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27 (Additional Plaintiffs Set Forth Below on Signature Page)
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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 ALVIN TODD and MELODY TODD, et)
5 al., individually and on behalf of all)
6 others similarly situated)

7 Plaintiffs,)

8 vs.)

9 TEMPUR SEALY INTERNATIONAL,)
10 INC., formerly known as TEMPUR-)
11 PEDIC INTERNATIONAL, INC. and)
12 TEMPUR-PEDIC NORTH AMERICA,)
13 LLC,)

14 Defendants.)
15)

Case No. 3:13-cv-04984-JST

STIPULATED PROTECTIVE ORDER

16 1. PURPOSES AND LIMITATIONS

17 Disclosure and discovery activity in this action are likely to involve production of
18 confidential, proprietary, or private information for which special protection from public
19 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
20 Accordingly, the parties hereby stipulate to and petition the court to enter the following
21 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
22 protections on all disclosures or responses to discovery and that the protection it affords from
23 public disclosure and use extends only to the limited information or items that are entitled to
24 confidential treatment under the applicable legal principles. The parties further acknowledge, as
25 set forth in Section 12.4, below, that this Stipulated Protective Order does not entitle them to file
26 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
27 followed and the standards that will be applied when a party seeks permission from the court to
28 file material under seal.

1 2. DEFINITIONS

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
3 information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
5 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
6 of Civil Procedure 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
8 well as their support staff).

9 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.]

11 2.5 Designating Party: a Party or Non-Party that designates information or items that
12 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

14 2.6 Disclosure or Discovery Material: all items or information, regardless of the
15 medium or manner in which it is generated, stored, or maintained (including, among other things,
16 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
17 responses to discovery in this matter.

18 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
19 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
20 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
21 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
22 or of a Party’s competitor.

23 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
24 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
25 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
26 less restrictive means.

27 2.9 House Counsel: attorneys who are employees of a party to this action. House
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1 Counsel does not include Outside Counsel of Record or any other outside counsel.

2 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
3 entity not named as a Party to this action.

4 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
5 action but are retained to represent or advise a party to this action and have appeared in this
6 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
7 that party.

8 2.12 Party: any party to this action, including all of its officers, directors, employees,
9 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
11 Material in this action.

12 2.14 Professional Vendors: persons or entities that provide litigation support services
13 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
14 organizing, storing, or retrieving data in any form or medium) and their employees and
15 subcontractors.

16 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
17 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

18 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
19 Producing Party.

20 3. SCOPE

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

6 4. DURATION

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

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
16 or Non-Party that designates information or items for protection under this Order must take care
17 to limit any such designation to specific material that qualifies under the appropriate standards.
18 To the extent it is practical to do so, the Designating Party must designate for protection only
19 those parts of material, documents, items, or oral or written communications that qualify – so
20 that other portions of the material, documents, items, or communications for which protection is
21 not warranted are not swept unjustifiably within the ambit of this Order.

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

26 If it comes to a Designating Party's attention that information or items that it designated
27 for protection do not qualify for protection at all or do not qualify for the level of protection
28 initially asserted, that Designating Party must promptly notify all other parties that it is

1 withdrawing the mistaken designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
3 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
4 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
5 designated before the material is disclosed or produced.

6 Designation in conformity with this Order requires:

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

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

27 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
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1 the Designating Party identify on the record, before the close of the deposition, hearing, or other
2 proceeding, all protected testimony and specify the level of protection being asserted. When it is
3 impractical to identify separately each portion of testimony that is entitled to protection and it
4 appears that substantial portions of the testimony may qualify for protection, the Designating
5 Party may invoke on the record (before the deposition, hearing, or other proceeding is
6 concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
7 which protection is sought and to specify the level of protection being asserted. Only those
8 portions of the testimony that are appropriately designated for protection within the 21 days shall
9 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
10 Party may specify, at the deposition or up to 21 days afterwards if that period is properly
11 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

