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15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17

18 CHIP PIER, an individual d/b/a FMP
 ASSOCIATES,
 19

Plaintiff,
 20

v.
 21

ARCHITECTURAL COMPONENTS
 22 GROUP, INC., a Missouri corporation;
 and DOES 1-10, inclusive,
 23

Defendant.
 24

CASE No. 3:18-cv-01485-EMC

**STIPULATED PROTECTIVE
 ORDER RE CONFIDENTIALITY
 OF DOCUMENTS AND
 INFORMATION FOR STANDARD
 LITIGATION**

Assigned for All Purposes:
 Judge Edward M. Chen
 Courtroom 5

Action Filed: February 6, 2018
 Removal Date: March 8, 2018
 Trial Date: None

1 Plaintiff Chip Pier d/b/a FMP Associates (“Plaintiff”) and Defendant
2 Architectural Components Group, Inc. (“Defendant”), by and through their respective
3 counsel of record, hereby stipulate and agree as follows, and in accordance with the
4 Federal Rules of Civil Procedure, and all applicable Local Rules of the United States
5 District Court for the Northern District of California, the Court enters this Stipulated
6 Protective Order.

7
8 **1. PURPOSES AND LIMITATIONS**

9 Disclosure and discovery activity in this action are likely to involve
10 production of confidential, proprietary, or private information for which special
11 protection from public disclosure and from use for any purpose other than
12 prosecuting this litigation may be warranted. Accordingly, the parties hereby
13 stipulate to and petition the court to enter the following Stipulated Protective Order.
14 The parties acknowledge that this Stipulated Protective Order does not confer
15 blanket protections on all disclosures or responses to discovery and that the
16 protection it affords from public disclosure and use extends only to the limited
17 information or items that are entitled to confidential treatment under applicable legal
18 principles. The parties further acknowledge, as set forth in Section 12.3, below, that
19 this Stipulated Protective Order does not entitle them to file confidential information
20 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
21 the standards that will be applied when a party seeks permission from the court to
22 file material under seal.

23
24 **2. DEFINITIONS**

25 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
26 information or items under this Order.

27 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
28 it is generated, stored or maintained) or tangible things that qualify for protection under

1 Federal Rule of Civil Procedure 26(c).

2 2.3 Counsel (without qualifier): Outside Counsel of Record and House
3 Counsel (as well as their support staff).

4 2.4 Designating Party: a Party or Non-Party that designates information or
5 items that it produces in disclosures or in responses to discovery as
6 “CONFIDENTIAL.”

7 2.5 Disclosure or Discovery Material: all items or information, regardless of
8 the medium or manner in which it is generated, stored, or maintained (including, among
9 other things, testimony, transcripts, and tangible things), that are produced or generated
10 in disclosures or responses to discovery in this matter.

11 2.6 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
13 expert witness or as a consultant in this action.

14 2.7 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
16 counsel.

17 2.8 Non-Party: any natural person, partnership, corporation, association, or
18 other legal entity not named as a Party to this action.

19 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
20 this action but are retained to represent or advise a party to this action and have
21 appeared in this action on behalf of that party.

22 2.10 Party: any party to this action, including all of its officers, directors,
23 employees, consultants, retained experts, and Outside Counsel of Record (and their
24 support staffs).

25 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
26 Discovery Material in this action.

27 2.12 Professional Vendors: persons or entities that provide litigation support
28 services (e.g., photocopying, videotaping, translating, preparing exhibits or

1 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
2 their employees and subcontractors.

3 2.13 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL.”

5 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
6 from a Producing Party.

7

8 **3. SCOPE**

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

24

25 **4. DURATION**

26 Even after final disposition of this litigation, the confidentiality obligations
27 imposed by this Order shall remain in effect until a Designating Party agrees
28 otherwise in writing or a court order otherwise directs. Final disposition shall be

1 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
2 or without prejudice; and (2) final judgment herein after the completion and
3 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
4 including the time limits for filing any motions or applications for extension of time
5 pursuant to applicable law.

6
7 **5. DESIGNATING PROTECTED MATERIAL**

8 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
9 Party or Non-Party that designates information or items for protection under this Order
10 must take care to limit any such designation to specific material that qualifies under the
11 appropriate standards. The Designating Party must, where reasonable and practicable,
12 designate for protection only those parts of material, documents, items, or oral or
13 written communications that qualify – so that other portions of the material, documents,
14 items, or communications for which protection is not warranted are not swept
15 unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations
17 that are shown to be clearly unjustified or that have been made for an improper
18 purpose (e.g., to unnecessarily encumber or retard the case development process or
19 to impose unnecessary expenses and burdens on other parties) expose the
20 Designating Party to sanctions. If it comes to a Designating Party’s attention that
21 information or items that it designated for protection do not qualify for protection,
22 that Designating Party must promptly notify all other Parties that it is withdrawing
23 the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this
25 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
26 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
27 must be clearly so designated before the material is disclosed or produced.

