

faith: (1) to contain non-public information of a competitively or commercially sensitive, proprietary, financial, or trade secret nature, or to involve or implicate the privacy interests of persons who are not a party to this lawsuit; and (2) that disclosure of such information to the other Party may be unduly detrimental to the Disclosing Party's or third party's interests.

Such documents may be designated as Confidential Information, and so marked, by stamping each page of the document "Confidential" or "Attorneys' Eyes Only." If the document is more than 25 pages in length, stamping the front page "Confidential" or "Attorneys' Eyes Only" shall be sufficient to cover the entire document under this Protective Order. The parties shall act in good faith and on a reasonable basis when designating any material as being "Confidential" or "Attorneys' Eyes Only", including, but not limited to the following:

- (i) Personnel files of employees, applications for employment and other employee-related information;
- (ii) References;
- (iii) Payroll information;
- (iv) Home or personal addresses and phone numbers;
- (v) Dates of birth;
- (vi) Social Security numbers;
- (vii) Medical records and healthcare information;
- (viii) Information obtained from and regarding the parties' customers, clients, or representation firms;
- (ix) Information of a competitively or commercially sensitive proprietary or trade secret nature; and
- (x) The financial information of either party to the extent it is not subject to public disclosure.

(b) “Documents,” when used in this Order shall mean all written, recorded, electronic, or graphic matter whatsoever, including, but not limited to, materials produced pursuant to Sup. Ct. Civ. P. Rule 34, by subpoena or by agreement, deposition transcripts and exhibits, interrogatory answers, responses to requests for admission, and any portion of any court papers that quote from any of the foregoing.

(c) “Parties” shall mean Plaintiff, Defendant, and any third party who agrees to be bound by this Order. “Disclosing Parties” shall mean Plaintiff, Defendant, and any third parties who give testimony or produce Documents or other information covered by this Order, including those Parties’ officers, directors, employees, and agents.

2. In designating information as Confidential or Attorneys’ Eyes Only, a Disclosing Party shall make such a designation only as to materials that the party in good faith believes constitute Confidential Information under the definition herein. Confidential Information marked and disclosed by a Disclosing Party shall be used by the receiving party (the “Recipient”) solely for conducting this litigation, and not for any other purpose whatsoever.

3. Confidential Restrictions. In the absence of prior written permission from the Disclosing Party, or an order of the Court, information designated as Confidential Information shall be used by the Recipient solely for the purposes of litigation between the parties hereto, and may be disclosed only to the following persons:

- (a) The parties and their officers, directors, agents, employees, in-house counsel, and representatives who have need for such information or who provide clerical or other support for purposes of this litigation;
- (b) Counsel for the parties, including corporate in-house counsel, in this proceeding and other attorneys, paralegals, law clerks, or clerical staff working with those attorneys;
- (c) Independent investigators, experts and/or consultants, retained by any party, who have a need for such information to assist in this litigation;

- (d) Any witness and their counsel during deposition or trial for whom disclosure is necessary to the testimony of such witness;
- (e) The Court, jury, court personnel, court reporters and similar Court personnel;
- (f) Court reporters and videographers employed to record depositions in this action;
- (g) Insurers for Defendant, if any, who have a need to review the information in connection with this action; or
- (h) Any person identified from the four corners of the information, document or thing itself as having authored or previously received the information, document or thing; (2) any party to this action; and (3) any non-party witness at a deposition, hearing, or trial, if (A) it appears from the face of the document, or from other documents or testimony, to have been used by the witness; or (B) if the witness is employed by the producing party, and provided that said witness has executed a certification in accordance with Exhibit A below;
- (i) Any other person only with the prior written consent of the Disclosing Party.

4. Attorneys' Eyes Only Restrictions. Confidential Information designated as Attorneys' Eyes Only shall not be disclosed, except by the prior written consent of the Disclosing Party or pursuant to further order of this Court, to any person or entity other than:

- (a) The attorneys of record for any party in this action, including the employees and associates of the party's attorneys who are involved in this action.
- (b) Defendant's in-house counsel.
- (c) Officers of the Court and supporting personnel or officers of any appellate court to which an appeal may be taken or in which review is sought, including necessary stenographic and clerical personnel (e.g., deposition and court reporters).
- (d) Deposition, trial or potential witnesses in this action and their counsel, provided that the conditions of Section 5 are met.

