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 15 LOUISVILLE LADDER INC.

16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA

18 CHRISTOPHER WULFF, M.D.,  
 19 Plaintiff,  
 20 vs.  
 21 CUPRUM ALUMINIO S.A. de  
 22 C.V., LOUISVILLE LADDER  
 23 INC., and DOES 2-50, inclusive,  
 24 Defendants.

CASE NO. C 11-03758 JSW

**STIPULATED PROTECTIVE  
 ORDER**

Complaint Filed: July 29, 2011  
 Trial Date: Not Set

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 may be warranted. Accordingly, the parties hereby

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1 stipulate to and petition the court to enter the following Stipulated Protective Order.  
2 The parties acknowledge that this Order does not confer blanket protections on all  
3 disclosures or responses to discovery and that the protection it affords from public  
4 disclosure and use extends only to the limited information or items that are entitled  
5 to confidential treatment under the applicable legal principles. The parties further  
6 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective  
7 Order does not entitle them to file confidential information under seal; Civil Local  
8 Rule 79-5 sets forth the procedures that must be followed and the standards that  
9 will be applied when a party seeks permission from the court to file material under  
10 seal.

## 11 2. DEFINITIONS

12 2.1 Challenging Party: a Party or Non-Party that challenges the  
13 designation of information or items under this Order.

14 2.2 "CONFIDENTIAL" Information or Items: information  
15 (regardless of how it is generated, stored or maintained) or tangible things that  
16 qualify for protection under Federal Rule of Civil Procedure 26(c).

17 2.3 Counsel (without qualifier): Outside Counsel of Record and  
18 House Counsel (as well as their support staff).

19 2.4 Designating Party: a Party or Non-Party that designates  
20 information or items that it produces in disclosures or in responses to discovery as  
21 "CONFIDENTIAL."

22 2.5 Disclosure or Discovery Material: all items or information,  
23 regardless of the medium or manner in which it is generated, stored, or maintained  
24 (including, among other things, testimony, transcripts, and tangible things), that are  
25 produced or generated in disclosures or responses to discovery in this matter.

26 2.6 Expert: a person with specialized knowledge or experience in a  
27 matter pertinent to the litigation who has been retained by a Party or its counsel to  
28 serve as an expert witness or as a consultant in this action.

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1           2.7 House Counsel: attorneys who are employees of a party to this  
2 action. House Counsel does not include Outside Counsel of Record or any other  
3 outside counsel.

4           2.8 Non-Party: any natural person, partnership, corporation,  
5 association, or other legal entity not named as a Party to this action.

6           2.9 Outside Counsel of Record: attorneys who are not employees of  
7 a party to this action but are retained to represent or advise a party to this action and  
8 have appeared in this action on behalf of that party or are affiliated with a law firm  
9 which has appeared on behalf of that party.

10          2.10 Party: any party to this action, including all of its officers,  
11 directors, employees, consultants, retained experts, and Outside Counsel of Record  
12 (and their support staffs).

13          2.11 Producing Party: a Party or Non-Party that produces Disclosure  
14 or Discovery Material in this action.

15          2.12 Professional Vendors: persons or entities that provide litigation  
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
18 and their employees and subcontractors.

19          2.13 Protected Material: any Disclosure or Discovery Material that is  
20 designated as “CONFIDENTIAL.”

21          2.14 Receiving Party: a Party that receives Disclosure or Discovery  
22 Material from a Producing Party.

23           3.    SCOPE

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

1 However, the protections conferred by this Stipulation and Order do not cover the  
2 following information: (a) any information that is in the public domain at the time  
3 of disclosure to a Receiving Party or becomes part of the public domain after its  
4 disclosure to a Receiving Party as a result of publication not involving a violation  
5 of this Order, including becoming part of the public record through trial or  
6 otherwise; and (b) any information known to the Receiving Party prior to the  
7 disclosure or obtained by the Receiving Party after the disclosure from a source  
8 who obtained the information lawfully and under no obligation of confidentiality to  
9 the Designating Party. Any use of Protected Material at trial shall be governed by a  
10 separate agreement or order.

