

1 LESLIE R. WEATHERHEAD, WSBA #11207
 J. CHRISTOPHER LYNCH, WSBA #17462
 2 RHETT V. BARNEY, WSBA #44764
 LEE & HAYES, PLLC
 3 601 W. Riverside Avenue, Suite 1400
 Spokane, WA 99201
 4 Phone: (509) 324-9256; Fax: (509) 323-8979
 Emails: lesliew@leehayes.com
 5 chris@leehayes.com
rhettb@leehayes.com

6 *Counsel for Plaintiffs OTR Wheel Engineering, Inc.,*
 7 *Blackstone/OTR, LLC, and F. B. T. Enterprises, Inc.*

8 **UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF WASHINGTON**

10 OTR WHEEL ENGINEERING, INC.,
 BLACKSTONE/OTR, LLC, and
 11 F. B. T. ENTERPRISES, INC.,

12 **Plaintiffs,**

13 **vs.**

14 WEST WORLDWIDE SERVICES,
 INC., and SAMUEL J. WEST,
 15 individually, and his marital
 community,

16 **Defendants.**

No. 2:14-CV-00085-LRS

STIPULATION OF
 CONFIDENTIALITY PROTECTION
 AND FEDERAL RULE OF
 EVIDENCE 502(d) ORDER

17 Pursuant to this Stipulation, the parties, through their counsel, agree as
 18 follows:
 19
 20

STIPULATION OF CONFIDENTIALITY PROTECTION AND
 FEDERAL RULE OF EVIDENCE 502(d) ORDER - 1

LEE & HAYES, PLLC
 601 West Riverside Avenue, Suite 1400
 Spokane, Washington 99201
 Telephone: (509)324-9256 Fax: (509)323-8979

1 1. The parties, by and through their counsel, stipulate and agree that certain
2 documents and other information and materials in this lawsuit that will be exchanged
3 in discovery or otherwise are confidential and/or proprietary and/or contain trade
4 secrets. This Stipulation of Confidentiality Protection – and any designation of a
5 document, material or information (whether written, graphic or electronic) as
6 “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEY'S EYES ONLY” under this
7 Stipulation – is intended solely to facilitate the preparation and trial of this case. Any
8 such designation under this Stipulation of Confidentiality Protection shall not be
9 construed as an admission or an agreement by any party:

10 a. That the designated disclosure constitutes or contains
11 confidential or proprietary or trade secret information; or

12 b. That any document, material or information, or any portion
13 thereof, constitutes competent, material, relevant or admissible evidence in this case.

14 2. DEFINITIONS:

15 a. When used herein, the word “document” means all written, recorded,
16 or graphic matter whatever, including but not limited to interrogatory
17 answers, responses to requests for admission, documents produced in
18 response to document requests or voluntarily, including writings,
19 drawings, graphs, charts, maps or other materials within the
20

1 contemplation of Federal Rule of Civil Procedure 34, deposition
2 testimony, deposition transcripts and exhibits, trial exhibits, hearing
3 or trial transcripts, any portion or summary of any of the foregoing,
4 and any other papers that quote from, reflect, reveal or summarize
5 any of the foregoing.

6 b. "Confidential Information" means such information that:

- 7 i. is used by a party in, or pertaining to, its business, which
8 information is not generally known and which that party would
9 normally not reveal to third parties or, if disclosed, would
10 require such third parties to maintain in confidence; or
11 ii. which may reasonably have the effect of harming the business
12 operations or competitive position of the producing party, or a
13 party in privity with the producing party, or would violate an
14 obligation of confidentiality to a third person, including a court

15 c. "Confidential – Attorney's Eyes Only" means such information that:

- 16 iii. particularly sensitive technical information relating to research
17 for and production of current products, technical, business and
18 research information regarding future products, highly
19 sensitive financial information and marketing plans and
20 forecasts, customer lists, pricing data, cost data, customer

1 orders, customer quotations, as well as such other documents,
2 information or materials that relate to other proprietary
3 information that the producing party reasonably believes is of
4 such nature and character that disclosure of such information
5 would be harmful to the producing party; or

6 iv. trade secrets.

7 d. When used herein, "Confidential Material" means any and all
8 documents or things that contain, reflect or reveal Confidential
9 Information.

