 09-0128 JSW
STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

1 **2. DEFINITIONS**

2 2.1 Party: any party to this action, including all of its officers, directors, employees,
3 consultants, retained experts, and outside counsel (and their support staff).

4 2.2 Disclosure or Discovery Material: all items or information, regardless of the
5 medium or manner generated, stored, or maintained (including, among other things, testimony,
6 transcripts, or tangible things) that are produced or generated in disclosures or responses to
7 discovery in this matter.

8 2.3 “Confidential” Information or Items: information (regardless of how generated,
9 stored or maintained) or tangible things that qualify for protection under standards developed under
10 F.R.Civ.P. 26(c).

11 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely
12 sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would
13 create a substantial risk of serious injury that could not be avoided by less restrictive means:

14 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from
15 a Producing Party.

16 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
17 Material in this action.

18 2.7. Designating Party: a Party or non-party that designates information or items in
19 Disclosures or Discovery Material as “Confidential” or “Highly Confidential — Attorneys’ Eyes
20 Only.”

21 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
22 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

23 2.9 Counsel: Counsel of record for the parties, in house counsel (if any) for the
24 parties, as well as each of their support staffs.

25 2.10 Expert: a person with specialized knowledge or experience in a matter pertinent
26 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
27 consultant in this action and who is not a past or a current employee of a Party or of a competitor of
28 a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or a

1 competitor of a Party's. This definition includes a professional jury or trial consultant retained in
2 connection with this litigation.

3 2.11 Professional Vendors: persons or entities that provide litigation support
4 services (e.g., photocopying; videotaping; court reporters; translating; preparing exhibits or
5 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
6 employees and subcontractors.

7 **3. SCOPE**

8 The protections conferred by this Stipulation and Order cover not only Protected Material
9 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
10 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
11 parties or counsel to or in court or in other settings that might reveal Protected Material.

12 **4. DURATION**

13 Even after the termination of this litigation, the confidentiality obligations imposed by this
14 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
15 otherwise directs.

16 **5. DESIGNATING PROTECTED MATERIAL**

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
18 or non-party that designates information or items for protection under this Order must take care to
19 limit any such designation to specific material that qualifies under the appropriate standards. A
20 Designating Party must take care to designate for protection only those parts of material, documents,
21 items, or oral or written communications that qualify – so that other portions of the material,
22 documents, items, or communications for which protection is not warranted are not swept
23 unjustifiably within the ambit of this Order.

24 If it comes to a Party's or a non-party's attention that information or items that it
25 designated for protection do not qualify for protection at all, or do not qualify for the level of
26 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
27 withdrawing the mistaken designation.

28 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order

1 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material
2 that qualifies for protection under this Order must be clearly so designated before the material is
3 disclosed or produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (apart from transcripts of depositions or other
6 pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on each page that contains protected
8 material. If only a portion or portions of the material on a page qualifies for protection, the
9 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
10 markings in the margins) and must specify, for each portion, the level of protection being asserted
11 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

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

25 (b) for testimony given in deposition or in other pretrial or trial proceedings, that a Party, or
26 non-party offering or sponsoring the testimony, identify on the record, before the close of the
27 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of
28 the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When

1 it is impractical to identify separately each portion of testimony that is entitled to protection, and
2 when it appears that substantial portions of the testimony may qualify for protection, the Party or
3 non-party that sponsors, offers, or gives the testimony may invoke on the record (before the
4 deposition or proceeding is concluded) a right to have up to 10 days following receipt of the
5 transcript, to identify the specific portions of the testimony as to which protection is sought and to
6 specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
7 – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately
8 designated for protection within the 10 days shall be covered by the provisions of this Stipulated
9 Protective Order.

10 Transcript pages containing Protected Material must be separately bound by the court
11 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or nonparty offering
13 or sponsoring the witness or presenting the testimony.

14 (c) for information produced in some form other than documentary, and for any other
15 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
16 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or item
18 warrant protection, the Producing Party, to the extent practicable, shall identify the protected
19 portions, specifying whether they qualify as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL
20 – ATTORNEYS’ EYES ONLY.”

21 (d) for information produced by non-parties: the Parties may designate Protected Material, as
22 appropriate, within 10 days of its being produced by a non-party by notifying the other parties in
23 writing of the designation. The other Parties shall immediately affix the legend “CONFIDENTIAL
24 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on the third-party documents in
25 their possession, custody, or control.

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
27 designate qualified information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating Party’s right to

1 secure protection under this Order for such material. If material is appropriately designated as
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” after the
3 material was initially produced, the Receiving Party, on timely notification of the designation, must
4 make reasonable efforts to assure that the material is treated in accordance with the provisions of
5 this Order and identify any previous disclosures made prior to the designation.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
8 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
9 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
10 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
11 after the original designation is disclosed.

12 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
13 Party’s confidentiality designation must do so in good faith and must begin the process by conferring
14 directly with counsel for the Designating Party. In conferring, the challenging Party must explain
15 the basis for its belief that the confidentiality designation was not proper and must give the
16 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
17 and, if no change in designation is offered, to explain the basis for the chosen designation. A
18 challenging Party may proceed to the next stage of the challenge process only if it has engaged in
19 this meet and confer process first.

