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6 Attorneys for Plaintiff/Counter-Defendant
 LIFT-U, A DIVISION OF HOGAN MFG., INC.

7
8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 LIFT-U, A DIVISION OF HOGAN MFG., INC., a)
 11 California corporation,)

Case No: 5 :10-cv-01850-LHK

12 Plaintiff,)

13 vs.)

14 RICON CORP., a California corporation, and)
 WESTINGHOUSE AIR BRAKE TECHNOLOGIES)
 15 CORPORATION dba VAPOR BUS)
 16 INTERNATIONAL, a Delaware corporation,)

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

17 Defendants.)

(MODIFIED BY THE COURT)

18 RICON CORP., a California corporation,)
 19)

20 Counter-Claimant,)

21 vs.)

22 LIFT-U, A DIVISION OF HOGAN MFG., INC., a)
 23 California corporation,)

24 Counter Defendant.)

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection it
8 affords from public disclosure and use extends only to the limited information or items that are
9 entitled to confidential treatment under the applicable legal principles. The parties further
10 acknowledge, as set forth in Section 13.3, below, that this Stipulated Protective Order does not
11 entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
12 procedures that must be followed and the standards that will be applied when a party seeks
13 permission from the court to file material under seal.
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16 2. DEFINITIONS

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
18 information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
20 generated, stored or maintained) or tangible things that qualify for protection under Federal
21 Rule of Civil Procedure 26(c), including, but not limited to, proprietary business information or
22 the personal or financial information of a party or non-party.
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24 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
25 (as well as their support staff).
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1 2.4 Designating Party: a Party or Non-Party that designates information or items
2 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

4 2.5 Disclosure or Discovery Material: all items or information, regardless of the
5 medium or manner in which it is generated, stored, or maintained (including, among other
6 things, testimony, transcripts, and tangible things), that are produced or generated in
7 disclosures or responses to discovery in this matter.

8 2.6 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an
10 expert witness or as a consultant in this action, (2) is not a past or current employee of a Party
11 or of a Party’s competitor, and (3) at the time of retention, is not anticipated to become an
12 employee of a Party or of a Party’s competitor.

13 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
14 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
15 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
16 less restrictive means, including, but not limited to, information that the Producing Party deems
17 especially sensitive such as confidential research and development, financial, technical,
18 marketing, and other sensitive trade secret information, proprietary business information or the
19 personal or financial information of a party or non-party, or information capable of being
20 utilized for the preparation or prosecution of a patent application dealing with such subject
21 matter of the case.

22 2.8 House Counsel: attorneys who are employees of a party to this action. House
23 Counsel does not include Outside Counsel of Record or any other outside counsel.
24

1 2.9 Non-Party: any natural person, partnership, corporation, association, or other
2 legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
4 action but are retained to represent or advise a party to this action and have appeared in this
5 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
6 that party.
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8 2.11 Party: any party to this action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their support
10 staffs).

11 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
12 Material in this action.
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14 2.13 Professional Vendors: persons or entities that provide litigation support
15 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,
16 and organizing, storing, or retrieving data in any form or medium) and their employees and
17 subcontractors.

18 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
19 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

20 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
21 a Producing Party.
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23 3. SCOPE

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

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

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

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

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9 If it comes to a Designating Party’s attention that information or items that it
10 designated for protection do not qualify for protection at all or do not qualify for the level of
11 protection initially asserted, that Designating Party must promptly notify all other parties that it
12 is withdrawing the mistaken designation.