11 4. DURATION

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

20 5. DESIGNATING PROTECTED MATERIAL

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

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

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

10 5.2 Manner and Timing of Designations. Except as otherwise  
11 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as  
12 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for  
13 protection under this Order must be clearly so designated before the material is  
14 disclosed or produced.

15 Designation in conformity with this Order requires:

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

22 A Party or Non-Party that makes original documents or materials  
23 available for inspection need not designate them for protection until after the  
24 inspecting Party has indicated which material it would like copied and produced.  
25 During the inspection and before the designation, all of the material made available  
26 for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has  
27 identified the documents it wants copied and produced, the Producing Party must  
28 determine which documents, or portions thereof, qualify for protection under this

1 Order. Then, before producing the specified documents, the Producing Party must  
 2 affix the “CONFIDENTIAL” legend to each page that contains Protected Material.  
 3 If only a portion or portions of the material on a page qualifies for protection, the  
 4 Producing Party also must clearly identify the protected portion(s) (e.g., by making  
 5 appropriate markings in the margins).

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

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

15 5.3 Inadvertent Failures to Designate. If timely corrected, an  
 16 inadvertent failure to designate qualified information or items does not, standing  
 17 alone, waive the Designating Party’s right to secure protection under this Order for  
 18 such material. Upon timely correction of a designation, the Receiving Party must  
 19 make reasonable efforts to assure that the material is treated in accordance with the  
 20 provisions of this Order.

## 21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

1           6.2 Meet and Confer. The Challenging Party shall initiate the  
2 dispute resolution process by providing written notice of each designation it is  
3 challenging and describing the basis for each challenge. To avoid ambiguity as to  
4 whether a challenge has been made, the written notice must recite that the challenge  
5 to confidentiality is being made in accordance with this specific paragraph of the  
6 Protective Order. The parties shall attempt to resolve each challenge in good faith  
7 and must begin the process by conferring directly (in voice to voice dialogue; other  
8 forms of communication are not sufficient) within 14 days of the date of service of  
9 notice. In conferring, the Challenging Party must explain the basis for its belief that  
10 the confidentiality designation was not proper and must give the Designating Party  
11 an opportunity to review the designated material, to reconsider the circumstances,  
12 and, if no change in designation is offered, to explain the basis for the chosen  
13 designation. A Challenging Party may proceed to the next stage of the challenge  
14 process only if it has engaged in this meet and confer process first or establishes  
15 that the Designating Party is unwilling to participate in the meet and confer process  
16 in a timely manner.

17           6.3 Judicial Intervention. If the Parties cannot resolve a challenge  
18 without court intervention, the Designating Party shall file and serve a motion to  
19 retain confidentiality under Civil Local Rule 7 (and in compliance with Civil Local  
20 Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within  
21 14 days of the parties agreeing that the meet and confer process will not resolve  
22 their dispute, whichever is earlier. Each such motion must be accompanied by a  
23 competent declaration affirming that the movant has complied with the meet and  
24 confer requirements imposed in the preceding paragraph. Failure by the  
25 Designating Party to make such a motion including the required declaration within  
26 21 days (or 14 days, if applicable) shall automatically waive the confidentiality  
27 designation for each challenged designation. In addition, the Challenging Party may  
28 file a motion challenging a confidentiality designation at any time if there is good

1 cause for doing so, including a challenge to the designation of a deposition  
 2 transcript or any portions thereof. Any motion brought pursuant to this provision  
 3 must be accompanied by a competent declaration affirming that the movant has  
 4 complied with the meet and confer requirements imposed by the preceding  
 5 paragraph.

6 The burden of persuasion in any such challenge proceeding shall be on  
 7 the Designating Party. Frivolous challenges, and those made for an improper  
 8 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
 9 parties) may expose the Challenging Party to sanctions. Unless the Designating  
 10 Party has waived the confidentiality designation by failing to file a motion to retain  
 11 confidentiality as described above, all parties shall continue to afford the material in  
 12 question the level of protection to which it is entitled under the Producing Party's  
 13 designation until the court rules on the challenge.