- (e) Independent experts and consultants (and their employees and support staff) retained by the attorneys for any party for purposes of assisting in this action, provided that the conditions of Section 5 are met.
- (f) With the prior written permission of the Disclosing Party, the officers, directors, agents, or employees and representatives of the Recipient, on a document-by-document basis.
- (g) Outside litigation support vendors of the parties, including commercial photocopying vendors, scanning services vendors, coders, and keyboard operators.

Any person other than officers of the Court and attorneys of record for any party who is to be provided with Confidential Information designated Attorneys' Eyes Only or access thereto under the terms of this Order must first execute and return to counsel of record for the party from whom the person is receiving such Confidential Information or access thereto the Agreement appended hereto as Exhibit A.

5. Attorneys' Eyes Only Restrictions. For purposes of Section 4(d) and 4(e), the Recipient shall give the Disclosing Party three (3) business days' written notice prior to disclosure of Confidential Information designated Attorneys' Eyes Only by the Disclosing Party to any potential witness, expert or consultant, or the attorneys, staff, employees, representatives, or agents of the same. Written notice shall include the name, employment, and affiliations of the person or entity to which the Information is sought to be disclosed. This provision shall not apply to potential witnesses, experts, consultants or their attorneys, staff, representative or agents who are authors or recipients of the "Attorneys Eyes Only" Confidential Information or who received the material prior to or separate from the litigation.

If during the three (3) business day period the Disclosing Party objects to the disclosure, then no disclosure shall be made until the Recipient obtains from the Court an Order compelling

such disclosure. The parties shall confer in good faith to resolve any such disagreements prior to bringing any motion to compel disclosure.

6. The Recipient of any Confidential Information provided under this Order shall maintain such information in a secure and safe area and shall exercise the same standard of due and proper care with respect to the storage, custody, use, and/or dissemination of such information as is exercised by the Recipient with respect to its own confidential information. Confidential Information shall not be copied, reproduced, summarized, or abstracted, except to the extent that such copying, reproduction, summarization, or abstraction is reasonably necessary for the conduct of this lawsuit. All such copies, reproductions, summarizations, extractions, and abstractions shall be subject to the terms of the Order, and labeled in the same manner as the designated material on which they are based.

7. Deposition testimony that one of the parties reasonably believes will contain Confidential Information or Attorneys' Eyes Only shall only be taken in front of persons entitled to access to such information under paragraphs 3 and 4 of this Protective Order and may be designated as Confidential or Attorneys' Eyes Only by the Disclosing Party making an appropriate statement on the record, in which case the reporter shall stamp or write "Confidential" or "Contains Confidential Information" or "Attorneys' Eyes Only" on each and every page of the printed and electronic transcript and shall stamp or write "Contains Confidential Information" or "Attorneys' Eyes Only" on the cover of the relevant transcript.

8. Parties (and deponents) may, within fifteen days after receiving the transcript of a deposition taken after the entry of this Order, designate pages of the transcript (and exhibits thereto) as "Confidential" if the material so designated is entitled to be designated as "Confidential" under the terms of this Protective Order. Confidential Information within the

deposition transcript may be designated by underlining the transcript lines that contain Confidential Information and marking such pages with “Confidential” and serving copies of the marked pages on counsel for all other parties. If no party or deponent timely designates Confidential Information in a deposition, then none of the transcript or its exhibits will be treated as confidential; if a timely designation is made, the confidential portions and exhibits shall be filed under separate seal from the portions and exhibits not so marked.

9. If a party (or aggrieved entity permitted by the Court to intervene for such purpose) disagrees with the designation of any particular document or other material designated as either of the two classes of “Confidential Information,” the parties shall attempt in good faith to resolve the dispute by agreement. If they cannot, then the party who disagrees with the designation of either of the two (2) classes of “Confidential Information” may file a motion to have the designation modified or removed. The burden remains on the designating party to demonstrate that the material in question contains the designated class of Confidential Information, or Confidential Information of any type, as described in paragraph 1 of this Order. Until a motion is filed and resolved by the Court, all materials designated as containing “Confidential Information” of either class shall be treated as such in accordance with this Order.

If no motion challenging the designation is made, the designation shall continue in full force and effect.

10. A party filing or tendering into evidence as part of a motion, pleading or hearing in this action or in any other court proceeding, any information, document, transcript or paper containing Attorneys’ Eyes Only or Confidential Information shall file such document, transcript or paper under seal. If only a portion of any document, transcript, or paper filed with the Court

contains material designated “Confidential” or “Attorneys’ Eyes Only,” any sealing shall apply only to that portion.