28 Designation in conformity with this Order requires:

1 (a) for information in documentary form (e.g., paper or electronic
2 documents, but excluding transcripts of depositions or other pretrial or trial
3 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
4 page that contains protected material. If only a portion or portions of the material on a
5 page qualifies for protection, the Producing Party also must clearly identify the
6 protected portion(s) (e.g., by making appropriate markings in the margins).

7 A Party or Non-Party that makes original documents or materials available for
8 inspection must designate them (or relevant portions thereof) for protection before the
9 inspecting Party has indicated which material it would like copied and produced.

10 (b) for testimony given in deposition or in other pretrial or trial
11 proceedings, that the Designating Party identify on the record, before the close of the
12 deposition, hearing, or other proceeding, all protected testimony. Alternatively,
13 confidentiality designations for depositions may be made by written notice to the other
14 party within 15 days following the deposition. Unless otherwise agreed, depositions
15 shall be treated as “Confidential” during the 15-day period following the deposition.

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

22 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate
23 qualified information or items does not, standing alone, waive the Designating Party’s
24 right to secure protection under this Order for such material. Upon reasonably timely
25 notice of an inadvertent failure to designate, the Receiving Party must assure that the
26 material is treated in accordance with the provisions of this Order. The Designating
27 Party may provide the Receiving Party with replacement material with the appropriate
28 “CONFIDENTIAL” designation per Section 5.2, which shall be used in lieu of the non-

1 designated material, which shall be destroyed or returned by the Receiving Party.

2
3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
5 designation of confidentiality at any time. Unless a prompt challenge to a Designating
6 Party's confidentiality designation is necessary to avoid foreseeable, substantial
7 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
8 litigation, a Party does not waive its right to challenge a confidentiality designation by
9 electing not to mount a challenge promptly after the original designation is disclosed.

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

25 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
26 court intervention, the Designating Party shall file and serve a motion to retain
27 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5,
28 if applicable) within 21 days of the initial notice of challenge or within 14 days of the

1 parties agreeing that the meet and confer process will not resolve their dispute,
2 whichever is earlier. Each such motion must be accompanied by a competent
3 declaration affirming that the movant has complied with the meet and confer
4 requirements imposed in the preceding paragraph. Failure by the Designating Party to
5 make such a motion including the required declaration within 21 days (or 14 days, if
6 applicable) shall automatically waive the confidentiality designation for each
7 challenged designation. In addition, the Challenging Party may file a motion
8 challenging a confidentiality designation at any time if there is good cause for doing so,
9 including a challenge to the designation of a deposition transcript or any portions
10 thereof. Any motion brought pursuant to this provision must be accompanied by a
11 competent declaration affirming that the movant has complied with the meet and confer
12 requirements imposed by the preceding paragraph.

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

21

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

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a Non-Party in connection with this case
25 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
26 Material may be disclosed only to the categories of persons and under the conditions
27 described in this Order. When the litigation has been terminated, a Receiving Party
28 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
5 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
6 may disclose any information or item designated “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this action, as
8 well as employees of said Outside Counsel of Record to whom it is reasonably
9 necessary to disclose the information for this litigation. The Receiving Party’s lead
10 Outside Counsel’s signature on this Stipulated Order shall be deemed sufficient for all
11 employees of such Outside Counsel of Record;

12 (b) the officers, directors, and employees (including House Counsel) of
13 the Receiving Party to whom disclosure is reasonably necessary for this litigation and
14 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A)¹;

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

18 (d) the court and its personnel;

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

23 _____
24 ¹ Each party shall retain all executed copies of Exhibit A, which shall be produced to the
25 opposing party only by a showing of good cause by the requesting party, first through an attempt to
26 meet and confer and then by motion to the court. The burden of persuasion in any such proceeding to
27 produce a copy of Exhibit A shall be on the party requesting production. Frivolous requests, and those
28 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other
parties) may expose the requesting party to sanctions.

