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9
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11 **UNITED STATES DISTRICT COURT FOR THE**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN FRANCISCO DIVISION**

14
 15 PRECISION CONCRETE CUTTING, Inc., a
 Utah Corporation,

CASE NO. C10-00310 RS

16
 17 Plaintiff,

18 v.

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

19 BRYAN PATRICK RIFLEY dba CHANNEL
 ISLANDS SAWING, CO., an individual;
 20 BRYAN PATRICK RIFLEY JR. dba
 CHANNEL ISLANDS SIDEWALK
 GRINDING and CHANNEL ISLANDS
 21 SAWING, an individual; and
 22 BPR, Inc., a California Corporation

23 Defendants.

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 25 1. PURPOSES AND LIMITATIONS

26 Disclosure and discovery activity in this action are likely to involve production of
 27 confidential, proprietary, or private information for which special protection from public
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1 disclosure and from use for any purpose other than prosecuting this litigation may be
2 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
3 following Stipulated Protective Order. The parties acknowledge that this Order does not
4 confer blanket protections on all disclosures or responses to discovery and that the
5 protection it affords from public disclosure and use extends only to the limited
6 information or items that are entitled to confidential treatment under the applicable legal
7 principles. The parties further acknowledge, as set forth in Section 14.4, below, that this
8 Stipulated Protective Order does not entitle them to file confidential information under
9 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
10 the standards that will be applied when a party seeks permission from the court to file material
11 under seal.
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14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
18 it is generated, stored or maintained) or tangible things that qualify for protection under
19 Federal Rule of Civil Procedure 26(c).
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21 2.3 Counsel (without qualifier): Outside Counsel of Record and House
22 Counsel (as well as their support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”
25 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

26 2.5 Disclosure or Discovery Material: all items or information, regardless of
27 the medium or manner in which it is generated, stored, or maintained (including, among
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1 other things, testimony, transcripts, and tangible things), that are produced or generated in
2 disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an
5 expert witness or as a consultant in this action, (2) is not a past or current employee of a
6 Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to
7 become an employee of a Party or of a Party’s competitor.
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9 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
10 Information or Items: extremely sensitive “Confidential Information or Items,” disclosure
11 of which to another Party or Non-Party would create a substantial risk of serious harm that
12 could not be avoided by less restrictive means.
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14 2.8 House Counsel: attorneys who are employees of a party to this action.
15 House Counsel does not include Outside Counsel of Record or any other outside counsel.

16 2.9 Non-Party: any natural person, partnership, corporation, association, or
17 other legal entity not named as a Party to this action.

18 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
19 this action but are retained to represent or advise a party to this action and have appeared
20 in this action on behalf of that party or are affiliated with a law firm which has appeared
21 on behalf of that party.
22

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

26 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
27 Discovery Material in this action.
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1 2.13 Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
4 their employees and subcontractors.

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

8 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
9 from a Producing Party.
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12 3. SCOPE