If either party desires to introduce a “Confidential” or “Attorneys’ Eyes Only” document, or deposition excerpt, in open court (at trial or otherwise), the parties agree that (i) nothing in this Order shall prevent the presentation of relevant evidence to the Court or trier of fact, and (ii) the parties will cooperate to facilitate the introduction in evidence of such document(s) or portions as are relevant while preserving the confidentiality of other information contained in the document(s), by such means as redaction, an agreed statement of the facts contained therein, closing the courtroom for publication of the confidential matter, or other similar means. A party intending to introduce such evidence shall provide notice to the other parties at the pretrial conference, if possible, or if not, then sufficiently in advance of its introduction to enable the parties to confer and seek a ruling from the Court on the method of introduction.

11. Nothing in this Order shall preclude any of the parties or their attorneys (a) from showing a document designated as Confidential Information to an individual who either prepared the document prior to the filing of this action, or is identified on the face of the document as an addressee or copy addressee, or (b) from disclosing or using, in any manner or for any purpose, any information or documents from the party’s own files which the party itself has designated as Confidential Information, or (c) from disclosing or using any information or documents which were already in possession of such party prior to the commencement of this action.

12. The inadvertent or unintentional disclosure of the party producing Confidential Information or Attorneys’ Eyes Only information, regardless of whether the information was so designated at the time of disclosure, shall not be deemed to constitute in whole or in part a waiver of, or estoppel as to, the party’s right to claim in this action or thereafter that said

information is Confidential. If a claim of inadvertent production is made, pursuant to this paragraph, with respect to information then in the custody of another party, such party shall promptly return to the claiming party or person that material as to which the claim of inadvertent production has been made. The party returning such material may then move the Court for an order compelling production of the material, but said motion shall not assert as a ground for entering such an order the fact or circumstances of the inadvertent production.

13. The parties hereto agree that an injunction shall issue to prevent violations of this Protective Order. The agreement to injunctive relief does not preclude any party from also obtaining damages that reasonably flow from a breach of this Order.

14. Any information, document or thing mistakenly produced or disclosed without a "Confidential" "Attorney's Eyes only" designation may be subsequently designated by the producing party as "Confidential" at any time pursuant to the terms of this paragraph without waiving the confidential nature of the document or information. In each such case, the designating party shall provide to the other party notice, either orally followed by written notice within five (5) business days or by written notice, of that subsequent designation and a copy of the document or thing marked in accordance with this paragraph.

15. The parties shall take all reasonable precautions to prevent the disclosure of any Confidential Information or Attorneys' Eyes Only information received by them to any persons who are prohibited under this Protective Order from receiving Confidential Information or Attorneys' Eyes Only information; provided, however, that the Recipient shall not be in violation of this Order with respect to use or disclosure of such document(s) prior to notice of the Confidential or Attorneys' Eyes Only designation.

16. Within thirty (30) days of the termination of litigation between the parties, all Confidential Information, and all copies thereof shall be returned to the party who produced it upon such party's request and at his or her cost, with certification from counsel that all copies have been so returned. Counsel for each party shall be entitled to retain all pleadings, motion papers, legal memoranda, correspondence, and work product.

17. Except as specifically provided herein, the terms, conditions, and limitations of this Order shall survive the termination of this action.

18. This Order is without prejudice to the right of any party to seek relief from the Court, upon good cause shown, from any of the provisions contained in this Order.

19. This Order shall remain in force and effect until modified, superseded, or terminated on the record by writing of the parties hereto or by order of the Court.

20. This Order shall not be construed as waiving any right to assert a claim of privilege, relevance, over breadth, burdensomeness, or other grounds for not producing material called for, and access to such material shall be only as otherwise provided by the discovery rules and other applicable law. Nothing in this agreed Order shall be construed to be an admission against a party or constitute evidence of any fact or issue in this case.

21. Subpoena by Other Court or Agencies. If another court or an administrative agency subpoenas or orders production of Confidential Information which a party or other person has obtained under the terms of this Order, such party or person shall as soon as practicable notify the party or person who designated the document or information as Confidential Information of the pendency of such subpoena or order.

22. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on the examination of Confidential Information.

23. Modification Permitted. Nothing in this Order shall prevent any party or other person from seeking modification of this Order, contesting the designation of information or documents as Confidential, or from objecting to discovery that it believes to be otherwise improper.

24. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this Order, duplication of, access to, and distribution of copies of Confidential Information.



Judge

Signed on April 30, 2010

Agreed to this 29th day of March, 2010

By: _____/s/
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By: _____/s/ [with consent to file on counsel's behalf]
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