1 (f) during their depositions, witnesses in the action to whom disclosure
2 is reasonably necessary (and their counsel if they are independently represented) and
3 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
4 unless otherwise agreed by the Designating Party or ordered by the court. Any witness
5 (and their applicable counsel) who declines to execute Exhibit A may be ordered by the
6 court to be subject to some or all of the terms of this Stipulated Protective Order upon
7 appropriate application to the court by any party with notice to that witness. Pages of
8 transcribed deposition testimony or exhibits to depositions that reveal Protected
9 Material must be separately bound by the court reporter and may not be disclosed to
10 anyone except as permitted under this Stipulated Protective Order.

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

13 (h) any mediator or other person jointly enlisted by the parties to
14 conduct and negotiate settlement discussion.

15

16 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
17 **IN OTHER LITIGATION**

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

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

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

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

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

9
10 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
11 **PRODUCED IN THIS LITIGATION**

12 (a) From the time the Order is entered, a copy of the Order shall be
13 served along with any subpoena served in connection with this action. The terms of this
14 Order are applicable to information produced by a Non-Party in this action and
15 designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
16 connection with this litigation is protected by the remedies and relief provided by this
17 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from
18 seeking additional protections.

19 (b) All non-designated documents produced by Non-Parties shall be
20 treated as “Confidential” for a period of 10 days from the date of their production, and
21 during that period any Party may designate such documents as “Confidential” pursuant
22 to the terms of the Order. Any document not designated “Confidential” by the Non-
23 Party or by a Party after such 10 day period will not be deemed Confidential.

24 (c) In the event that a Party is required, by a valid discovery request, to
25 produce a Non-Party’s confidential information in its possession, and the Party is
26 subject to an agreement with the Non-Party not to produce the Non-Party’s confidential
27 information, then the Party shall:

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

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

7 (3) make the information requested available for inspection by the
8 Non-Party.

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

17

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

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

28

1 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other protection, the
5 obligations of the Producing and Receiving Parties are those set forth in Federal Rule of
6 Civil Procedure 26(b)(5)(B) and subject to Federal Rule of Evidence 502.

7
8 **12. MISCELLANEOUS**

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any
15 ground to use in evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. Without written permission from the
17 Designating Party or a court order secured after appropriate notice to all interested
18 persons, a Party may not file in the public record in this action any Protected Material.
19 A Party that seeks to file under seal any Protected Material must comply with Civil
20 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
21 order authorizing the sealing of the specific Protected Material at issue. Pursuant to
22 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that
23 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
24 entitled to protection under the law. If a Receiving Party's request to file Protected
25 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the
26 Receiving Party may file the information in the public record pursuant to Civil Local
27 Rule 79-5(e) unless otherwise instructed by the court.

1 **13. FINAL DISPOSITION**

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

19

20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21

22 Dated: June 7, 2018

Evan Pitchford
Eric S. Engel, members of
CONKLE, KREMER & ENGEL
Professional Law Corporation

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By: /s/ Evan Pitchford

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Evan Pitchford
Attorneys for Plaintiff Chip Pier
d/b/a FMP Associates

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Dated: June 7, 2018

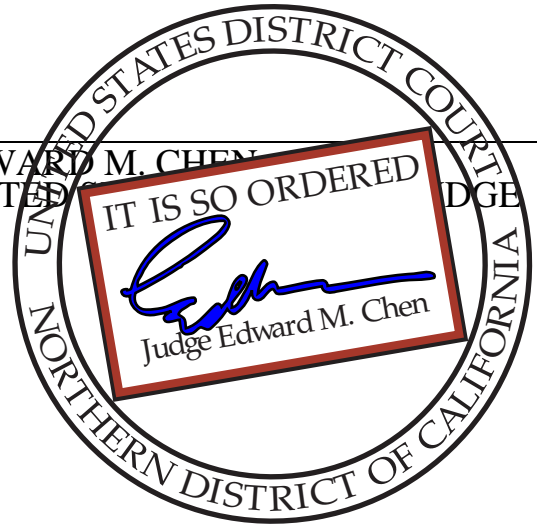
REED SMITH LLP

By: /s/ Matthew T. Peters
Matthew T. Peters
Jonathan R. Doolittle
Attorneys for Defendant
Architectural Components Group, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: June 8, 2018

EDWARD M. CHEN
UNITED STATES DISTRICT COURT JUDGE



1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I
5 have read in its entirety and understand the Stipulated Protective Order that was issued
6 by the United States District Court for the Northern District of California in the case of
7 Chip Pier v. Architectural Components Group, Inc., et al., Case No. 3:18-cv-01485-
8 EMC. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
11 that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

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

18
19 Date: _____

20
21 City and State where sworn and signed: _____

22
23 Printed name: _____

24
25 Signature: _____