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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PACIFIC MARINE PROPELLERS,
INC.,

Plaintiff,

v.

WARTSILA DEFENSE, INC., BRYAN
RUTTER, BOBBY HENINGER,

Defendants.

Case No.: 17cv555 BEN (NLS)
**ORDER ON JOINT MOTION FOR
DETERMINATION OF FORM OF
PROTECTIVE ORDER**

AND
**PROTECTIVE ORDER, AS
MODIFIED BY THE COURT (SEE
SECTIONS 4, 8, & 15)**

[ECF NO. 31]

On November 1, 2017, the parties filed a Joint Motion for Determination of Form of Protective Order. ECF No. 31. Therein, the parties present their differing proposals as to appropriate language for a protective order governing discovery in this case.

In their joint motion, the parties offer arguments regarding the disputed provisions, which the Court will address in turn.

1. Defendants’ Paragraph 4

The first dispute pertains to Defendants’ (proposed) Paragraph 4, which states: “All documents and information produced in this litigation by any party or nonparty, whether produced informally or pursuant to a formal discovery request, shall be used by

1 the parties solely for the purpose of conducting this litigation.” ECF No. 31 at 2.
2 Plaintiff objects to this request on the grounds that its Facility Security Officer, James
3 King, “has an independent duty of reporting to the United States of fraud, waste and
4 abuse and any of a myriad of potential security breaches,” and thus cannot be barred by
5 the protective order from sharing discovery documents with the government if he
6 believes the documents demonstrate fraud, waste, or abuse by Defendant Wartsila
7 Defense, Inc. (“Wartsila”). Id. at 4. Plaintiff has not specified the regulations governing
8 Mr. King’s reporting duties or clarified the scope of Mr. King’s reporting duties, such as
9 whether they are limited only to fraud, waste, or abuse occurring in Plaintiff’s facilities.

10 “Rule 26(c), setting forth grounds for protective orders, was enacted as a safeguard
11 for the protection of parties and witnesses in view of the broad discovery rights
12 authorized in Rule 26(b).” United States v. Columbia Broad. Sys., Inc., 666 F.2d 364,
13 368-69 (9th Cir. 1982). “Generally, the public can gain access to litigation documents
14 and information produced during discovery unless the party opposing disclosure shows
15 ‘good cause’ why a protective order is necessary.” Phillips ex rel. Estates of Byrd v.
16 Gen. Motors Corp., 307 F.3d 1206, 1210 (9th Cir. 2002). In order to satisfy the good
17 cause standard, the party seeking the protective order must explain what specific
18 prejudice or harm will result without protection. Id. at 1211. “Rule 26(c) confers broad
19 discretion on the trial court to decide when a protective order is appropriate and what
20 degree of protection is required . . . [because the] trial court is in the best position to
21 weigh fairly the competing needs and interests of parties affected by discovery.” Seattle
22 Times Co. v. Rhinehart, 467 U.S. 20, 36 (1984).

23 Here, the parties agree that documents likely to be exchanged in this case will
24 include trade secrets, confidential research, and material reflecting technical, cost, price,
25 marketing, and/or other commercially sensitive information. ECF No. 31-1 at 1; 31-2 at
26 1. For competitive reasons, the parties seek to keep this sort of information confidential.
27 Id. Defendants’ additional concern is that Mr. King intends to disclose Wartsila’s
28 documents to the United States government, which Defendants believe has less to do with

1 his reporting duties, and more with Plaintiff's intent to create problems for Wartsila.
2 ECF No. 31 at 3. According to Defendants, Mr. King already has made such reports
3 regarding Wartsila to federal agencies, so this represents a real and immediate concern.
4 Id.