20 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
21 designation after considering the justification offered by the Designating Party may file and serve a
22 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
23 identifies the challenged material and sets forth in detail the basis for the challenge. Each such
24 motion must be accompanied by a competent declaration that affirms that the movant has complied
25 with the meet and confer requirements imposed in the preceding paragraph and that sets forth with
26 specificity the justification for the confidentiality designation that was given by the Designating
27 Party in the meet and confer dialogue.

28 The burden of persuasion in any such challenge proceeding shall be on the Designating

1 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
2 question the level of protection to which it is entitled under the Producing Party's designation. The
3 prevailing party in such motion may seek reasonable sanctions from the court.

4 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a non-party in connection with this case only for
7 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
8 disclosed only to the categories of persons and under the conditions described in this Order. When
9 the litigation has been terminated, a Receiving Party must comply with the provisions of section
10 11, below (FINAL DISPOSITION).

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

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
14 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
15 disclose any information or item designated CONFIDENTIAL only to:

16 (a) the Receiving Party's Counsel in this action;

17 (b) the officers, directors, and employees of the Receiving Party (other than counsel)
18 to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement
19 to Be Bound by Protective Order" (Exhibit A);

20 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
21 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
22 Protective Order" (Exhibit A);

23 (d) the Court and its personnel;

24 (e) court reporters, their staffs, and professional vendors to whom disclosure is
25 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
26 Protective Order" (Exhibit A);

27 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
28 necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A).

1 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
2 must be separately bound by the court reporter and may not be disclosed to anyone except as
3 permitted under this Stipulated Protective Order.

4 (g) the author of the document or the original source of the information; and

5 (h) the individual Parties bound by this Order.

6 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

7 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
8 Designating Party, a Receiving Party may disclose any information or item designated
9 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

10 (a) the Receiving Party's Counsel in this action, as well as employees of said Counsel to
11 whom it is reasonably necessary to disclose the information for this litigation;

12 (b) Experts (as defined in this Order) to whom disclosure is reasonably necessary for this
13 litigation, and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

14 (d) the Court and its personnel;

15 (e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably
16 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order"
17 (Exhibit A); and

18 (f) the author of the document or the original source of the information.

19 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
20 **IN OTHER LITIGATION.**

21 If a Receiving Party is served with a subpoena or an order issued in other litigation that
22 would compel disclosure of any information or items designated in this action as
23 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
24 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
25 and in no event more than three court days after receiving the subpoena or order. Such notification
26 must include a copy of the subpoena or court order.

27 The Receiving Party also must immediately inform in writing the Party who caused the
28 subpoena or order to issue in the other litigation that some or all the material covered by the

1 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
2 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
3 caused the subpoena or order to issue.

4 The purpose of imposing these duties is to alert the interested parties to the existence of this
5 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
6 confidentiality interests in the court from which the subpoena or order issued. The Designating
7 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
8 material – and nothing in these provisions should be construed as authorizing or encouraging a
9 Receiving Party in this action to disobey a lawful directive from another court.

10 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

18 9.1 FILING PROTECTED MATERIAL. Without written permission from the
19 Designating Party or a court order secured after appropriate notice to all interested persons, a Party
20 may not file in the public record in this action any Protected Material. A Party that seeks to file
21 under seal any Protected Material must comply with Civil Local Rule 79-5.

22 9.2 FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
23 Producing Party, within sixty days after the final termination of this action, each Receiving Party
24 must return all Protected Material to the Producing Party. As used in this subdivision, “all Protected
25 Material” includes all copies, abstracts, compilations, summaries or any other form of reproducing or
26 capturing any of the Protected Material. With permission in writing from the Designating Party, the
27 Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether
28 the Protected Material is returned or destroyed, the Receiving Party must submit a written

1 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
2 by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material
3 that was returned or destroyed and that affirms that the Receiving Party has not retained any copies,
4 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
5 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
6 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
7 even if such materials contain Protected Material. Any such archival copies that contain or
8 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
9 (DURATION), above.

10 **10. MISCELLANEOUS**

11 10.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
12 seek its modification by the Court in the future.

13 10.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
14 Order, no Party waives any right it otherwise would have to object to disclosing or producing any
15 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
16 Party waives any right to object on any ground to use in evidence of any of the material covered by
17 this Protective Order.

18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD. DATED:

19 Dated: April 13, 2009

/s/ Kathryn Burkett Dickson

Kathryn Burkett Dickson
Dickson Ross LLP
Attorneys for Plaintiff

22 Dated: April 13, 2009

/s/ Jennifer L. Field

Jennifer L. Field
Baker & McKenzie LLP
Attorney for Defendant

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26 Dated: April 14, 2009


Hon. Jeffrey S. White
United States District Court

1 EXHIBIT A
2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court for the
6 Northern District of California on _____ in the case of *Fifer v. Rohm and Haas*
7 *Company*, USDC C09-00128 JSW. I agree to comply with and to be bound by all the terms of this
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
10 disclose in any manner any information or item that is subject to this Stipulated Protective Order to
11 any person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the
13 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
14 Order, even if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number]
17 as my California agent for service of process in connection with this action or any proceedings
18 related to enforcement of this Stipulated Protective Order.

19 Dated: _____ Printed name: _____

20 Signature: _____