

1 THE FOLLOWING IS A FORM MODEL PROTECTIVE ORDER FOR SUGGESTED USE IN
2 CIVIL CASES. USE OF THIS MODEL IS VOLUNTARY AND THE MODEL MAY BE
3 REVISED PER THE CIRCUMSTANCES AND NEEDS OF A PARTICULAR CASE. ALL
4 PROTECTIVE ORDERS MUST EXPLICITLY PROVIDE FOR COMPLIANCE WITH
5 CALIFORNIA RULES OF COURT 2.550, 2.551 AND 8.46 TO THE EXTENT APPLICABLE,
6 AND MUST BE SUBMITTED FOR COURT APPROVAL, WHETHER OR NOT BASED ON
7 THIS MODEL.
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10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SONOMA

12
13 CASE No. _____

14 Plaintiff,

15 vs.

16 **STIPULATION AND PROTECTIVE**
17 **ORDER REGARDING CONFIDENTIAL**
18 **INFORMATION**

19 Defendant.
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1 In order to protect confidential information obtained by the parties in connection with this
2 case, [NAME PARTIES], by and through their respective undersigned counsel and subject to the
3 approval of the Court, hereby agree as follows:

4 **Part One: Use Of Confidential Materials In Discovery**

5 1. Any party or non-party may designate as “Confidential Information” (by stamping
6 the relevant page or as otherwise set forth herein) any document or response to discovery which
7 that party or non-party considers in good faith to contain information involving trade secrets, or
8 confidential business or financial information, including personal financial information about any
9 party to this lawsuit, putative class members or employee of any party to this lawsuit, information
10 regarding any individual’s banking relationship with any banking institution, including
11 information regarding the individual’s financial transactions or financial accounts, and any
12 information regarding any party not otherwise available to the public, subject to protection under
13 Rules 2.550, 2.551, 2.580, 2.585, and 8.46 of the California Rules of Court or under other
14 provisions of California law. Where a document or response consists of more than one page, the
15 first page and each page on which confidential information appears shall be so designated.

16 2. A party or non-party may designate information disclosed during a deposition or in
17 response to written discovery as “Confidential” by so indicating in said responses or on the record
18 at the deposition and requesting the preparation of a separate transcript of such material. In
19 addition, a party or non-party may designate in writing, within thirty (30) days after receipt of said
20 responses or of the deposition transcript for which the designation is proposed, that specific pages
21 of the transcript and/or specific responses be treated as “Confidential Information.” Any other
22 party may object to such proposal, in writing or on the record. Upon such objection, the parties
23 shall follow the procedures described in Paragraph 10 below. After any designation made
24 according to the procedure set forth in this paragraph, the designated documents or information
25 shall be treated according to the designation until the matter is resolved according to the
26 procedures described in Paragraph 10 below, and counsel for all parties shall be responsible for
27 marking all previously unmarked copies of the designated material in their possession or control
28 with the specified designation. A party that makes original documents or materials available for

1 inspection need not designate them as Confidential Information until after the inspecting party has
2 indicated which materials it would like copied and produced. During the inspection and before the
3 designation and copying, all of the material made available for inspection shall be considered
4 Confidential Information.

5 3. All Confidential Information produced or exchanged in the course of this case (not
6 including information that is publicly available) shall be used by the party or parties to whom the
7 information is produced solely for the purpose of this case. Confidential Information shall not be
8 used for any commercial competitive, personal, or other purpose.

9 4. Except with the prior written consent of the other parties, or upon prior order of this
10 Court obtained upon notice to opposing counsel, Confidential Information shall not be disclosed to
11 any person other than:

- 12 (a) counsel for the respective parties to this litigation, including in-house
13 counsel and co-counsel retained for this litigation;
- 14 (b) employees of such counsel;
- 15 (c) individual parties or officers or employees of a party, to the extent deemed
16 necessary by counsel for the prosecution or defense of this litigation, and
17 insurance carrier(s) providing representation for any party herein;
- 18 (d) consultants or expert witnesses retained for the prosecution or defense of
19 this litigation, provided that each such person shall execute a copy of the
20 Certification annexed to this Order (which shall be retained by counsel to
21 the party so disclosing the Confidential Information and made available for
22 inspection by opposing counsel during the pendency or after the termination
23 of the action only upon good cause shown and upon order of the Court)
24 before being shown or given any Confidential Information, and provided
25 that if the party chooses a consultant or expert employed by a party or one
26 of its competitors, the party shall notify the opposing party, or designating
27 non-party, before disclosing any Confidential Information to that individual
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1 and shall give the opposing party an opportunity to move for a protective
2 order preventing or limiting such disclosure;

3 (e) any authors or recipients of the Confidential Information;

4 (f) the Court, court personnel, and court reporters; and

5 (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall
6 sign the Certification before being shown a confidential document.