5 The Court finds that Defendants have shown good cause to limit the use of
6 discovery to this case. See Phillips, 307 F.3d at 1211 (confirming that district courts have
7 "broad latitude" to enter protective orders where necessary to prevent disclosure of trade
8 secrets, research, and other commercial information). To hold otherwise would risk
9 discouraging compliance with the Federal Rules of Civil Procedure and cooperation
10 among the parties. And, whether he did so out of legal obligation or to attempt to thwart
11 Plaintiff's competitor, Wartsila, the fact that Mr. King already has reported Wartsila
12 presents a specific harm justifying protection. That being said, Defendants did not
13 provide legal authority pursuant to which this Court could prevent Mr. King from
14 complying with his legal reporting obligations. The protective order exemplar
15 Defendants referenced for the proposition that other courts have limited discovery to the
16 case at hand, which was entered in The Wharf, Inc. v. District of Columbia, et al.,
17 15cv1198 (CKK) (D.D.C. May 22, 2017), ECF No. 97 at ¶¶ 2-3, in fact contained a carve
18 out that specified that "this restriction will not operate to preclude the District of
19 Columbia from using Discovery Materials for law enforcement purposes or as otherwise
20 required by law, regulation, or other legal obligation imposed upon the District of
21 Columbia."

22 The Court finds that adding similar language allowing disclosure where required
23 by law strikes the proper balance of protecting confidential information and preventing
24 anti-competitive behavior without impairing Mr. King's ability to comply with his legal
25 obligations. Additionally, to balance the equities, the Court will require Plaintiff to notify
26 Defendants of any documents obtained via discovery in this case that Mr. King intends to
27 turn over to the United States government.

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1 2. Defendants’ Paragraph 5

2 Both parties’ proposed protective orders contain provisions allowing the parties to
3 designate documents as “confidential” or “confidential – outside counsel only,¹” but
4 Defendants also seek to allow nonparties to designate documents as confidential and to
5 allow parties to designate documents produced by nonparties as confidential. ECF No.
6 31 at 5. Plaintiff objects that of the more than six subpoenas issues so far, none have
7 solicited documents that the subpoenaed third parties sought to maintain as confidential,
8 and that authority should be limited to the parties to avoid needlessly involving third
9 parties in the action. Id. at 6.

10 Parties frequently incorporate this procedural provision into their protective orders.
11 As Defendants point out, the Northern District of California even includes a similar
12 provision in its model order. See N.D. Cal. Stipulated Protective Order for Standard
13 Litigation at § 2.4, *available at* <http://www.cand.uscourts.gov/model-protective-orders>.
14 Allowing nonparties to designate documents as confidential encourages prompt
15 compliance with subpoenas and furthers the general policy of protecting nonparties in
16 particular from inconvenience, undue cost, and harassment. See Dart Indus. Co. v.
17 Westwood Chem. Co., 649 F.2d 646, 649 (9th Cir. 1980) (“[w]hile discovery is a
18 valuable right and should not be unnecessarily restricted, the ‘necessary’ restriction may
19 be broader when a nonparty is the target of discovery”); Amini Innovation Corp. v.
20 McFerran Home Furnishings, Inc., 300 F.R.D. 406, 409 (C.D. Cal. 2014) (“‘concern for
21 the unwanted burden thrust upon non-parties is a factor entitled to special weight in
22 evaluating the balance of competing needs’ in a Rule 45 inquiry”) (citation omitted).
23 Allowing parties to designate nonparty documents also encourages cooperation among
24 the parties and, though it may not have been an issue to date, providing a mechanism
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27 ¹ Plaintiff’s version includes a designation for “confidential – counsel only,” but given the possibility
28 that Wartsila may have in-house counsel, the Court will utilize the designation “confidential – outside
counsel only.”

1 within the protective order for concerns about the confidentiality of nonparty documents
2 likely will obviate the need for court intervention down the road. The Court, therefore,
3 finds it appropriate to include Defendants’ proposed language regarding nonparty
4 designations.

5 3. Defendants’ Paragraph 11

6 Defendants seek to expand the list of individuals and entities who may view
7 “confidential” or “confidential – outside counsel only” documents for purposes of aiding
8 counsel in this case. ECF No. 6. Plaintiff believes Defendants’ additional language is
9 unnecessary as these individuals already are included within the description set forth in
10 Paragraph 9 of the Southern District of California’s Model Protective Order. The Court
11 disagrees. Defendants’ list includes numerous categories of individuals or entities who
12 reasonably may need to view confidential information and who are not covered by the
13 model protective order language. The Court will include Defendants’ proposed language
14 in the protective order.

15 4. Defendants’ Paragraphs 20-22

16 With the addition of these three paragraphs, Defendants seek to implement further
17 safeguards in the event that privileged information is disclosed inadvertently. ECF No.
18 31 at 6-9. Plaintiff believes all of these provisions already are covered by the Federal
19 Rules. Id.