10 3. This Stipulation of Confidentiality Protection shall not be construed as a
11 waiver by any party of the right to contest the designation of documents as
12 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEY'S EYES ONLY" under this
13 Stipulation of Confidentiality Protection. Any party desiring to contest the protected
14 designation of specific documents as "CONFIDENTIAL" or "CONFIDENTIAL-
15 ATTORNEY'S EYES ONLY" shall give the producing party notice in writing
16 including the listing and/or specific description of any such document. Unless the
17 producing party agrees to remove the designation of "CONFIDENTIAL" or
18 "CONFIDENTIAL-ATTORNEY'S EYES ONLY" on the documents that are the
19 subject of the contest within fifteen (15) days, the producing party shall promptly
20 request a hearing and file any necessary moving papers expeditiously. Pending a

1 Court determination, no document designated as "CONFIDENTIAL" or
2 "CONFIDENTIAL-ATTORNEY'S EYES ONLY" under this Order shall be
3 disseminated other than as provided by this Order unless otherwise ordered by the
4 Court or as stipulated by the parties.

5 4. No party shall be obligated to challenge the propriety or correctness of
6 the designation of information as CONFIDENTIAL or CONFIDENTIAL-
7 ATTORNEY'S EYES ONLY, and a failure to do so shall not preclude a subsequent
8 challenge to such status.

9 5. The parties, and law firms appearing as their counsel of record, may only
10 make use of CONFIDENTIAL or CONFIDENTIAL-ATTORNEY'S EYES ONLY
11 documents and materials produced by persons subject to this Stipulation of
12 Confidentiality Protection as the preparation of this case and trial may reasonably
13 require, but in so doing shall disclose such documents or materials only to such
14 persons, including parties, their employees, counsel of record and their employees,
15 insurers and their employees, and witnesses, and prospective witnesses, including
16 testifying and consulting experts, involved in the litigation process who must have the
17 information from such documents and materials for purposes of preparation of this
18 case and trial.

19 6. The parties, and law firms appearing as their counsel of record, may not
20 make use of CONFIDENTIAL or CONFIDENTIAL-ATTORNEY'S EYES ONLY

1 information for any purpose other than this pending litigation, including without
2 limitation, any competitive or business purpose.

3 7. Any party and/or experts desiring to do so may render any documents
4 and materials produced by itself or any other party in response to a written discovery
5 request CONFIDENTIAL or CONFIDENTIAL-ATTORNEY'S EYES ONLY and
6 restricted and subject to the terms and prohibitions of this Stipulation of
7 Confidentiality Protection by designating such document or material as herein
8 provided. Designation shall be made by affixing to the documents, electronic material
9 or written response the words: "CONFIDENTIAL, DOCUMENT SUBJECT TO
10 PROTECTIVE ORDER" or "CONFIDENTIAL-ATTORNEY'S EYES ONLY,
11 DOCUMENT SUBJECT TO PROTECTIVE ORDER."

12 A designation shall subject the document or material, and its contents, to this
13 Stipulation of Confidentiality Protection without any further act on the part of the
14 person desiring confidentiality.

15 No party or expert shall designate a document as "CONFIDENTIAL" or
16 "CONFIDENTIAL-ATTORNEY'S EYES ONLY" pursuant to this Stipulation of
17 Confidentiality Protection unless that party has a good faith belief that the document
18 contains or may contain or constitute trade secret, proprietary or other confidential
19 information that is the necessary subject of a protective order.
20

1 Any information that is designated "CONFIDENTIAL" or
2 "CONFIDENTIAL-ATTORNEY'S EYES ONLY" shall be immediately and at all
3 times hereafter maintained and kept confidential, as subject to this Stipulation of
4 Confidentiality Protection.

5 8. Prior to dissemination of any information from CONFIDENTIAL or
6 CONFIDENTIAL-ATTORNEY'S EYES ONLY documents or materials, to any
7 witness, prospective witness or other person (except any court personnel or court
8 reporter), counsel so disseminating shall maintain in a log, the name, address, place
9 of employment, and employment capacity of each such person who is to receive such
10 information, evidencing that such person has executed the undertaking set out in
11 paragraph 13 and Exhibit A.