#### 14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material  
 16 that is disclosed or produced by another Party or by a Non-Party in connection with  
 17 this case only for prosecuting, defending, or attempting to settle this litigation. Such  
 18 Protected Material may be disclosed only to the categories of persons and under the  
 19 conditions described in this Order. When the litigation has been terminated, a  
 20 Receiving Party must comply with the provisions of section 13 below (FINAL  
 21 DISPOSITION).

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

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
 26 otherwise ordered by the court or permitted in writing by the Designating Party, a  
 27 Receiving Party may disclose any information or item designated  
 28 "CONFIDENTIAL" only to:



1 (a) the Receiving Party’s Outside Counsel of Record in this action, as  
2 well as employees of said Outside Counsel of Record to whom it is reasonably  
3 necessary to disclose the information for this litigation and who have signed the  
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
5 A;

6 (b) the officers, directors, and employees (including House Counsel) of  
7 the Receiving Party to whom disclosure is reasonably necessary for this litigation  
8 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
9 A);

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

13 (d) the court and its personnel;

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

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

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

27 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
28 PRODUCED IN OTHER LITIGATION

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

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

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

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

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

20 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
21 PRODUCED IN THIS LITIGATION

22 (a) The terms of this Order are applicable to information produced by a  
23 Non-Party in this action and designated as “CONFIDENTIAL.” Such information  
24 produced by Non-Parties in connection with this litigation is protected by the  
25 remedies and relief provided by this Order. Nothing in these provisions should be  
26 construed as prohibiting a Non-Party from seeking additional protections.

27 (b) In the event that a Party is required, by a valid discovery request, to  
28 produce a Non-Party’s confidential information in its possession, and the Party is

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1 subject to an agreement with the Non-Party not to produce the Non-Party's  
2 confidential information, then the Party shall:

3 1. promptly notify in writing the Requesting Party and the Non-  
4 Party that some or all of the information requested is subject to a confidentiality  
5 agreement with a Non-Party;

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

9 3. make the information requested available for inspection by  
10 the Non-Party.

11 (c) If the Non-Party fails to object or seek a protective order from this  
12 court within 14 days of receiving the notice and accompanying information, the  
13 Receiving Party may produce the Non-Party's confidential information responsive  
14 to the discovery request. If the Non-Party timely seeks a protective order, the  
15 Receiving Party shall not produce any information in its possession or control that  
16 is subject to the confidentiality agreement with the Non-Party before a  
17 determination by the court.<sup>1</sup> Absent a court order to the contrary, the Non-Party  
18 shall bear the burden and expense of seeking protection in this court of its Protected  
19 Material.

20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

27  
28 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a  
Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

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

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

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

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right  
 18 of any person to seek its modification by the court in the future.

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

25 12.3 Filing Protected Material. Without written permission from the  
 26 Designating Party or a court order secured after appropriate notice to all interested  
 27 persons, a Party may not file in the public record in this action any Protected  
 28 Material. A Party that seeks to file under seal any Protected Material must comply

1 with Civil Local Rule 79-5. Protected Material may only be filed under seal  
2 pursuant to a court order authorizing the sealing of the specific Protected Material  
3 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a  
4 request establishing that the Protected Material at issue is privileged, protectable as  
5 a trade secret, or otherwise entitled to protection under the law. If a Receiving  
6 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-  
7 5(d) is denied by the court, then the Receiving Party may file the information in the  
8 public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by  
9 the court.

10 13. FINAL DISPOSITION.

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

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2

3 Dated: November 17, 2011

s/ Thomas G. Beatty  
Attorney for Plaintiff

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6 Dated: November 17, 2011

s/ Brendan M. Ford  
Attorney for Defendant

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10 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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13 Dated: December 2, 2011

  
\_\_\_\_\_  
JEFFREY S. WHITE  
UNITED STATES DISTRICT 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 \_\_\_\_\_ in the case of  
Plaintiff Christopher Wulff vs. Defendant Louisville Ladder Inc., Case No. C 11-03758  
JSW. 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: \_\_\_\_\_

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