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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ALBERTO LOPEZ,
12 Plaintiff,
13 v.
14 SMITHS DETECTION, INC., et al.,
15 Defendants.

Case No.: 20-CV-1453-JLS-WVG

**ORDER GRANTING RENEWED
JOINT MOTION FOR ENTRY OF
STIPULATED PROTECTIVE
ORDER**

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17 On May 24, 2021, the Parties filed a Joint Motion for Entry of Stipulated Protective
18 Order and lodged a proposed order accordingly. (Doc. No. 20.) On May 25, 2021, the Court
19 denied the Parties’ submission for failure to comply with this Court’s Civil Chambers Rule
20 V. (Doc. No. 21.) On June 8, 2021, the Parties renewed their Joint Motion for Protective
21 Order (“Joint Motion”). (Doc. No. 22.) Having reviewed and considered the entirety of the
22 Parties’ Joint Motion, the Court GRANTS the Joint Motion and makes enforceable the
23 following language to which the Parties stipulated:

24 The Court recognizes that at least some of the documents and information
25 (“materials”) being sought through discovery in the above-captioned action are, for
26 competitive reasons, normally kept confidential by the parties. The parties have agreed to
27 be bound by the terms of this Protective Order (“Order”) in this action.

28 The materials to be exchanged throughout the course of the litigation between the

1 parties may contain trade secret or other confidential research, technical, cost, price,
2 marketing or other commercial information, as is contemplated by Federal Rule of Civil
3 Procedure 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of such
4 materials as much as practical during the litigation. THEREFORE:

5 DEFINITIONS

6 1. The term “confidential information” will mean and include information
7 contained or disclosed in any materials, including documents, portions of documents,
8 answers to interrogatories, responses to requests for admissions, trial testimony, deposition
9 testimony, and transcripts of trial testimony and depositions, including data, summaries,
10 and compilations derived therefrom that is deemed to be confidential information by any
11 party to which it belongs.

12 2. The term “materials” will include, but is not be limited to: documents;
13 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other
14 material that identify customers or potential customers; price lists or schedules or other
15 matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks;
16 contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk
17 diaries; appointment books; expense accounts; recordings; photographs; motion pictures;
18 compilations from which information can be obtained and translated into reasonably usable
19 form through detection devices; sketches; drawings; notes (including laboratory notebooks
20 and records); reports; instructions; disclosures; other writings; models and prototypes and
21 other physical objects.

22 3. The term “counsel” will mean outside counsel of record, and other attorneys,
23 paralegals, secretaries, and other support staff employed in Walker Law, P.C., and Squire
24 Patton Boggs (US) LLP.

25 GENERAL RULES

26 4. Each party to this litigation that produces or discloses any materials, answers
27 to interrogatories, responses to requests for admission, trial testimony, deposition
28 testimony, and transcripts of trial testimony and depositions, or information that the

1 producing party believes should be subject to this Protective Order may designate the same
2 as “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY.”

3 a. Designation as “CONFIDENTIAL”: Any party may designate information as
4 “CONFIDENTIAL” only if, in the good faith belief of such party and its counsel,
5 the unrestricted disclosure of such information could be potentially prejudicial to the
6 business or operations of such party.

7 b. Designation as “CONFIDENTIAL - FOR COUNSEL ONLY”: Any party
8 may designate information as “CONFIDENTIAL - FOR COUNSEL ONLY” only
9 if, in the good faith belief of such party and its counsel, the information is among
10 that considered to be most sensitive by the party, including but not limited to trade
11 secret or other confidential research, development, financial or other commercial
12 information.

13 5. In the event the producing party elects to produce materials for inspection, no
14 marking need be made by the producing party in advance of the initial inspection. For
15 purposes of the initial inspection, all materials produced will be considered as
16 “CONFIDENTIAL - FOR COUNSEL ONLY,” and must be treated as such pursuant to
17 the terms of this Order. Thereafter, upon selection of specified materials for copying by the
18 inspecting party, the producing party must, within a reasonable time prior to producing
19 those materials to the inspecting party, mark the copies of those materials that contain
20 confidential information with the appropriate confidentiality marking.