20 While Rule 502(b) of the Federal Rules of Evidence and Rule 26(b)(5) of the
21 Federal Rules of Civil Procedure provide some protection from a finding that the
22 producing party has waived privilege if it inadvertently produces a privileged document,
23 both come into play only if the producing party realizes its mistake and promptly requests
24 return of the document. Defendants seek to impose an affirmative duty on the *receiving*
25 *party* to notify the producing party if it has reason to believe that a privileged document
26 was produced inadvertently. Though attorneys in California admittedly already have an
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1 ethical duty to provide such notice², Defendants cannot be faulted for wanting the
2 protective order to have an express reminder of this duty. Particularly where, as here,
3 Defendants are the ones producing voluminous amounts of documents, they run the
4 greater risk of inadvertently producing privileged material.

5 An additional rationale for Defendants’ request is that while Rule 502 provides that
6 an inadvertent production does not operate as a waiver of privilege in the litigation
7 pending before the court (if all of the criteria are satisfied), a court order is required to
8 confirm that the disclosure also is not a waiver in any other state or federal proceedings.
9 Fed. R. Evid. 502(b), (d)³. Thus, in the instant joint motion, Defendants request an order
10 implementing a permissive rule. ECF No. 31 at 7. The Court finds that addition of
11 Defendants’ proposed language is authorized by Rule 502, with the caveat that the order
12 in no way relieves Defendants’ burden to demonstrate that the inadvertently produced
13 documents qualify for the claimed privilege or protection. See Fed. R. Evid. 502

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16 ² In Rico v. Mitsubishi Motors Corp., 42 Cal. 4th 807, 817 (2007), the California Supreme Court
17 expressly adopted the standard of professional conduct applicable to California attorneys set forth with
18 regard to inadvertent production in State Comp. Ins. Fund v. WPS, Inc., 70 Cal. App. 4th 644 (1999).
That standard is as follows:

19 When a lawyer who receives materials that obviously appear to be subject to an attorney-
20 client privilege or otherwise clearly appear to be confidential and privileged and where it
21 is reasonably apparent that the materials were provided or made available through
22 inadvertence, the lawyer receiving such materials should refrain from examining the
23 materials any more than is essential to ascertain if the materials are privileged, and shall
24 immediately notify the sender that he or she possesses material that appears to be
privileged. The parties may then proceed to resolve the situation by agreement or may
resort to the court for guidance with the benefit of protective orders and other judicial
intervention as may be justified.

25 Rico, 42 Cal. 4th at 817. The court deemed this standard consistent with the state’s policies of
26 encouraging attorneys to thoroughly prepare their cases and investigate both positive and negative
27 aspects of their cases and ensuring that attorneys would be free from adversaries taking undue advantage
of their efforts. Id. at 818.

28 ³ Rule 502(d) provides that “[a] federal court *may* order that the privilege or protection is not waived by
disclosure connected with the litigation pending before the court — in which event the disclosure is also
not a waiver in any other federal or state proceeding.” (emphasis added).

1 Addendum to Advisory Committee Notes.

2 In light of the foregoing, the Court hereby enters the version of the protective order
3 submitted by Defendants, **as modified by the Court** (see Sections 4, 8, and 15):

4 **PROTECTIVE ORDER**

5 The Court recognizes that at least some of the documents, electronic data, and
6 information ("Materials") being sought through discovery in the above-captioned action
7 are, for competitive reasons, normally kept confidential by the parties. The parties have
8 agreed to be bound by the terms of this Protective Order ("Order") in this action.