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

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic documents, but
20 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
21 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY” to each page that contains protected material. To the extent practicable, if only
23 a portion or portions of the material on a page qualifies for protection, the Producing Party also
24 should clearly identify the protected portion(s) (e.g., by making appropriate markings in the
25 margins) and specify, for each portion, the level of protection being asserted.
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1 A Party or Non-Party that makes original documents or materials available for
2 inspection need not designate them for protection until after the inspecting Party has indicated
3 which material it would like copied and produced. During the inspection and before the
4 designation, all of the material made available for inspection shall be deemed “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified
6 the documents it wants copied and produced, the Producing Party must determine which
7 documents, or portions thereof, qualify for protection under this Order. Then, before producing
8 the specified documents, the Producing Party must affix the appropriate legend
9 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to
10 each page that contains Protected Material. To the extent practicable, if only a portion or
11 portions of the material on a page qualifies for protection, the Producing Party also should
12 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins)
13 and specify, for each portion, the level of protection being asserted.
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16 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
17 Designating Party identify on the record, before the close of the deposition, hearing, or other
18 proceeding, all protected testimony and specify the level of protection being asserted. When it
19 is impractical to identify separately each portion of testimony that is entitled to protection and
20 it appears that substantial portions of the testimony may qualify for protection, the Designating
21 Party may invoke on the record (before the deposition, hearing, or other proceeding is
22 concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
23 which protection is sought and to specify the level of protection being asserted. Only those
24 portions of the testimony that are appropriately designated for protection within the 21 days
25 shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a
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1 Designating Party may specify, at the deposition or up to 21 days afterwards if that period is
2 properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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

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

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the Designating
5 Party's right to secure protection under this Order for such material. Upon timely correction of
6 a designation, the Receiving Party must make reasonable efforts to assure that the material is
7 treated in accordance with the provisions of this Order.
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9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
11 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
13 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
14 challenge a confidentiality designation by electing not to mount a challenge promptly after the
15 original designation is disclosed.
16

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
18 process by providing written notice of each designation it is challenging and describing the
19 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
20 written notice must recite that the challenge to confidentiality is being made in accordance with
21 this specific paragraph of the Protective Order. The parties shall attempt to resolve each
22 challenge in good faith and must begin the process by conferring directly (in voice to voice
23 dialogue; other forms of communication are not sufficient) within 14 days of the date of
24 service of notice. In conferring, the Challenging Party must explain the basis for its belief that
25 the confidentiality designation was not proper and must give the Designating Party an
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1 opportunity to review the designated material, to reconsider the circumstances, and, if no
2 change in designation is offered, to explain the basis for the chosen designation. A Challenging
3 Party may proceed to the next stage of the challenge process only if it has engaged in this meet
4 and confer process first or establishes that the Designating Party is unwilling to participate in
5 the meet and confer process in a timely manner.
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7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
8 intervention, the Challenging Party shall file and serve a motion to contest confidentiality
9 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within
10 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet
11 and confer process will not resolve their dispute, whichever is earlier. Each such motion must
12 be accompanied by a competent declaration affirming that the movant has complied with the
13 meet and confer requirements imposed in the preceding paragraph.
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15 The burden of persuasion in any such challenge proceeding shall be on the
16 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to
17 harass or impose unnecessary expenses and burdens on other parties) may expose the
18 Challenging Party to sanctions. All parties shall continue to afford the material in question the
19 level of 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 only for
25 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
26 disclosed only to the categories of persons and under the conditions described in this Order.
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1 When the litigation has been terminated, a Receiving Party must comply with the provisions of
2 section 14 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location
4 and in a secure manner that ensures that access is limited to the persons authorized under this
5 Order.
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7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
8 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
9 disclose any information or item designated “CONFIDENTIAL” only to:

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

15 (b) up to two (2) officers, directors, or employees (including House Counsel) of the
16 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
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19 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
20 reasonably necessary for this litigation and who have signed the “Acknowledgment and
21 Agreement to Be Bound” (Exhibit A) (the Receiving Party must provide a copy of the signed
22 "Acknowledgement and Agreement to Be Bound" (Exhibit A) to the Designating Party prior to
23 the disclosure);

24 (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);

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

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

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

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

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

1 (c) the court and its personnel;

2 (d) court reporters and their staff, professional jury or trial consultants, and
3 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
4 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and
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6 (e) the author or recipient of a document containing the information or a custodian or
7 other person who otherwise possessed or knew the information.

