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FILED

MAY 28 2013

Attorney for Defendant
LOUISVILLE LADDER INC.
formerly known as Louisville Ladder Group
LLC

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

WISDOM SCOTT, JR.,
Plaintiff,

Case No.: 5:12-CV 03920-LHK

[Originally Filed in Santa Clara Superior
Court; Case No 112-CV-226302]

vs.

Assigned to Judge Lucy H. Koh

LOUISVILLE LADDER GROUP
LLC, and DOES 1 to 10,
Defendants.

PROTECTIVE ORDER

Date of Removal: July 26, 2012
Trial Date: February 10, 2014

(RE: DOCKET No. 30)

MODIFIED BY THE COURT

1. PURPOSES AND LIMITATIONS

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

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

6 2. DEFINITIONS

7 2.1 Challenging Party: a Party or Non-Party that challenges the
8 designation of information or items under this Order.

9 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
10 how it is generated, stored or maintained) or tangible things that qualify for
11 protection under Federal Rule of Civil Procedure 26(c).

12 2.3 Counsel (without qualifier): Outside Counsel of Record and House
13 Counsel (as well as their support staff).

14 2.4 Designating Party: a Party or Non-Party that designates information or
15 items that it produces in disclosures or in responses to discovery as
16 "CONFIDENTIAL."

17 2.5 Disclosure or Discovery Material: all items or information, regardless
18 of the medium or manner in which it is generated, stored, or maintained (including,
19 among other things, testimony, transcripts, and tangible things), that are produced
20 or generated in disclosures or responses to discovery in this matter.

21 2.6 Expert: a person with specialized knowledge or experience in a matter
22 pertinent to the litigation who has been retained by a Party or its counsel to serve as
23 an expert witness or as a consultant in this action.

24 2.7 House Counsel: attorneys who are employees of a party to this action.
25 House Counsel does not include Outside Counsel of Record or any other outside
26 counsel.

27 2.8 Non-Party: any natural person, partnership, corporation, association, or
28 other legal entity not named as a Party to this action.

1 2.9 Outside Counsel of Record: attorneys who are not employees of a
 2 party to this action but are retained to represent or advise a party to this action and
 3 have appeared in this action on behalf of that party or are affiliated with a law firm
 4 which has appeared on behalf of that party.

5 2.10 Party: any party to this action, including all of its officers, directors,
 6 employees, consultants, retained experts, and Outside Counsel of Record (and their
 7 support staffs).

8 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
 9 Discovery Material in this action.

10 2.12 Professional Vendors: persons or entities that provide litigation
 11 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
 12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 13 and their employees and subcontractors.

14 2.13 Protected Material: any Disclosure or Discovery Material that is
 15 designated as “CONFIDENTIAL.”

16 2.14 Receiving Party: a Party that receives Disclosure or Discovery
 17 Material from a Producing Party.

18 3. SCOPE

19 The protections conferred by this Protective Order cover not only Protected
 20 Material (as defined above), but also (1) any information copied or extracted from
 21 Protected Material; (2) all copies, excerpts, summaries, or compilations of
 22 Protected Material; and (3) any testimony, conversations, or presentations by
 23 Parties or their Counsel that might reveal Protected Material. However, the
 24 protections conferred by this Protective Order do not cover the following
 25 information: (a) any information that is in the public domain at the time of
 26 disclosure to a Receiving Party or becomes part of the public domain after its
 27 disclosure to a Receiving Party as a result of publication not involving a violation
 28 of this Protective Order, including becoming part of the public record through trial

1 or otherwise; and (b) any information known to the Receiving Party prior to the
2 disclosure or obtained by the Receiving Party after the disclosure from a source
3 who obtained the information lawfully and under no obligation of confidentiality to
4 the Designating Party. Any use of Protected Material at trial shall be governed by a
5 separate agreement or order.

6 4. DURATION

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

14 FOR A PERIOD OF SIX MONTHS AFTER FINAL DISPOSITION OF
15 THIS LITIGATION, THIS COURT WILL RETAIN JURISDICTION TO ENFORCE THE TERMS OF
16 THIS ORDER.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

5 5.2 Manner and Timing of Designations. Except as otherwise provided in
6 this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material
7 that qualifies for protection under this Protective Order must be clearly so
8 designated before the material is disclosed or produced.

9 Designation in conformity with this Protective Order requires:

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

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

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

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
26 failure to designate qualified information or items does not, standing alone, waive
27 the Designating Party's right to secure protection under this Protective Order for
28 such material. Upon timely correction of a designation, the Receiving Party must

1 make reasonable efforts to assure that the material is treated in accordance with the
2 provisions of this Order.