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

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

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

1 If it comes to a Designating Party’s attention that information or items that it
2 designated for protection do not qualify for protection at all or do not qualify for the level
3 of protection initially asserted, that Designating Party must promptly notify all other
4 parties that it is withdrawing the mistaken designation.
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7 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
8 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure
9 or Discovery Material that qualifies for protection under this Order must be clearly so designated
10 before the material is disclosed or produced.
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12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic documents, but
14 excluding transcripts of depositions or other pretrial or trial proceedings), that the
15 Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY” to each page that contains protected material. If only a
17 portion or portions of the material on a page qualifies for protection, the Producing Party
18 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
19 in the margins) and must specify, for each portion, the level of protection being asserted.
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22 A Party or Non-Party that makes original documents or materials available for
23 inspection need not designate them for protection until after the inspecting Party has
24 indicated which material it would like copied and produced. During the inspection and
25 before the designation, all of the material made available for inspection shall be deemed
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1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting
2 Party has identified the
3 documents it wants copied and produced, the Producing Party must determine which documents,
4 or portions thereof, qualify for protection under this Order. Then, before producing the specified
5 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains
7 Protected Material. If only a portion or portions of the material on a page qualifies for
8 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
9 making appropriate markings in the margins) and must specify, for each portion, the level of
10 protection being asserted.
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12 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
13 the Designating Party identify on the record, before the close of the deposition, hearing, or
14 other proceeding, all protected testimony and specify the level of protection being
15 asserted. When it is impractical to identify separately each portion of testimony that is
16 entitled to protection and it appears that substantial portions of the testimony may qualify
17 for protection, the Designating Party may invoke on the record (before the deposition,
18 hearing, or other proceeding is concluded) a right to have up to 21 days to identify the
19 specific portions of the testimony as to which protection is sought and to specify the level
20 of protection being asserted. Only those portions of the testimony that are appropriately
21 designated for protection within the 21 days shall be covered by the provisions of this
22 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the
23 deposition or up to 21 days afterwards if that period is properly invoked, that the entire
24 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY.”
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1 Parties shall give the other parties notice if they reasonably expect a deposition,
2 hearing or other proceeding to include Protected Material so that the other parties can
3 ensure that only authorized individuals who have signed the “Acknowledgment and
4 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a
5 document as an exhibit at a deposition shall not in any way affect its designation as
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
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8 Transcripts containing Protected Material shall have an obvious legend on the title
9 page that the transcript contains Protected Material, and the title page shall be followed by
10 a list of all pages (including line numbers as appropriate) that have been designated as
11 Protected Material and the level of protection being asserted by the Designating Party.
12 The Designating Party shall inform the court reporter of these requirements. Any
13 transcript that is prepared before the expiration of a 21-day period for designation shall be
14 treated during that period as if it had been designated “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
16 expiration of that period, the transcript shall be treated only as actually designated.
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19 (c) for information produced in some form other than documentary and for any
20 other tangible items, that the Producing Party affix in a prominent place on the exterior of
21 the container or containers in which the information or item is stored the legend
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.
23 If only a portion or portions of the information or item warrant protection, the Producing
24 Party, to the extent practicable, shall identify the protected portion(s) and specify the level
25 of protection being asserted.
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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive the
3 Designating Party’s right to secure protection under this Order for such material. Upon timely
4 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
5 material is treated in accordance with the provisions of this Order.
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8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
10 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s
11 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
12 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
13 right to challenge a confidentiality designation by electing not to mount a challenge promptly
14 after the original designation is disclosed.
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17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process by providing written notice of each designation it is challenging and
19 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been
20 made, the written notice must recite that the challenge to confidentiality is being made in
21 accordance with this specific paragraph of the Protective Order. The parties shall attempt to
22 resolve each challenge in good faith and must begin the process by conferring directly (in voice
23 to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of
24 service of notice. In conferring, the Challenging Party must explain the basis for its belief that
25 the confidentiality designation was not proper and must give the Designating Party an
26 opportunity to review the designated material, to reconsider the circumstances, and, if no change
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1 in designation is offered, to explain the basis for the chosen designation. A Challenging Party
2 may proceed to the next stage of the challenge process only if it has engaged in this meet and
3 confer process first or establishes that the Designating Party is unwilling to participate in the
4 meet and confer process in a timely manner.
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7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
8 court intervention, the Designating Party shall file and serve a motion to retain confidentiality
9 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21
10 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
11 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
12 accompanied by a competent declaration affirming that the movant has complied with the meet
13 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party
14 to make such a motion including the required declaration within 21 days (or 14 days, if
15 applicable) shall automatically waive the confidentiality designation for each challenged
16 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
17 designation at any time if there is good cause for doing so, including a challenge to the
18 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
19 this provision must be accompanied by a competent declaration affirming that the movant has
20 complied with the meet and confer requirements imposed by the preceding paragraph.
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24 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
25 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
26 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
27 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
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1 file a motion to retain confidentiality as described above, all parties shall continue to afford the
2 material in question the level of protection to which it is entitled under the Producing Party's
3 designation until the court rules on the challenge.
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6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is
8 disclosed or produced by another Party or by a Non-Party in connection with this case
9 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
10 Material may be disclosed only to the categories of persons and under the conditions
11 described in this Order. When the litigation has been terminated, a Receiving Party must
12 comply with the provisions of section 15 below (FINAL DISPOSITION).
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14 Protected Material must be stored and maintained by a Receiving Party at a
15 location and in a secure manner that ensures that access is limited to the persons
16 authorized under this Order.
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18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
20 may disclose any information or item designated "CONFIDENTIAL" only to:
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22 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
23 employees of said Outside Counsel of Record to whom it is reasonably necessary to
24 disclose the information for this litigation and who have signed the "Acknowledgment and
25 Agreement to Be Bound" that is attached hereto as Exhibit A;
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1 (b) the officers, directors, and employees (including House Counsel) of the
2 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
3 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

7 (d) the court and its personnel;

8 (e) court reporters and their staff, professional jury or trial consultants, and
9 Professional Vendors to whom disclosure is reasonably necessary for this litigation and
10 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

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23 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
24 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by
25 the Designating Party, a Receiving Party may disclose any information or item designated
26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:
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1 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
2 employees of said Outside Counsel of Record to whom it is reasonably necessary to
3 disclose the information for this litigation and who have signed the “Acknowledgment and
4 Agreement to Be Bound” that is attached hereto as Exhibit A;

5 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
6 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to
7 Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph
8 7.4(a)(2), below, have been followed;

9 (c) the court and its personnel;

10 (d) court reporters and their staff, professional jury or trial consultants,⁵ and
11 Professional Vendors to whom disclosure is reasonably necessary for this litigation and
12 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and
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14 (e) the author or recipient of a document containing the information or a custodian
15 or other person who otherwise possessed or knew the information.
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18 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated
20 House Counsel or Experts.
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23 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
24 Designating Party, a Party that seeks to disclose to Designated House Counsel any
25 information or item that has been designated “HIGHLY CONFIDENTIAL –
26 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written
27 request to the Designating Party that (1) sets forth the full name of the Designated House
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1 Counsel and the city and state of his or her residence, and (2) describes the Designated
2 House Counsel’s current and reasonably foreseeable future primary job duties and
3 responsibilities in sufficient detail to determine if House Counsel is involved, or may
4 become involved, in any competitive decision-making.