12 9. The parties of record have the right to have persons present in the
13 inspection room at all times during the other party's inspection of any trade secret
14 original documents and materials. The original trade secret documents and materials
15 produced under the terms of this Stipulation of Confidentiality Protection shall remain
16 in the custody and control of the producing party at all times.

17 10. Absent Court Order to the contrary, all documents and materials, and
18 copies of documents and materials, subject to this Stipulation of Confidentiality
19 Protection shall be returned and surrendered to the producing party or person upon
20

1 the conclusion of this lawsuit. Conclusion shall be taken and construed as the date
2 sixty (60) days following the entry of a final, non-appealable order disposing of this
3 lawsuit. Upon such conclusion, counsel of record shall notify counsel for the
4 producing party of compliance but shall not be required to make any oath. Counsel
5 shall make a reasonable effort to retrieve any document or information subject to this
6 Order from any party or non-party witness to whom such information has been given,
7 and shall notify counsel for the producing party of the failure to retrieve any such
8 information. Such notification shall include descriptive detail of any document or
9 material not returned.

10 This Stipulation of Confidentiality Protection shall remain in full force and
11 effect and each person subject to this Order shall continue to be subject to the
12 jurisdiction of this Court, for the purposes of this Order, in perpetuity, and the Court
13 shall not be divested of jurisdiction of any person or of the subject matter of this
14 Order by the occurrence of conclusion of this case, or by the filing of a notice of
15 appeal, or other pleading that would have the effect of divesting this Court of
16 jurisdiction of this matter generally.

17 11. **Federal Rule of Evidence 502(d) Order.** The parties request and
18 stipulate that the Court issue an Order as provided in Federal Rule of Evidence 502(d)
19 providing that disclosure of privileged material in the discovery process shall not
20 constitute a waiver of any privilege in this or any other proceeding. Further,

1 inadvertent production shall not be asserted as a ground for seeking an order later
2 compelling production of the material inadvertently disclosed. Privileged documents
3 must be returned to the disclosing party "irrespective of the care taken by" the party
4 in reviewing them prior to production.

5 12. No person who examines any information that is protected by this
6 Stipulation of Confidentiality Protection shall disseminate orally, or by any other
7 means, any CONFIDENTIAL or CONFIDENTIAL-ATTORNEY'S EYES ONLY
8 information other than as permitted by this Order.

9 All portions of deposition transcripts that relate to information protected by
10 this Stipulation of Confidentiality Protection shall be kept confidential. Any party
11 may designate specific pages as confidential by written notification to all counsel
12 within fifteen (30) days of the receipt of the written deposition transcript. Such
13 designated portions will be kept confidential and may, if requested, be separately
14 transcribed. If any party intends to file a protected document or a protected portion
15 of a deposition transcript with the Court, and if there is no dispute as to the
16 protected status of the document or deposition transcript, then the parties shall so
17 stipulate and jointly petition the Court that the document or deposition transcript be
18 filed under seal and not made part of the public record. If there is a dispute as to
19 whether a document or a portion of a deposition is protected and a party intends to
20 file the same with the Court, the party intending to use the claimed protected

1 document or portion of the deposition shall give the other parties at least ten (10)
2 days' written notice so as to give them the opportunity to move the Court for leave
3 to have the materials filed under seal. If any party intends to offer a protected
4 document or protected portion of a deposition into evidence at trial, that party shall
5 notify the party asserting confidentiality, and the party asserting confidentiality shall
6 so notify the Court and the Court will then consider what steps, if any, should be
7 taken to protect the confidential information. The party offering such evidence shall
8 have no responsibility to notify the Court as to the claim of confidentiality.

9 13. Each person examining any protected documents or information
10 pursuant to this Stipulation of Confidentiality Protection shall, in writing as outlined
11 in EXHIBIT A, first agree to submit himself or herself to the jurisdiction of this Court,
12 shall agree to be bound by this Order and shall agree to keep all information received
13 confidential as herein provided.