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
6 Designating Party's confidentiality designation is necessary to avoid foreseeable,
7 substantial unfairness, unnecessary economic burdens, or a significant disruption or
8 delay of the litigation, a Party does not waive its right to challenge a confidentiality
9 designation by electing not to mount a challenge promptly after the original
10 designation is disclosed.

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

27 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
28 court intervention, ~~the Designating Party shall file and serve a motion to retain~~
THEY SHALL COMPLY WITH THE UNDERSIGNED'S STANDING

ORDER RE CIVIL DISCOVERY DISPUTES

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

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

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
25 case only for prosecuting, defending, or attempting to settle this litigation. Such
26 Protected Material may be disclosed only to the categories of persons and under the
27 conditions described in this Protective Order. When the litigation has been
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1 terminated, a Receiving Party must comply with the provisions of section 13 below
2 (FINAL DISPOSITION).

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

6 7.2 Disclosure of "CONFIDENTIAL" Information or Items.

7 Unless otherwise ordered by the court or permitted in writing by the
8 Designating Party, a Receiving Party may disclose any information or item
9 designated "CONFIDENTIAL" only to:

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

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

19 (c) Experts (as defined in this Order) of the Receiving Party to whom
20 disclosure is reasonably necessary for this litigation and who have signed the
21 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

22 (d) the Court and its personnel;

23 (e) court reporters and their staff, professional jury or trial consultants,
24 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
25 for this litigation and who have signed the "Acknowledgment and Agreement to Be
26 Bound" (Exhibit A);

27 (f) during their depositions, witnesses in the action to whom disclosure
28 is reasonably necessary and who have signed the "Acknowledgment and

1 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
2 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits
3 to depositions that reveal Protected Material must be separately bound by the court
4 reporter and may not be disclosed to anyone except as permitted under this
5 Protective Order.

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

8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
9 PRODUCED IN OTHER LITIGATION

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

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

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

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

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

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 The terms of this Order are applicable to information produced by a Non-
4 Party in this action and designated as "CONFIDENTIAL." Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Protective Order. Nothing in these provisions
7 should be construed as prohibiting a Non-Party from seeking additional protections.

8 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
10 Protected Material to any person or in any circumstance not authorized under this
11 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
12 writing the Designating Party of the unauthorized disclosures, (b) use its best
13 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
14 person or persons to whom unauthorized disclosures were made of all the terms of
15 this Protective Order, and (d) request such person or persons to execute the
16 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
17 A.

18 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
19 OTHERWISE PROTECTED MATERIAL

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

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order, no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in
2 this Protective Order. Similarly, no Party waives any right to object on any ground
3 to use in evidence of any of the material covered by this Protective Order.

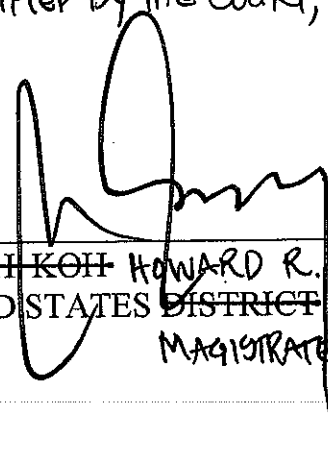
4 12.3 Filing Protected Material. Without written permission from the
5 Designating Party or a court order secured after appropriate notice to all interested
6 persons, a Party may not file in the public record in this action any Protected
7 Material. A Party that seeks to file under seal any Protected Material must comply
8 with Local Rule ~~441~~ **79-5**.

9 13. FINAL DISPOSITION.

10 Within 60 days after the final disposition of this action, as defined in
11 paragraph 4, each Receiving Party must return all Protected Material to the
12 Producing Party or destroy such material. Notwithstanding this provision, Counsel
13 are entitled to retain an archival copy of all pleadings, motion papers, trial,
14 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
15 and trial exhibits, expert reports, attorney work product, and consultant and expert
16 work product, even if such materials contain Protected Material. Any such archival
17 copies that contain or constitute Protected Material remain subject to this Protective
18 Order.

19 PURSUANT TO STIPULATION, AS MODIFIED BY THE COURT,
20 IT IS SO ORDERED.

21
22 Dated: 5/24/13

23 
~~LUCY H. KOH~~ HOWARD R. LLOYD
24 UNITED STATES DISTRICT JUDGE
25 MAGISTRATE

1 FORM OF ORDER APPROVED BY:

2

3 LAW OFFICES OF
4 STEPHEN SOLANO

5 By: s/ *[Signature]* (as authorized on 4-24,
6 2013)

7 Stephen Solano
8 Attorney for Plaintiff
9 WISDOM SCOTT, JR.

SNELL & WILMER L.L.P.

By: s/ *[Signature]* (as authorized on *5/23/13*, 2013)

Timothy G. O'Neill
Nathan K. Davis
Jonathan R. Murphy
Attorneys for Defendant
LOUISVILLE LADDER INC.

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