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Hartford Life and Accident Insurance Company and
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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11
12 MICHAEL WISNIEWSKI,

13 Plaintiff,

14 v.

15 HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY; WIND
16 RIVER SYSTEMS, INC. WELFARE
BENEFIT PLAN,

17 Defendants.
18

Case No. 3:14-CV-01674-JST

**STIPULATED PROTECTIVE
ORDER**

19
20 1. PURPOSES AND LIMITATIONS

21 Disclosure and discovery activity in this action are likely to involve
22 production of confidential, proprietary, or private information for which special
23 protection from public disclosure and from use for any purpose other than
24 prosecuting this litigation may be warranted. Accordingly, the parties hereby
25 stipulate to and petition the court to enter the following Stipulated Protective Order.
26 The parties acknowledge that this Order does not confer blanket protections on all
27 disclosures or responses to discovery and that the protection it affords from public
28 disclosure and use extends only to the limited information or items that are entitled

1 to confidential treatment under the applicable legal principles. The parties further
2 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
3 Order does not entitle them to file confidential information under seal; Civil Local
4 Rule 79-5 sets forth the procedures that must be followed and the standards that
5 will be applied when a party seeks permission from the court to file material under
6 seal.

7 8 2. DEFINITIONS

9 2.1 Challenging Party: a Party or Non-Party that challenges the
10 designation of information or items under this Order.

11 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for
13 protection under Federal Rule of Civil Procedure 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House
15 Counsel (as well as their support staff).

16 2.4 Designating Party: a Party or Non-Party that designates information or
17 items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL.”

19 2.5 Disclosure or Discovery Material: all items or information, regardless
20 of the medium or manner in which it is generated, stored, or maintained (including,
21 among other things, testimony, transcripts, and tangible things), that are produced
22 or generated in disclosures or responses to discovery in this matter.

23 2.6 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as
25 an expert witness or as a consultant in this action.

26 2.7 House Counsel: attorneys who are employees of a party to this action.
27 House Counsel does not include Outside Counsel of Record or any other outside
28 counsel.

1 2.8 Non-Party: any natural person, partnership, corporation, association,
2 or other legal entity not named as a Party to this action.

3 2.9 Outside Counsel of Record: attorneys who are not employees of a
4 party to this action but are retained to represent or advise a party to this action and
5 have appeared in this action on behalf of that party or are affiliated with a law firm
6 which has appeared on behalf of that party.

7 2.10 Party: any party to this action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this action.

12 2.12 Professional Vendors: persons or entities that provide litigation
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.13 Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL.”

18 2.14 Receiving Party: a Party that receives Disclosure or Discovery
19 Material from a Producing Party.

20
21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only
23 Protected Material (as defined above), but also (1) any information copied or
24 extracted from Protected Material; (2) all copies, excerpts, summaries, or
25 compilations of Protected Material; and (3) any testimony, conversations, or
26 presentations by Parties or their Counsel that might reveal Protected Material.
27 However, the protections conferred by this Stipulation and Order do not cover the
28 following information: (a) any information that is in the public domain at the time

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

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10 4. DURATION

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

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20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber or retard the case development process or
4 to impose unnecessary expenses and burdens on other parties) expose the
5 Designating Party to sanctions. If it comes to a Designating Party's attention that
6 information or items that it designated for protection do not qualify for protection,
7 that Designating Party must promptly notify all other Parties that it is withdrawing
8 the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each
18 page that contains protected material. If only a portion or portions of the material
19 on a page qualifies for protection, the Producing Party also must clearly identify the
20 protected portion(s) (e.g., by making appropriate markings in the margins). A Party
21 or Non-Party that makes original documents or materials available for inspection
22 need not designate them for protection until after the inspecting Party has indicated
23 which material it would like copied and produced. During the inspection and
24 before the designation, all of the material made available for inspection shall be
25 deemed "CONFIDENTIAL." After the inspecting Party has identified the
26 documents it wants copied and produced, the Producing Party must determine
27 which documents, or portions thereof, qualify for protection under this Order.
28 Then, before producing the specified documents, the Producing Party must affix the

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

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

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

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
15 failure to designate qualified information or items does not, standing alone, waive
16 the Designating Party’s right to secure protection under this Order for such
17 material. Upon timely correction of a designation, the Receiving Party must make
18 reasonable efforts to assure that the material is treated in accordance with the
19 provisions of this Order.
20