14 14. Nothing contained in this Stipulation of Confidentiality Protection shall
15 constitute a waiver of any party's right to assert that CONFIDENTIAL or
16 CONFIDENTIAL-ATTORNEY'S EYES ONLY information or material is entitled
17 to greater protection and/or limitation of access than afforded by this Stipulation of
18 Confidentiality Protection, including an assertion that certain such information or
19 materials should not be produced at all. In the event that counsel for any party asserts
20

1 that CONFIDENTIAL or CONFIDENTIAL-ATTORNEY'S EYES ONLY
2 information or material is entitled to such greater protection and/or limitation of
3 access, counsel shall confer with counsel for all other parties in an effort to resolve
4 the matter. If resolved by agreement, counsel shall submit a stipulated form of Order
5 to the Court reflecting any terms of agreement providing any such greater protection
6 or limitations of access than otherwise provided by this Stipulation of Confidentiality
7 Protection. In the absence of agreement, any party may move the Court for an Order
8 further protecting, limiting or denying access.

9 15. References to person in this Stipulated Protective Order of
10 Confidentiality shall be taken and construed to refer to natural persons, and to
11 corporations and other entities.

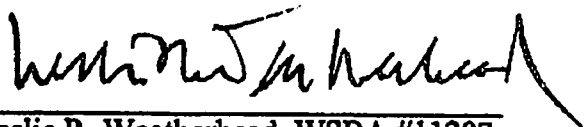
12 **IT IS HEREBY SO ORDERED.**

13 DATED THIS 22nd day of September, 2014.

14
15 
16 _____
17 Honorable Lonny R. Suko
18
19
20

1 Respectfully submitted this ____ day of September, 2014, by the parties
2 jointly.

3 LEE & HAYES, PLLC

4
5 By: 

6 Leslie R. Weatherhead, WSBA #11207
7 J. Christopher Lynch, WSBA #17462
8 Rhett V. Barney, WSBA #44764
9 Lee & Hayes, PLLC
10 601 W. Riverside Avenue, Suite 1400
11 Spokane, WA 99201
12 Phone: (509) 324-9256
13 Emails: lesliew@leehayes.com
14 chris@leehayes.com
15 rhettb@leehayes.com

16 Counsel for Plaintiffs OTR Wheel Engineering, Inc.,
17 Blackstone/OTR, LLC, and F. B. T. Enterprises, Inc.

18 LIVENGOOD ALSKOG, PLLC


19 By: 

20 Thomas K. Windus, WSBA #7779
 John J. White, Jr., WSBA #13682
 Kevin B. Hansen, WSBA #28349
 121 Third Avenue, P.O. Box 908
 Kirkland, WA 98083-0908
 Phone: 425-822-9281
 Fax: 425-828-0908
 Email: windus@livengoodlaw.com
 white@livengoodlaw.com
 hansen@livengoodlaw.com


 Counsel for Defendants West Worldwide Services, Inc.
 and Samuel J. West

1 Respectfully submitted this ____ day of _____, 2014, by the parties jointly.

2
3 Counsel for Plaintiffs OTR Wheel Engineering, Inc., Blackstone/OTR, LLC, and F.
B. T. Enterprises, Inc.

4 By: 
5 Leslie R. Weatherhead, WSBA #11207
6 J. Christopher Lynch, WSBA #17462
7 Rhett V. Barney, WSBA #44764
8 Lee & Hayes, PLLC
9 601 W. Riverside Avenue, Suite 1400
10 Spokane, WA 99201
11 Phone: (509) 324-9256
12 Emails: lesliew@leehayes.com
13 chris@leehayes.com
14 rhettb@leehayes.com

10 Counsel for Defendants West Worldwide Services, Inc. and Samuel J. West.

11
12 By: 
13 R. Sc
14 Christine Lebrón Dykeman
15 Alexandria M. Christian
16 MCKEE, VOORHEES & SEASE, P.L.C.
17 801 Grand Avenue, Ste. 3200
18 Des Moines, IA 50309
19 Ph: 515-288-3667
20 Fax: 515-288-1338
Email: scott.johnson@ipmvs.com
Email: christine.lebron-dykeman@ipmvs.com
Email: alex.christian@ipmvs.com

Thomas K. Windus, WSBA #7779
John J. White, Jr., WSBA #13682
Kevin B. Hansen, WSBA #28349
LIVENGOOD ALSKOG, PLLC