21 6. Whenever a deposition taken on behalf of any party involves a disclosure of
22 confidential information of any party:

23 a. the deposition or portions of the deposition must be designated as containing
24 confidential information subject to the provisions of this Order; such designation
25 must be made on the record whenever possible, but a party may designate portions
26 of depositions as containing confidential information after transcription of the
27 proceedings; [A] party will have until fourteen (14) days after receipt of the
28 deposition transcript to inform the other party or parties to the action of the portions

1 of the transcript to be designated “CONFIDENTIAL” or “CONFIDENTIAL - FOR
2 COUNSEL ONLY.”

3 b. the disclosing party will have the right to exclude from attendance at the
4 deposition, during such time as the confidential information is to be disclosed, any
5 person other than the deponent, counsel (including their staff and associates), the
6 court reporter, and the person(s) agreed upon pursuant to paragraph 8 below; and

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

13 7. All confidential information designated as “CONFIDENTIAL” or
14 “CONFIDENTIAL FOR COUNSEL ONLY” must not be disclosed by the receiving party
15 to anyone other than those persons designated within this order and must be handled in the
16 manner set forth below and, in any event, must not be used for any purpose other than in
17 connection with this litigation, unless and until such designation is removed either by
18 agreement of the parties, or by order of the Court.

19 8. Information designated “CONFIDENTIAL - FOR COUNSEL ONLY” must
20 be viewed only by counsel (as defined in paragraph 3) of the receiving party, and by
21 independent experts under the conditions set forth in this Paragraph. The right of any
22 independent expert to receive any confidential information will be subject to the advance
23 approval of such expert by the producing party or by permission of the Court. The party
24 seeking approval of an independent expert must provide the producing party with the name
25 and curriculum vitae of the proposed independent expert, and an executed copy of the form
26 attached hereto as Exhibit A, in advance of providing any confidential information of the
27 producing party to the expert. Any objection by the producing party to an independent
28 expert receiving confidential information must be made in writing within fourteen (14)

1 days following receipt of the identification of the proposed expert. Confidential
2 information may be disclosed to an independent expert if the fourteen (14) day period has
3 passed and no objection has been made. The approval of independent experts must not be
4 unreasonably withheld.

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

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

18 10. With respect to material designated “CONFIDENTIAL” or
19 “CONFIDENTIAL – FOR COUNSEL ONLY,” any person indicated on the face of the
20 document to be its originator, author or a recipient of a copy of the document, may be
21 shown the same.

22 11. All information which has been designated as “CONFIDENTIAL” or
23 “CONFIDENTIAL -FOR COUNSEL ONLY” by the producing or disclosing party, and
24 any and all reproductions of that information, must be retained in the custody of the counsel
25 for the receiving party identified in paragraph 3, except that independent experts authorized
26 to view such information under the terms of this Order may retain custody of copies such
27 as are necessary for their participation in this litigation.

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1 12. In the event a party seeks to file with the Court any confidential information
2 subject to protection under this Order, that party must take appropriate action to ensure that
3 the document receives proper protection from public disclosure, including: (a) filing a
4 redacted document with the consent of the party who designated the document as
5 confidential; (b) where appropriate (e.g., in relation to discovery and evidentiary motion),
6 submitting the document solely for in camera review; or (c) when the preceding measures
7 are inadequate, seeking permission to file the document under seal by filing a motion for
8 leave to file under seal pursuant to all applicable standards and rules. The burden of filing
9 the motion for leave to file under seal and of demonstrating the need for appropriateness
10 of a sealing order is borne by the party contending the document(s) should be filed in such
11 manner. Regardless of whether the parties agree, it remains the Court's independent
12 obligation to determine whether a seal is appropriate for any given document or portion
13 thereof. When a party to this Order seeks to file documents that another party believes may
14 warrant sealing, but is not the party who may be prejudiced by the document(s) becoming
15 part of the public record, the filing party shall provide the potentially-prejudiced party with
16 written notice of its intent to file such documents at least fourteen (14) days before doing
17 so. After being provided such notice, the potentially harmed party will then have seven (7)
18 days to file with the Court a motion for sealing. The Court will rule on the motion as
19 promptly as possible. If the potentially harmed party fails to timely file the motion for
20 sealing, the filing party may file the documents without them being under seal.