9 The materials to be exchanged throughout the course of the litigation between the
10 parties may contain trade secret or other confidential research, technical, cost, price,
11 marketing or other commercial information, as is contemplated by Federal Rule of Civil
12 Procedure 26(c)(7). The purpose of this Order is to protect the confidentiality of such
13 materials as much as practical during the litigation. THEREFORE:

14 **DEFINITIONS**

- 15 1. The term "Confidential Information" will mean and include information contained
16 or disclosed in any Materials, including documents, portions of documents, answers
17 to interrogatories, responses to requests for admissions, trial testimony, deposition
18 testimony, and transcripts of trial testimony and depositions, including data,
19 summaries, and compilations derived therefrom that is deemed to be
20 "CONFIDENTIAL" or "CONFIDENTIAL – OUTSIDE COUNSEL ONLY" as set
21 out below.
- 22 2. The term "Materials" will include, but is not be limited to: documents;
23 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or
24 other matter identifying customers or potential customers; price lists or schedules or
25 other matter identifying pricing; minutes; telegrams; letters; statements; cancelled
26 checks; contracts; invoices; drafts; books of account; worksheets; notes of
27 conversations; desk diaries; appointment books; expense accounts; recordings;
28 photographs; motion pictures; compilations from which information can be obtained
and translated into reasonably usable form through detection devices; sketches;

1 drawings; notes (including laboratory notebooks and records); reports; instructions;
2 disclosures; other writings; models and prototypes and other physical objects.

- 3 3. The term "Counsel" will mean outside counsel of record and other attorneys,
4 paralegals, secretaries, contract attorneys and other support staff employed in the
5 following law firms: Pillsbury Winthrop Shaw Pittman LLP; and Law Offices of
6 Andria Catalano Redcrow. "Counsel" also includes in-house attorneys for
7 Defendant, Wartsila Defense, Inc.

8 GENERAL RULES

- 9 4. All documents and information produced in this litigation by any party or nonparty,
10 whether produced informally or pursuant to a formal discovery request, shall be used
11 by the parties solely for the purpose of conducting this litigation, **except to the**
12 **extent disclosure is required for law enforcement purposes or otherwise is**
13 **required by law, regulation, or other legal obligation. Any party intending to**
14 **disclose one or more documents obtained through discovery in this case as a**
15 **result of a legal obligation to do so must first notify the party that produced the**
16 **document(s) of its intent and specify which document(s) will be disclosed.**

- 17 5. Each party or nonparty to this litigation that produces or discloses any materials,
18 answers to interrogatories, responses to requests for admission, trial testimony,
19 deposition testimony, and transcripts of trial testimony and depositions, or
20 information that the producing party believes should be subject to this Protective
21 Order may designate the same as "CONFIDENTIAL" or "CONFIDENTIAL - FOR
22 COUNSEL ONLY." Each party to this litigation that believes Materials or other
23 information produced by a nonparty should be subject to this Order, may designate
24 the same as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY."

- 25 a. Designation as "CONFIDENTIAL": Any party or nonparty may designate
26 information as "CONFIDENTIAL" only if, in the good faith belief of such
27 party and its counsel, or of such nonparty, the unrestricted disclosure of such
28 information could be potentially prejudicial to the business or operations of
such party or nonparty.

1 b. Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any party or
2 nonparty may designate information as "CONFIDENTIAL - FOR COUNSEL
3 ONLY" only if, in the good faith belief of such party and its counsel, or of
4 such nonparty, the information is among that considered to be most sensitive
5 by the party or nonparty, including but not limited to trade secret or other
6 confidential research, development, financial or other commercial
7 information.

8 6. In the event the producing party elects to produce Materials for inspection, no
9 marking need be made by the producing party in advance of the initial inspection.
10 For purposes of the initial inspection, all Materials produced will be considered as
11 "CONFIDENTIAL - FOR COUNSEL ONLY," and must be treated as such pursuant
12 to the terms of this Order. Thereafter, upon selection of specified Materials for
13 copying by the inspecting party, the producing party must, within a reasonable time
14 prior to producing those materials to the inspecting party, mark the copies of those
15 Materials that contain Confidential Information with the appropriate confidentiality
16 marking.