7 Confidential Information may be disclosed to a witness who will not sign
8 the Certification only in a deposition at which the party who designated the
9 Confidential Information is represented or has been given notice that
10 Confidential Information produced by the party may be used. At the
11 request of any party, the portion of the deposition transcript involving the
12 Confidential Information shall be designated “Confidential” pursuant to
13 Paragraph 2 above. Witnesses shown Confidential Information shall not be
14 allowed to retain copies.

15 5. Any persons receiving Confidential Information shall not reveal or discuss such
16 information to or with any person who is not entitled to receive such information, except as set
17 forth herein. If a party or any of its representatives, including counsel, inadvertently discloses any
18 Confidential Information to persons who are not authorized to use or possess such material, the
19 party shall provide immediate written notice of the disclosure to the party whose material was
20 inadvertently disclosed. If a party has actual knowledge that Confidential Information is being
21 used or possessed by a person not authorized to use or possess that material, regardless of how the
22 material was disclosed or obtained by such person, the party shall provide immediate written
23 notice of the unauthorized use or possession to the party whose material is being used or
24 possessed. No party shall have an affirmative obligation to inform itself regarding such possible
25 use or possession.

26 6. In connection with discovery proceedings as to which a party submits Confidential
27 Information, all documents and chamber copies containing Confidential Information which are
28 submitted to the Court shall be filed with the Court in sealed envelopes or other appropriate sealed

1 containers. On the outside of the envelopes, a copy of the first page of the document shall be
2 attached. If Confidential Information is included in the first page attached to the outside of the
3 envelopes, it may be deleted from the outside copy. The word “CONFIDENTIAL” shall be
4 stamped on the envelope and a statement substantially in the following form shall also be printed
5 on the envelope:

6 “This envelope is sealed pursuant to Order of the Court, contains
7 Confidential Information and is not to be opened or the contents
8 revealed, except by Order of the Court or agreement by the
9 parties.”

10 7. If another court or administrative agency subpoenas or orders production of
11 Confidential Information, such party shall promptly notify counsel for the party who produced the
12 material of the pendency of such subpoena or order and shall furnish counsel with a copy of said
13 subpoena or order.

14 8. A party may designate as “Confidential Information” documents or discovery
15 materials produced by a non-party by providing written notice to all parties of the relevant
16 document numbers or other identification within thirty (30) days after receiving such documents
17 or discovery materials. Any party or non-party may voluntarily disclose to others without
18 restriction any information designated by that party or non-party as Confidential Information,
19 although a document may lose its confidential status if it is made public. If a party produces
20 materials designated Confidential Information in compliance with this Order, that production shall
21 be deemed to have been made consistent with any confidentiality or privacy requirements
22 mandated by local, state or federal laws.

23 9. If a producing party through inadvertence produced or revealed any confidential
24 information without labeling or marking or otherwise designating it as such in accordance with the
25 provisions of this Order, the producing party may give written notice to the receiving party that the
26 document or thing produced is deemed confidential information and should be treated as such in
27 accordance with the provisions of this Order. The receiving party must treat such documents and
28 things with the noticed level of protection from the date such notice is received. Promptly upon

1 providing such notice to the receiving party, the producing party shall provide the receiving party
2 with another copy of the documents or things that bear the new designation under this Order, at
3 which time the receiving party shall return the originally-produced documents and things to the
4 producing party. The receiving party's disclosure, prior to the receipt of notice from the
5 producing party of a new designation, to persons not authorized to receive such information shall
6 not be deemed a violation of this Order. However, the receiving party shall make a good faith
7 effort to immediately retrieve such information from such persons not authorized to receive such
8 information and to obtain agreement from the person to whom the disclosure was made to be
9 bound by this Order. If such efforts are unsuccessful, the receiving party shall notify the
10 producing party of the disclosure and the identity of the person or entity to whom or to which the
11 disclosure was made.

12 10. A party shall not be obligated to challenge the propriety of the designation at the
13 time it is made, and a failure to do so shall not preclude a subsequent challenge thereto. If a party
14 contends that any material is not entitled to confidential treatment, such party may at any time give
15 written notice to the party or non-party who designated the material. The party or non-party who
16 designated the material shall have twenty (20) days from the receipt of such written notice to apply
17 to the Court for an order designating the material as confidential. The party or non-party seeking
18 the order has the burden of establishing that the document is entitled to protection.