21 13. No document shall be filed under seal unless counsel secures a court order
22 allowing the filing of a document under seal. An application to file a document under seal
23 shall be served on opposing counsel, and on the person or entity that has custody and
24 control of the document, if different from opposing counsel. If opposing counsel, or the
25 person or entity who has custody and control of the document, wishes to oppose the
26 application, he/she must contact the chambers of the judge who will rule on the application,
27 to notify the judge's staff that an opposition to the application will be filed. If an application
28 to file a document under seal is granted by Judge Gallo, a redacted version of the document

1 shall be e-filed. A courtesy copy of the unredacted document shall be delivered to Judge
2 Gallo's chambers.

3 14. At any stage of these proceedings, any party may object to a designation of
4 the materials as confidential information. The party objecting to confidentiality must
5 notify, in writing, counsel for the designating party of the objected-to materials and the
6 grounds for the objection. If the dispute is not resolved consensually between the parties
7 within seven (7) days of receipt of such a notice of objections, the objecting party may
8 move the Court for a ruling on the objection. The materials at issue must be treated as
9 confidential information, as designated by the designating party, until the Court has ruled
10 on the objection or the matter has been otherwise resolved.

11 15. All confidential information must be held in confidence by those inspecting
12 or receiving it, and must be used only for purposes of this action. Counsel for each party,
13 and each person receiving confidential information must take reasonable precautions to
14 prevent the unauthorized or inadvertent disclosure of such information. If confidential
15 information is disclosed to any person other than a person authorized by this Order, the
16 party responsible for the unauthorized disclosure must immediately bring all pertinent facts
17 relating to the unauthorized disclosure to the attention of the other parties and, without
18 prejudice to any rights and remedies of the other parties, make every effort to prevent
19 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

20 16. No party will be responsible to another party for disclosure of confidential
21 information under this Order if the information in question is not labeled or otherwise
22 identified as such in accordance with this Order.

23 17. If a party, through inadvertence, produces any confidential information
24 without labeling or marking or otherwise designating it as such in accordance with this
25 Order, the designating party may give written notice to the receiving party that the
26 document or thing produced is deemed confidential information, and that the document or
27 thing produced should be treated as such in accordance with that designation under this
28 Order. The receiving party must treat the materials as confidential, once the designating

1 party so notifies the receiving party. If the receiving party has disclosed the materials before
2 receiving the designation, the receiving party must notify the designating party in writing
3 of each such disclosure. Counsel for the parties will agree on a mutually acceptable manner
4 of labeling or marking the inadvertently produced materials as “CONFIDENTIAL” or
5 “CONFIDENTIAL - FOR COUNSEL ONLY” - SUBJECT TO PROTECTIVE ORDER.

6 18. If this matter proceeds to trial, nothing in this Protective Order shall restrict
7 the ability of the parties to present trial to the trier of fact. Upon the request of a party, the
8 Court may implement appropriate procedures to protect confidential information subject
9 to protection under this Order which may be disclosed at trial or any hearing in this matter
10 consistent with the spirit and scope of this Protective Order.

11 19. Nothing within this order will prejudice the right of any party to object to the
12 production of any discovery material on the grounds that the material is protected as
13 privileged or as attorney work product.

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

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

23 22. Nothing within this order will be construed to prevent disclosure of
24 confidential information if such disclosure is required by law or by order of the Court.

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

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

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

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

20 26. Transmission by email or some other currently utilized method of
21 transmission is acceptable for all notification purposes within this Order.

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

24 28. The Court may modify the terms and conditions of this Order for good cause,
25 or in the interest of justice, or on its own order at any time in these proceedings. The parties
26 prefer that the Court provide them with notice of the Court's intent to modify the Order and

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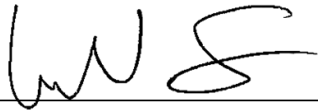
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the content of those modifications, prior to entry of such an order.

IT IS SO ORDERED.

Dated: June 9, 2021



Hon. William V. Gallo
United States Magistrate Judge