17 7. Whenever a deposition taken on behalf of any party involves a disclosure of
18 Confidential Information of any party (including Confidential Information of a
19 nonparty deponent):

20 a. the deposition or portions of the deposition must be designated as containing
21 Confidential Information subject to the provisions of this Order; such designation
22 must be made on the record whenever possible, but a party (or nonparty
23 deponent) may designate portions of depositions as containing Confidential
24 Information after transcription of the proceedings; and a party (or nonparty
25 deponent) will have until fourteen (14) days after receipt of the deposition
26 transcript to inform the other party or parties to the action of the portions of the
27 transcript to be designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR
28 COUNSEL ONLY";

1 b. the disclosing party or nonparty will have the right to exclude from attendance at
2 the deposition, during such time as the Confidential Information is to be
3 disclosed, any person other than the deponent, Counsel (including their staff and
4 associates), the court reporter, and the person(s) agreed upon pursuant to
5 paragraph 9 below; and

6 c. the originals of the deposition transcripts and all copies of the deposition must
7 bear the legend "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL
8 ONLY," as appropriate, and the original or any copy ultimately presented to a
9 court for filing must not be filed unless it can be accomplished under seal,
10 identified as being subject to this Order, and protected from being opened except
11 by order of this Court.

12 8. All Confidential Information designated as "CONFIDENTIAL" or
13 "CONFIDENTIAL - FOR COUNSEL ONLY" must not be disclosed by the
14 receiving party to anyone other than those persons designated within this order and
15 must be handled in the manner set forth below.

16 9. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY" must be
17 viewed only by counsel (as defined in paragraph 3) of the receiving party, and by
18 independent experts under the conditions set forth in this Paragraph. The right of any
19 independent expert to receive any Confidential Information will be subject to the
20 advance approval of such expert by the producing party or by permission of the
21 Court. The party seeking approval of an independent expert must provide the
22 producing party with the name and curriculum vitae of the proposed independent
23 expert, and an executed copy of the form attached hereto as Exhibit A, in advance
24 of providing any Confidential Information of the producing party to the expert. Any
25 objection by the producing party to an independent expert receiving Confidential
26 Information must be made in writing within fourteen (14) days following receipt of
27 the identification of the proposed expert. Confidential Information may be disclosed
28 to an independent expert if the fourteen (14) day period has passed and no objection

1 has been made. The approval of independent experts must not be unreasonably
2 withheld.

3 10. Information designated "CONFIDENTIAL" must be viewed only by counsel (as
4 defined in paragraph 3) of the receiving party, by independent experts (pursuant to
5 the terms of paragraph 8), and by the additional individuals listed below, provided
6 each such individual has read this Order in advance of disclosure and has agreed in
7 writing to be bound by its terms:

- 8 a. Executives who are required to participate in policy decisions with reference to
9 this action;
- 10 b. Technical personnel of the parties with whom Counsel for the parties find it
11 necessary to consult, in the discretion of such counsel, in preparation for trial of
12 this action; and
- 13 c. Stenographic and clerical employees associated with the individuals identified
14 above.

15 11. Confidential Information designated "CONFIDENTIAL - OUTSIDE COUNSEL
16 ONLY" or "CONFIDENTIAL" may also be viewable by independent copying,
17 scanning, technical support and electronic document processing services retained by
18 Counsel in connection with this action; graphics, translation, or design services
19 retained by Counsel for purposes of preparing demonstrative or other exhibits for
20 deposition, trial, or otherwise in connection with this action; non-technical jury or
21 trial consulting services retained by Counsel in connection with this action and mock
22 jurors, provided, however, that any such individual has read this Order in advance
23 of disclosure and has executed a copy of the form attached hereto as Exhibit A in
24 advance of access.

25 12. With respect to material designated "CONFIDENTIAL" or "CONFIDENTIAL -
26 FOR COUNSEL ONLY," any person indicated on the face of the document to be its
27 originator, author or a recipient of a copy of the document, may be shown the same.

28 13. All information which has been designated as "CONFIDENTIAL" or
"CONFIDENTIAL -FOR COUNSEL ONLY" by the producing or disclosing party,

1 and any and all reproductions of that information, must be retained in the custody of
2 the counsel for the receiving party identified in paragraph 3, except that independent
3 experts authorized to view such information under the terms of this Order may retain
4 custody of copies such as are necessary for their participation in this litigation.

5 14. Before any Materials produced in discovery, answers to interrogatories, responses
6 to requests for admissions, deposition transcripts, or other documents which are
7 designated as Confidential Information are filed with the Court for any purpose, the
8 party seeking to file such Material must seek permission of the Court to file the
9 Material under seal.