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6 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
7 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
8 information or item that has been designated “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written
10 request to the Designating Party that (1) identifies the general categories of “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party
12 seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and
13 the city and state of his or her primary residence, (3) attaches a copy of the Expert’s
14 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person
15 or entity from whom the Expert has received compensation or funding for work in his or
16 her areas of expertise or to whom the expert has provided professional services, including
17 in connection with a litigation, at any time during the preceding five years, and (6)
18 identifies (by name and number of the case, filing date, and location of court) any
19 litigation in connection with which the Expert has offered expert testimony, including
20 through a declaration, report, or testimony at a deposition or trial, during the preceding
21 five years.
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25 (b) A Party that makes a request and provides the information specified in the
26 preceding respective paragraphs may disclose the subject Protected Material to the
27 identified Designated House Counsel or Expert unless, within 14 days of delivering the
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1 request, the Party receives a written objection from the Designating Party. Any such
2 objection must set forth in detail the grounds on which it is based.

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4 (c) A Party that receives a timely written objection must meet and confer with
5 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter
6 by agreement within seven days of the written objection. If no agreement is reached, the
7 Party seeking to make the disclosure to Designated House Counsel or the Expert may file
8 a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5,
9 if applicable) seeking permission from the court to do so. Any such motion must describe
10 the circumstances with specificity, set forth in detail the reasons why the disclosure to
11 Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm
12 that the disclosure would entail, and suggest any additional means that could be used to
13 reduce that risk. In addition, any such motion must be accompanied by a competent
14 declaration describing the parties' efforts to resolve the matter by agreement (i.e., the
15 extent and the content of the meet and confer discussions) and setting forth the reasons
16 advanced by the Designating Party for its refusal to approve the disclosure.
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19 In any such proceeding, the Party opposing disclosure to Designated House
20 Counsel or the Expert shall bear the burden of proving that the risk of harm that the
21 disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's
22 need to disclose the Protected Material to its Designated House Counsel or Expert.
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25 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
26 PRODUCED IN OTHER LITIGATION
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1 If a Party is served with a subpoena or a court order issued in other litigation that
2 compels disclosure of any information or items designated in this action as
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
4 that Party must:

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

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

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by
12 the Designating Party whose Protected Material may be affected.
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16 If the Designating Party timely seeks a protective order, the Party served with the
17 subpoena or court order shall not produce any information designated in this action as
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
19 before a determination by the court from which the subpoena or order issued, unless the
20 Party has obtained the Designating Party’s permission. The Designating Party shall bear
21 the burden and expense of seeking protection in that court of its confidential material –
22 and nothing in these provisions should be construed as authorizing or encouraging a
23 Receiving Party in this action to disobey a lawful directive from another court.
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26 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
27 PRODUCED IN THIS LITIGATION
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1 (a) The terms of this Order are applicable to information produced by a Non-Party
2 in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection
4 with this litigation is protected by the remedies and relief provided by this Order. Nothing
5 in these provisions should be construed as prohibiting a Non-Party from seeking
6 additional protections.
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8 (b) In the event that a Party is required, by a valid discovery request, to produce a
9 Non-Party’s confidential information in its possession, and the Party is subject to an
10 agreement with the Non-Party not to produce the Non-Party’s confidential information,
11 then the Party shall:

12 1. promptly notify in writing the Requesting Party and the Non-Party that
13 some or all of the information requested is subject to a confidentiality agreement with a
14 Non-Party;
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16 2. promptly provide the Non-Party with a copy of the Stipulated Protective
17 Order in this litigation, the relevant discovery request(s), and a reasonably specific
18 description of the information requested; and
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20 3. make the information requested available for inspection by the Non-Party.

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

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4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

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

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy

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

17
18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19 DATED: September 15, 2010

LAW OFFICE OF PHILIP J. WANG

Philip J. Wang

LAW OFFICE OF RAMON L. PIZARRO

By /s/ Ramon Pizarro

Ramon L. Pizarro (Pro Hac Vice)

Counsel for Plaintiff and Counterclaim Defendant
PRECISION CONCRETE CUTTING, INC.

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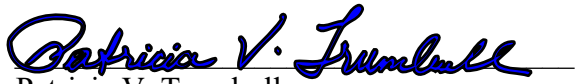
DATED: September 15, 2010

/s/ Monica Cruz Thornton
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Counsel for Defendants

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 10/26/10


Patricia V. Trumbull
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of *Precision Concrete Cutting, Inc. v. Rifley et al.*, CASE NO. C10-00310 RS. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____