8 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

10 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
11 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or
12 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
13 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1)
14 identifies the Expert and provides to the Designating Party a copy of the resume or curriculum
15 vitae of the Expert that includes any current and past consulting relationships of the Expert in
16 the industry, and (2) certifies that the Expert is not a current director, officer, employee or
17 consultant to any competitor of the Designating Party or currently anticipates becoming an
18 officer, director or employee or consultant of any such competitor.
19

20 (b) A Party that makes a request and provides the information specified in the
21 preceding respective paragraphs may disclose the subject Protected Material to the identified
22 Expert unless, within 5 days of delivering the request, the Party receives a written objection
23 from the Designating Party. Any such objection must set forth in detail the grounds on which it
24 is based.
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1 (c) A Party that receives a timely written objection must meet and confer with the
2 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
3 agreement within seven days of the written objection. If no agreement is reached, the Party
4 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule
5 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the
6 court to do so. Any such motion must describe the circumstances with specificity, set forth in
7 detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of
8 harm that the disclosure would entail, and suggest any additional means that could be used to
9 reduce that risk. In addition, any such motion must be accompanied by a competent declaration
10 describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the
11 content of the meet and confer discussions) and setting forth the reasons advanced by the
12 Designating Party for its refusal to approve the disclosure.
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15 In any such proceeding, the Party opposing disclosure to the Expert shall bear the
16 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
17 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its
18 Expert.

19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
20 OTHER LITIGATION

21 If a Party is served with a subpoena or a court order issued in other litigation that
22 compels disclosure of any information or items designated in this action as
23 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that
24 Party must:
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1 (a) promptly notify in writing the Designating Party. Such notification shall include a
2 copy of the subpoena or court order;

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

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

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

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

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

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

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14 (c) If the Non-Party fails to object or seek a protective order from this court within
15 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
18 information in its possession or control that is subject to the confidentiality agreement with the
19 Non-Party before a determination by the court. Absent a court order to the contrary, the Non-
20 Party shall bear the burden and expense of seeking protection in this court of its Protected
21 Material.
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23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

18 12. MISCELLANEOUS

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
20 person to seek its modification by the court in the future.
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22 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
23 Order no Party waives any right it otherwise would have to object to disclosing or producing
24 any information or item on any ground not addressed in this Stipulated Protective Order.
25 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
26 material covered by this Protective Order.
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1 12.3 Filing Protected Material. Without written permission from the Designating
2 Party or a court order secured after appropriate notice to all interested persons, a Party may not
3 file in the public record in this action any Protected Material. A Party that seeks to file under
4 seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may
5 only be filed under seal pursuant to a court order authorizing the sealing of the specific
6 Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only
7 upon a request establishing that the Protected Material at issue is privileged, protectable as a
8 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
9 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court,
10 then the Receiving Party may file the Protected Material in the public record pursuant to Civil
11 Local Rule 79-5(e) unless otherwise instructed by the court.
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14 14. FINAL DISPOSITION

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

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 Dated: September 17, 2010

LARIVIERE, GRUBMAN & PAYNE, LLP

8 By: /s/ Scott J. Allen

Scott J. Allen

Attorneys for Plaintiff/Counter-Defendant

11 Dated: September 17, 2010

REED SMITH LLP

13 By: /s/ James A. Daire

James A. Daire

Attorney for Defendants/Counterclaimants

Ricon Corp. and Westinghouse Air Brake

Technologies Corporation dba Vapor Bus

International

16 **AS MODIFIED BY THE COURT,**
17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18 ^

19 Dated: September 20, 2010

20 
21 Hon. ~~Lucy H. Koh~~ Howard R. Lloyd
22 United States District Court Judge
23 Magistrate
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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 Lift-U, a Division of Hogan Mfg., Inc. vs. Ricon Corp., Westinghouse Air Brake
Technologies Corporation dba Vapor Bus International, U.S. District Court, Northern District
of California, Case No.: 5:10-cv-01850 (LHK). 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]