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 dispute
2 resolution process by providing written notice of each designation it is challenging
3 and describing the basis for each challenge. To avoid ambiguity as to whether a
4 challenge has been made, the written notice must recite that the challenge to
5 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 without
18 court intervention, the Designating Party shall file and serve a motion to retain
19 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
20 79-5, if applicable) within 21 days of the initial notice of challenge or within 14
21 days of the parties agreeing that the meet and confer process will not resolve their
22 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
28 may file a motion challenging a confidentiality designation at any time if there is

1 good 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 the
7 Designating Party. Frivolous challenges, and those made for an improper purpose
8 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
9 expose the Challenging Party to sanctions. Unless the Designating Party has
10 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 15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

3 (a) the Receiving Party’s Outside Counsel of Record in this action,
4 as well as employees of said Outside Counsel of Record to whom it is reasonably
5 necessary to disclose the information for this litigation;

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

10 (c) Experts (as defined in this Order) of the Receiving Party to
11 whom 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
15 consultants, mock jurors, and Professional Vendors to whom disclosure is
16 reasonably necessary for this litigation and who have signed the “Acknowledgment
17 and Agreement to Be Bound” (Exhibit A);

18 (f) during their depositions, witnesses in the action to whom
19 disclosure 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
26 or a custodian or other person who otherwise possessed or knew the information.

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

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

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

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

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

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking
19 protection in that court of its confidential material – and nothing in these provisions
20 should be construed as authorizing or encouraging a Receiving Party in this action
21 to disobey a lawful directive from another court.
22

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

25 (a) The terms of this Order are applicable to information produced
26 by a Non-Party in this action and designated as “CONFIDENTIAL.” Such
27 information produced by Non-Parties in connection with this litigation is protected
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1 by the remedies and relief provided by this Order. Nothing in these provisions
2 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
4 request, to produce a Non-Party's confidential information in its possession, and the
5 Party is subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

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

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

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

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

24
25 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
27 Protected Material to any person or in any circumstance not authorized under this
28 Stipulated Protective Order, the Receiving Party must immediately (a) notify in

1 writing the Designating Party of the unauthorized disclosures, (b) use its best
2 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
3 person or persons to whom unauthorized disclosures were made of all the terms of
4 this Order, and (d) request such person or persons to execute the “Acknowledgment
5 and Agreement to Be Bound” that is attached hereto as Exhibit A.

6
7 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
8 PROTECTED MATERIAL

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

19
20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
22 person to seek its modification by the court in the future.

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

1 12.3 Filing Protected Material. Without written permission from the
2 Designating Party or a court order secured after appropriate notice to all interested
3 persons, a Party may not file in the public record in this action any Protected
4 Material. A Party that seeks to file under seal any Protected Material must comply
5 with Civil Local Rule 79-5. Protected Material may only be filed under seal
6 pursuant to a court order authorizing the sealing of the specific Protected Material
7 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
8 request establishing that the Protected Material at issue is privileged, protectable as
9 a trade secret, or otherwise entitled to protection under the law. If a Receiving
10 Party’s request to file Protected Material under seal pursuant to Civil Local Rule
11 79-5 is denied by the court, then the Receiving Party may file the information in the
12 public record unless otherwise instructed by the court.

13
14 13. FINAL DISPOSITION

15 Within 60 days after the final disposition of this action, as defined in
16 paragraph 4, each Receiving Party must return all Protected Material to the
17 Producing Party or destroy such material upon request of the Producing Party. As
18 used in this subdivision, “all Protected Material” includes all copies, abstracts,
19 compilations, summaries, and any other format reproducing or capturing any of the
20 Protected Material. Whether the Protected Material is returned or destroyed, the
21 Receiving Party must submit a written certification to the Producing Party and, if
22 not the same person or entity, to the Designating Party), after the request of the
23 Producing/Designating party, by the 60 day deadline, that (1) identifies (by
24 category, where appropriate) all the Protected Material that was returned or
25 destroyed and (2) affirms that the Receiving Party has not retained any copies,
26 abstracts, compilations, summaries or any other format reproducing or capturing
27 any of the Protected Material. Notwithstanding this provision, Counsel are entitled
28 to retain an archival copy of all pleadings, motion papers, trial, deposition, and

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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 *Michael Wisniewski v.*
Hartford Life and Accident Insurance Company; Wind River Systems, Inc. Welfare
Benefit Plan, Case No. 3:14-CV-01674-JST. 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: _____