13 Parties shall give the other parties notice if they reasonably expect a deposition, hearing
14 or other proceeding to include Protected Material so that the other parties can ensure that only
15 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
16 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
17 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

19 Transcripts containing Protected Material shall have an obvious legend on the title page
20 that the transcript contains Protected Material, and the title page shall be followed by a list of all
21 pages (including line numbers as appropriate) that have been designated as Protected Material
22 and the level of protection being asserted by the Designating Party. The Designating Party shall
23 inform the court reporter of these requirements. Any transcript that is prepared before the
24 expiration of a 21-day period for designation shall be treated during that period as if it had been
25 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
26 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
27 actually designated.
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1 (c) for information produced in some form other than documentary and for any
2 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
3 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
4 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions
5 of the information or item warrant protection, the Producing Party, to the extent practicable, shall
6 identify the protected portion(s) and specify the level of protection being asserted.

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 designate qualified information or items does not, standing alone, waive the Designating Party’s
9 right to secure protection under this Order for such material. Upon timely correction of a
10 designation, the Receiving Party must make reasonable efforts to assure that the material is
11 treated in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
14 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
16 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
17 challenge a confidentiality designation by electing not to mount a challenge promptly after the
18 original designation is disclosed.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
20 process by providing written notice of each designation it is challenging and describing the basis
21 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
22 notice must recite that the challenge to confidentiality is being made in accordance with this
23 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
24 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
25 forms of communication are not sufficient) within 14 days of the date of service of notice. In
26 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
27 designation was not proper and must give the Designating Party an opportunity to review the
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1 designated material, to reconsider the circumstances, and, if no change in designation is offered,
2 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
3 stage of the challenge process only if it has engaged in this meet and confer process first or
4 establishes that the Designating Party is unwilling to participate in the meet and confer process in
5 a timely manner.

6 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
7 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
8 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
9 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
10 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
11 accompanied by a competent declaration affirming that the movant has complied with the meet
12 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
13 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
14 shall automatically waive the confidentiality designation for each challenged designation. In
15 addition, the Challenging Party may file a motion challenging a confidentiality designation at
16 any time if there is good cause for doing so, including a challenge to the designation of a
17 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must
18 be accompanied by a competent declaration affirming that the movant has complied with the
19 meet and confer requirements imposed by the preceding paragraph.

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

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
3 or produced by another Party or by a Non-Party in connection with this case only for
4 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
5 disclosed only to the categories of persons and under the conditions described in this Order.
6 When the litigation has been terminated, a Receiving Party must comply with the provisions of
7 section 13 below (FINAL DISPOSITION).

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

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
11 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
12 disclose any information or item designated “CONFIDENTIAL” only to:

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

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

20 (c) any party insurers responsible for payment of claims under any policy
21 required to be disclosed in this action pursuant to Rule 26(a)(1)(iv), Federal Rules of Civil
22 Procedure and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
23 A);

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

27 (e) the court and its personnel;

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

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

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

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

11 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
12 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
13 Designating Party, a Receiving Party may disclose any information or item designated
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

19 (b) Designated House Counsel of the Receiving Party (1) who has no involvement
20 in competitive decision-making, (2) to whom disclosure is reasonably necessary for this
21 litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
22 and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

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

27 (d) the court and its personnel;
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1 (e) court reporters and their staff, professional jury or trial consultants, and
2 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
3 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

4 (f) the author or recipient of a document containing the information or a custodian
5 or other person who otherwise possessed or knew the information.

6 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL
7 – ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Experts.

8 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
9 Designating Party, a Party that seeks to disclose to Designated House Counsel any information
10 or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
11 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that
12 certifies that the Receiving Party has done a reasonable investigation and determined that the
13 Designated House Counsel’s current and reasonably foreseeable future primary job duties and
14 responsibilities do not and will not involve any competitive decision-making with regard to
15 Designating Party.