10 15. **Any challenge to the “CONFIDENTIAL” OR “CONFIDENTIAL –**
11 **OUTSIDE COUNSEL ONLY” designation of any Confidential Information**
12 **shall be raised in writing within 30 days of the challenging party’s receipt of**
13 **the materials at issue. If the dispute is not resolved consensually between the**
14 **parties within 7 days of receipt of such written notice, the parties shall file a**
15 **joint motion for determination of discovery dispute, as outlined in this Court’s**
16 **Chambers Rules, no later than 45 days after the challenging party’s receipt of**
17 **the designated material in issue.** The materials at issue must be treated as
18 Confidential Information, as designated by the designating party, until the Court
19 has ruled on the objection or the matter has been otherwise resolved.

20 16. All Confidential Information must be held in confidence by those inspecting or
21 receiving it, and must be used only for purposes of this action. Counsel for each
22 party, and each person receiving Confidential Information must take reasonable
23 precautions to prevent the unauthorized or inadvertent disclosure of such
24 information. If Confidential Information is disclosed to any person other than a
25 person authorized by this Order, the party responsible for the unauthorized
26 disclosure must immediately bring all pertinent facts relating to the unauthorized
27 disclosure to the attention of the other parties and, without prejudice to any rights
28 and remedies of the other parties, make every effort to prevent further disclosure by
the party and by the person(s) receiving the unauthorized disclosure.

- 1 17. No party will be responsible to another party for disclosure of Confidential
2 Information under this Order if the information in question is not labeled or
3 otherwise identified as such in accordance with this Order.
- 4 18. If a party, through inadvertence, produces any Confidential Information without
5 labeling or marking or otherwise designating it as such in accordance with this
6 Order, the designating party may give written notice to the receiving party that the
7 document or thing produced is to be designated, as appropriate, "CONFIDENTIAL"
8 or "CONFIDENTIAL – OUTSIDE COUNSEL ONLY," and that the document or
9 thing produced should be treated as such in accordance with that designation under
10 this Order. The receiving party must treat the Materials as confidential, once the
11 designating party so notifies the receiving party. If the receiving party has disclosed
12 the Materials before receiving the designation, the receiving party must notify the
13 designating party in writing of each such disclosure. Counsel for the parties will
14 agree on a mutually acceptable manner of labeling or marking the inadvertently-
15 produced Materials as "CONFIDENTIAL" or "CONFIDENTIAL - FOR
16 COUNSEL ONLY."
- 17 19. Nothing within this order will prejudice the right of any party to object to the
18 production of any discovery material on the grounds that the material is protected as
19 privileged or as attorney work product.
- 20 20. The inadvertent production of documents or other information subject to protection
21 by the attorney-client privilege, the attorney work product doctrine or any other legal
22 principle or doctrine protecting such documents or information from discovery shall
23 not constitute a waiver of any privilege or other protection (whether applicable to
24 the document or other information that was inadvertently produced, or any other
25 document or information), provided that the producing party notifies the receiving
26 party in writing of the inadvertent production within fourteen (14) days after the
27 producing party discovers the inadvertent production.
- 28 21. If a receiving party is in receipt of a document from a producing party that the
receiving party has reason to believe was inadvertently produced and contains

1 information that the receiving party believes is subject to protection by the attorney-
2 client privilege, the attorney work product doctrine, or any other legal principle
3 protecting such document from discovery, then the receiving party shall, in good
4 faith, take reasonable steps to notify the producing party of the production of that
5 document so that the producing party may make a determination of whether such
6 document was inadvertently produced.

7 22. A receiving party in receipt of inadvertently produced document(s) may move for
8 an order compelling production of some or all of such documents, but the fact that
9 the documents were produced inadvertently shall not be deemed to be a waiver of
10 any privilege or protection, and shall not be a basis for compelling production. In
11 addition, any motion to compel production of the documents that were inadvertently
12 produced shall not describe the specific contents of the inadvertently produced
13 documents in a way that would diminish or destroy the privilege or protection that
14 the producing party claims applies to the document.

15 23. Nothing in this Order will bar counsel from rendering advice to their clients with
16 respect to this litigation and, in the course thereof, relying upon any information
17 designated as Confidential Information, provided that the contents of the information
18 must not be disclosed.

19 24. This Order will be without prejudice to the right of any party to oppose production
20 of any information for lack of relevance or any other ground other than the mere
21 presence of Confidential Information. The existence of this Order must not be used
22 by either party as a basis for discovery that is otherwise improper under the Federal
23 Rules of Civil Procedure.