19 11. Notwithstanding any challenge to the designation of material as Confidential
20 Information, all documents shall be treated as such and shall be subject to the provisions hereof
21 unless and until one of the following occurs:

- 22 (a) the party or non-party who claims that the material is Confidential
23 Information withdraws such designation in writing; or
24 (b) the party or non-party who claims that the material is Confidential
25 Information fails to apply to the Court for an order designating the material
26 confidential within the time period specified above after receipt of a written
27 challenge to such designation; or
28 (c) the Court rules the material is not Confidential Information.

1 12. All provisions of this Order restricting the communication or use of Confidential
2 Information shall continue to be binding after the conclusion of this action, unless otherwise
3 agreed or ordered. Upon conclusion of the litigation, a party in the possession of Confidential
4 Information, other than that which is contained in pleadings, correspondence, and deposition
5 transcripts, shall either (a) return such documents no later than thirty (30) days after conclusion of
6 this action to counsel for the party or non-party who provided such information, or (b) destroy
7 such documents within the time period upon consent of the party who provided the information
8 and certify in writing within thirty (30) days that the documents have been destroyed.

9 13. Nothing herein shall be deemed to waive any applicable privilege or work product
10 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
11 protected by privilege or work product protection. Any witness or other person, firm or entity
12 from which discovery is sought may be informed of and may obtain the protection of this Order by
13 written advice to the parties' respective counsel or by oral advice at the time of any deposition or
14 similar proceeding.

15 14. Any party who has not executed this stipulation and protective order as of the time
16 it is presented to the Court for signature may thereafter become a party to this Order by its
17 counsel's signing and dating a copy thereof and filing the same with the Court, and serving copies
18 of such signed and dated copy upon the other parties. Any party (or other person subject to the
19 terms of this Order) may as the Court, after appropriate notice to the other parties to the
20 proceeding, to modify or grant relief from any provisions of this Order. Nothing in this Order
21 shall be construed to preclude any party from asserting in good faith that certain Confidential
22 Information requires additional protection. To the extent permitted by law, the Court shall retain
23 jurisdiction to enforce, modify, or reconsider this Order, even after the proceeding is terminated.

24 **Part Two: Use of Confidential Materials in Court**

25 The following provisions govern the treatment of Confidential Information used at trial or
26 submitted as a basis for adjudication of matters other than discovery motions or proceedings.
27 These provisions are subject to Rules 2.550, 2.551, 2.580, 2.585, and 8.46 of the California Rules
28 of Court and must be construed in light of those Rules.

1 15. A party that files with the Court, or seeks to use at trial, materials designated as
2 Confidential Information, and who seeks to have the record containing such information sealed,
3 shall submit to the Court a motion or an application to seal, pursuant to California Rule of Court
4 2.551.

5 16. A party that files with the Court, or seeks to use at trial, materials designated as
6 Confidential Information by anyone other than itself, and who does not seek to have the record
7 containing such information sealed, shall comply with either of the following requirements:

8 (a) At least ten (10) business days prior to the filing or use of the Confidential
9 Information, the submitting party shall give notice to all other parties, and
10 to any non-party that designated the materials as Confidential Information
11 pursuant to this Order, of the submitting party's intention to file or use the
12 Confidential Information, including specific identification of the
13 Confidential Information. Any affected party or non-party may then file a
14 motion to seal, pursuant to California Rule of Court 2.551(b); or

15 (b) At the time of filing or desiring to use the Confidential Information, the
16 submitting party shall submit the materials pursuant to the lodging-
17 underseal provision of California Rule of Court 2.551(d). Any affected
18 party or non-party may then file a motion to seal, pursuant to the California
19 Rule of Court 2.551(b), within ten (10) business days after such lodging.
20 Documents lodged pursuant to California Rule of Court 2.551(d) shall bear
21 a legend stating that such materials shall be unsealed upon expiration of ten
22 (10) business days, absent the filing of a motion to seal pursuant to Rule
23 2.551(b) or Court order.

24 17. In connection with a request to have materials sealed pursuant to Paragraph 15 or
25 Paragraph 16, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1)
26 shall contain sufficient particularity with respect to the particular Confidential Information and the
27 basis for sealing to enable the Court to make the findings required by California Rule of Court
28 2.550(d).

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IT IS SO STIPULATED.

Dated: _____

By: _____

Dated: _____

By: _____

ORDER

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

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CERTIFICATION

I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on _____, 20____, in Sonoma County Superior Court Case No. _____ (“Order”). I have been given a copy of that Order and read it.

I agree to be bound by the Order. I will not reveal the Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information. I hereby consent to the jurisdiction of Sonoma County Superior Court for the purpose of enforcing the Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this ____ day of _____, 20____, at _____.

By: _____
Address: _____

Phone: _____