16 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
17 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
18 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
19 EYES ONLY” pursuant to paragraph 7.3(c) first must complete a reasonable investigation of the
20 Expert and determined (1) that the Expert’s current employer(s) are not competitors of the
21 Receiving Party, (2) that the Expert is not a past employee of a Party or a Party’s competitor and
22 at the time of retention not anticipated to become an employee of a Party or a competitor; and (3)
23 that the Expert, and all persons working with or for the Expert that will receive the Protected
24 Material, have executed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

25 In addition, the Receiving Party shall maintain a log of all persons to whom the
26 Protected Material is provided and shall provide such log to the Designating Party at the
27 conclusion of the Litigation if so ordered upon good cause showing by the Designating Party.
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1 The log shall be kept with sufficient detail to allow the Designating Party to determine whether
2 the Receiving Party has complied with the requirements of this Order.

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
4 OTHER LITIGATION

5 If a Party is served with a subpoena or a court order issued in other litigation that
6 compels disclosure of any information or items designated in this action as “CONFIDENTIAL”
7 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

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

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

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

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” before a
19 determination by the court from which the subpoena or order issued, unless the Party has
20 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
21 expense of seeking protection in that court of its confidential material – and nothing in these
22 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
23 disobey a lawful directive from another court.

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

26 (a) The terms of this Order are applicable to information produced by a Non-
27 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY” Such information produced by Non-Parties in connection with

1 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
2 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

2 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
3 PROTECTED MATERIAL

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

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
15 seek its modification by the court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
17 Order no Party waives any right it otherwise would have to object to disclosing or producing any
18 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
19 no Party waives any right to object on any ground to use in evidence of any of the material
20 covered by this Protective Order.

21 12.3 Filing Protected Material. Without written permission from the Designating Party
22 or a court order secured after appropriate notice to all interested persons, a Party may not file in
23 the public record in this action any Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
25 filed under seal pursuant to a court order authorizing the sealing of the specific Protected
26 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
27 request establishing that the Protected Material at issue is privileged, protectable as a trade
28 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file

1 Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then
2 the Receiving Party may file the Protected Material in the public record pursuant to Civil Local
3 Rule 79-5(e)(2) unless otherwise instructed by the court.

4 12.4. Right to Modification and Further Protections. This Order shall not prevent any
5 party from applying to the Court for relief therefrom, or from applying to the Court for further or
6 additional protective orders, or from agreeing among themselves to modification of this Order,
7 subject to the approval of the Court.

8 13. FINAL DISPOSITION

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: September 11, 2014

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1 Dated: September 11, 2014

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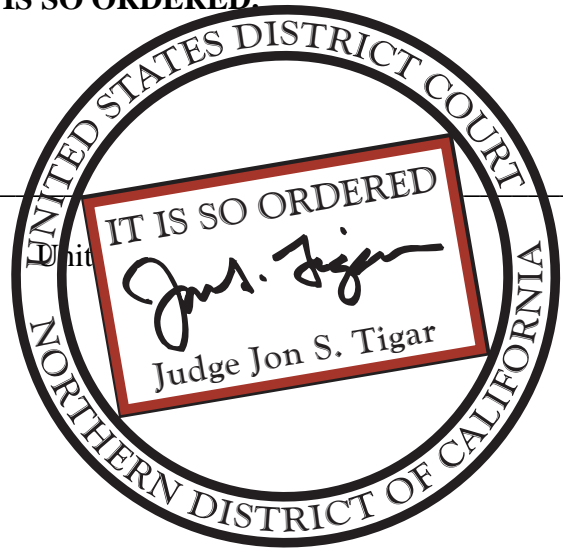
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26 **Kucharski, Diane Kucharski and the Proposed**
27 **Class**
28

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: September 16, 2014



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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 _____ **[insert formal name of the case and the number and initials assigned to it by the court]**. 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: _____
[printed name]

Signature: _____
[signature]