24 25. Nothing within this order will be construed to prevent disclosure of Confidential
25 Information if such disclosure is required by law or by order of the Court.

26 26. Upon final termination of this action, including any and all appeals, counsel for each
27 party must, upon request of the producing party, return all Confidential Information
28 to the party that produced the information, including any copies, excerpts, and
summaries of that information, or must destroy same at the option of the receiving

1 party, and must purge all such information from all machine-readable media on
2 which it resides. Notwithstanding the foregoing, counsel for each party may retain
3 all pleadings, briefs, memoranda, motions, and other documents filed with the Court
4 that refer to or incorporate Confidential Information, and will continue to be bound
5 by this Order with respect to all such retained information. Further, attorney work
6 product materials that contain Confidential Information need not be destroyed, but,
7 if they are not destroyed, the person in possession of the attorney work product will
8 continue to be bound by this Order with respect to all such retained information.

9 27. The restrictions and obligations set forth within this order will not apply to any
10 information that: (a) the parties agree should not be designated Confidential
11 Information; (b) the parties agree, or the Court rules, is already public knowledge;
12 (c) the parties agree, or the Court rules, has become public knowledge other than as
13 a result of disclosure by the receiving party, its employees, or its agents in violation
14 of this Order; or (d) has come or will come into the receiving party's legitimate
15 knowledge independently of the production by the designating party. Prior
16 knowledge must be established by pre-production documentation.

17 28. The restrictions and obligations within this order will not be deemed to prohibit
18 discussions of any Confidential Information with anyone if that person already has
19 or obtains legitimate possession of that information.

20 29. Transmission by facsimile or e-mail is acceptable for all notification purposes within
21 this Order.

22 30. This Order may be modified by agreement of the parties, subject to approval by the
23 Court.

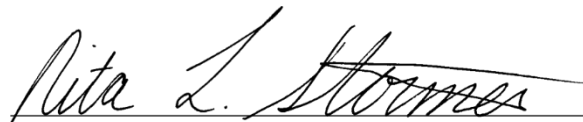
24 31. Filing Under Seal. Nothing shall be filed under seal, and the Court shall not be
25 required to take any action, without separate prior order by the Judge before whom
26 the hearing or proceeding will take place, after application by the affected party with
27 appropriate notice to opposing counsel. The parties shall follow and abide by
28 applicable law, including Civ. L.R.79.2, ECF Administrative Policies and

1 Procedures, Section II.j, and the chambers rules, with respect to filing documents
2 under seal.

3 32. The Court may modify the terms and conditions of this Order for good cause, or in
4 the interest of justice, for public policy reasons, or on its own order at any time in
5 these proceedings. The parties prefer that the Court provide them with notice of the
6 Court's intent to modify the Order and the content of those modifications, prior to
7 entry of such an order.

8 **IT IS SO ORDERED.**

9 Dated: November 13, 2017

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11 Hon. Nita L. Stormes

12 United States Magistrate Judge

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PACIFIC MARINE PROPELLERS,
INC.

Plaintiff,

v.

WARTSILA DEFENSE, INC.,
BRYAN RUTTER, and BOBBY
HENINGER,

Defendants.

Case No. 3:17-cv-00555-BEN-NLS
AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER

I, _____, declare and say that:

1. I am employed as _____ by
_____.

2. I have received and read a copy of the Protective Order entered in *Pacific Marine Propellers, Inc. v. Wartsila Defense, Inc., et al.*, Case No. 3:17-cv-00555-BEN-NLS, and understand and agree to abide by its terms.

3. I agree to keep confidential all Confidential Information provided to me in this matter, in accordance with the restrictions in the Protective Order.

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1 4. I acknowledge that, by signing this agreement, I am subjecting myself to the
2 jurisdiction of the United States District Court for the Southern District of California with
3 respect to enforcement of the Protective Order.

4 5. I understand that any disclosure or use of Confidential Information in any manner
5 contrary to the provisions of the Protective Order may subject me to sanctions for
6 contempt of court.

7 I declare under penalty of perjury that the foregoing is true and correct.
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9 Dated:
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