

1 The parties represent that this litigation does not present any public health or safety
2 concerns and this Order does not deviate from the Model Confidentiality Order published by the
3 Santa Clara County Task Force on Complex Litigation Procedures and Technology.

4 In order to protect the confidentiality of confidential information obtained by the parties
5 in connection with this case, the parties hereby agree as follows:

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

7 1. Any party or non-party may designate as “Confidential Information” (by stamping
8 the relevant page or as otherwise set forth herein) any document or response to discovery which
9 that party or non-party considers in good faith to contain information involving trade secrets, or
10 confidential business or financial information, subject to protection under Rules 12.5, 56, 243.1,
11 243.2, 243.3, and 243.4 of the California Rules of Court or under other provisions of California
12 law. Where a document or response consists of more than one page, the first page and each page
13 on which confidential information appears shall be so designated.

14 2. A party or non-party may designate information disclosed during a deposition or
15 in response to written discovery as “confidential” by so indicating in said responses or on the
16 record at the deposition and requesting the preparation of a separate transcript of such material.
17 In addition, a party or non-party may designate in writing, within twenty (20) days after receipt
18 of said responses or of the deposition transcript for which the designation is proposed, that
19 specific pages of the transcript and/or specific responses be treated as “Confidential
20 Information.” Any other party may object to such proposal, in writing or on the record. Upon
21 such objection, the parties shall follow the procedures described in paragraph 8 below. After any
22 designation made according to the procedure set forth in this paragraph, the designated
23 documents or information shall be treated according to the designation until the matter is
24 resolved according to the procedures described in paragraph 8 below, and counsel for all parties
25 shall be responsible for marking all previously unmarked copies of the designated material in
26 their possession or control with the specified designation.

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1 3. All Confidential Information produced or exchanged in the course of this case
2 (not including information that is publicly available) shall be used by the party or parties to
3 whom the information is produced solely for the purpose of this case.

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

7 (a) counsel for the respective parties to this litigation, including in-house
8 counsel and co-counsel retained for this litigation;

9 (b) employees of such counsel;

10 (c) individual parties or officers or employees of a party, to the extent deemed
11 necessary by counsel for the prosecution or defense of this litigation;

12 (d) consultants or expert witnesses retained for the prosecution or defense of
13 this litigation, provided that each such person shall execute a copy of the Certification annexed to
14 this Order (which shall be retained by counsel to the party so disclosing the Confidential
15 Information and made available for inspection by opposing counsel during the pendency or after
16 the termination of the action only upon good cause shown and upon order of the Court) before
17 being shown or given any Confidential Information, and provided that if the party chooses a
18 consultant or expert employed by the defendant or one of its competitors (as listed on Appendix
19 A), the party shall notify the opposing party, or designating non-party, before disclosing any
20 Confidential Information to that individual and shall give the opposing party an opportunity to
21 move for a protective order preventing or limiting such disclosure;

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

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

24 (g) witnesses (other than persons described in paragraph 4(e)). A witness
25 shall sign the Certification before being shown a confidential document. Confidential
26 Information may be disclosed to a witness who will not sign the Certification only in a
27 deposition at which the party who designated the Confidential Information is represented or has
28 been given notice that Confidential Information produced by the party may be used. At the

1 request of any party, the portion of the deposition transcript involving the Confidential
2 Information shall be designated “Confidential” pursuant to paragraph 2 above. Witnesses shown
3 Confidential Information shall not be allowed to retain copies.

4 5. Any persons receiving Confidential Information shall not reveal or discuss such
5 information to or with any person who is not entitled to receive such information, except as set
6 forth herein.

7 6. In connection with discovery proceedings as to which a party submits
8 Confidential Information, all documents and chamber copies containing Confidential
9 Information which are submitted to the Court shall be filed with the Court in sealed envelopes or
10 other appropriate sealed containers. On the outside of the envelopes, a copy of the first page of
11 the document shall be attached. If Confidential Information is included in the first page attached
12 to the outside of the envelopes, it may be deleted from the outside copy. The word
13 “CONFIDENTIAL” shall be stamped on the envelope and a statement substantially in the
14 following form shall also be printed on the envelope:

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

18 7. A party may designate as “Confidential Information” documents or discovery
19 materials produced by a non-party by providing written notice to all parties of the relevant
20 document numbers or other identification within thirty (30) days after receiving such documents
21 or discovery materials. Any party or non-party may voluntarily disclose to others without
22 restriction any information designated by that party or non-party as Confidential Information,
23 although a document may lose its confidential status if it is made public.

24 8. If a party contends that any material is not entitled to confidential treatment, such
25 party may at any time give written notice to the party or non-party who designated the material.
26 The party or non-party who designated the material shall have twenty-five (25) days from the
27 receipt of such written notice to apply to the Court for an order designating the material as
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1 confidential. The party or non-party seeking the order has the burden of establishing that the
2 document is entitled to protection.

3 9. Notwithstanding any challenge to the designation of material as Confidential
4 Information, all documents shall be treated as such and shall be subject to the provisions hereof
5 unless and until one of the following occurs:

6 (a) the party or non-party who claims that the material is Confidential
7 Information withdraws such designation in writing; or

8 (b) the party or non-party who claims that the material is Confidential
9 Information fails to apply to the Court for an order designating the material confidential within
10 the time period specified above after receipt of a written challenge to such designation; or

11 (c) the Court rules the material is not Confidential Information.

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

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

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

27 The following provisions govern the treatment of Confidential Information used at trial or
28 submitted as a basis for adjudication of matters other than discovery motions or proceedings.

1 These provisions are subject to Rules 12.5, 56, 243.1, 243.2, 243.3, and 243.4 of the California
2 Rules of Court and must be construed in light of those Rules.

3 12. A party that files with the Court, or seeks to use at trial, materials designated as
4 Confidential Information, and who seeks to have the record containing such information sealed,
5 shall submit to the Court a motion to seal, pursuant to California Rule of Court 243.2.

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

9 (a) At least ten (10) business days prior to the filing or use of the Confidential
10 Information, the submitting party shall give notice to all other parties, and to any non-party that
11 designated the materials as Confidential Information pursuant to this Order, of the submitting
12 party's intention to file or use the Confidential Information, including specific identification of
13 the Confidential Information. Any affected party or non-party may then file a motion to seal,
14 pursuant to California Rule of Court 243.2(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-under-seal provision of
17 California Rule of Court 243.2(d). Any affected party or non-party may then file a motion to
18 seal, pursuant to the California Rule of Court 243.2(b), within ten (10) business days after such
19 lodging. Documents lodged pursuant to California Rule of Court 243.2(d) shall bear a legend
20 stating that such materials shall be unsealed upon expiration of ten (10) business days, absent the
21 filing of a motion to seal pursuant to Rule 243.2(b) or Court order.

22 14. In connection with a request to have materials sealed pursuant to Section 12 or
23 Section 13, the moving party's declaration pursuant to California Rule of Court 243.2(b)(1) shall
24 contain sufficient particularity with respect to the particular Confidential Information and the
25 basis for sealing to enable the Court to make the findings required by California Rule of Court
26 243.1(d) without being required to review each item of Confidential Information.

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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 Proposed Confidentiality Agreement and Order dated [date], in [Case name and docket number]. 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 the California Superior Court, County of Santa Clara, for the purpose of enforcing the Confidentiality Order.

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

By: _____

Address: _____

Phone: _____