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| STATE OF NORTH CAROLINA  \_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY | IN THE GENERAL COURT OF JUSTICE  SUPERIOR COURT DIVISION  \_\_\_\_ CVS \_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  Plaintiff(s),  v.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  Defendant(s). | **ONE-TIERED PROTECTIVE ORDER**  **(October 3, 2019)** |
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THIS MATTER is before the Court upon the Consent Motion for Protective Order (the “Motion”) filed by the parties to this action on \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_. It appears to the Court that discovery and the trial of this action may involve the production and disclosure of confidential, proprietary, or sensitive information requiring protection against unrestricted disclosure or use.

THEREFORE, it is hereby ORDERED that, pursuant to Rule 26(c) of the North Carolina Rules of Civil Procedure, the following confidentiality provisions shall govern all information and documents disclosed in discovery or otherwise in this action:

1. Parties to the Protective Order. The parties to this Protective Order (the “Order”) are [LIST PARTIES] (each a “Party” and, collectively, the “Parties”). To the extent that any person other than: (a) Outside Counsel for the Parties (as defined in paragraph 7.(b)); or (b) those persons identified in paragraph 7.(a) and (e), seeks access to information designated as “CONFIDENTIAL” pursuant to this Protective Order, such person must first execute the Nondisclosure Agreement attached as Exhibit A hereto (“Nondisclosure Agreement”). The term “Signatory” shall refer to any person who has executed the Nondisclosure Agreement.
2. Certain information and documents to be produced by the parties and by non-parties may contain information claimed, by one or more of the parties to this action or the person or entity producing documents, to constitute trade secrets or otherwise contain proprietary, confidential research, development, or commercial information that should be considered confidential and protected from unreasonable disclosure pursuant to Rule 26(c) of the North Carolina Rules of Civil Procedure.
3. The information and documents to be considered as confidential and disclosed only in accordance with the terms of this Order shall include, without limitation, all documents or information, whether in hard copy or electronic form, designated in accordance with the terms of this Order and supplied in response to the demands or requests of either party, formally or informally, regardless of whether said information is produced or disclosed by a party, by any affiliated person or entity, or formerly affiliated person or entity, or by a non-party pursuant to subpoena, request, or other directive.
4. All information designated “CONFIDENTIAL” in accordance with the terms of this Order (as set forth below) and disclosed in this action shall be used by the parties receiving such information solely for purposes of prosecuting or defending this litigation and shall not be used for any other purpose.
5. Production by Non-Parties. Information produced by non-parties during the course of this action may be designated under this Order by such non-party or by a party as “CONFIDENTIAL” by following the procedures set forth herein. Information so designated and produced by non-parties shall thereafter be treated by the parties in the same manner as if produced with such designation by a party. A producing non-party shall have all the rights of a producing party with respect to protection of information under the terms of this Order. The provisions of this Order for challenging the designation by a party are applicable to challenges to designations by non-parties.
6. Discovery Material. “Discovery Material” shall mean and include any document (whether in hard copy or electronic form), object, deposition testimony, interrogatory answers, responses to requests for admissions and/or production, or other information provided in discovery in this action. Any party and any non-party producing Discovery Material may, in good faith, designate Discovery Material as “CONFIDENTIAL.” Discovery Material designated “CONFIDENTIAL” shall contain non-public proprietary information, whether personal or business-related; information protected from disclosure by contractual obligations with third parties; or information protected from disclosure by law.
7. All information designated “CONFIDENTIAL” shall be maintained in confidence by the parties to whom such information is produced or given, shall be used solely for the purposes of this litigation, and shall not be disclosed to any person except:
   1. The Court (including the judicial officer assigned to any motion or hearing regarding this matter, court reporters, non-court employed stenographic reporters and videographers utilized by the parties during discovery, and court personnel);
   2. The attorneys of record (who are not employees of a corporate party), their partners, employees, contractors, and associates of outside counsel (collectively hereafter referred to as “Outside Counsel”);
   3. The individual Plaintiff and Defendant and officers and employees of the corporate Defendant in this action; provided, that such officers or employees shall receive such “CONFIDENTIAL” information solely on a “need to know” basis for purposes of prosecuting or defending this litigation and for no other purposes;
   4. Consulting or testifying experts and their staff and litigation support personnel and their staff retained by Outside Counsel in this litigation; and
   5. Any mediator and/or arbitrator selected with the consent of all parties or by the Court;
   6. Any other person as to whom the designating party agrees in writing prior to such disclosure.
8. Designating Documents. A party desiring to designate documents as “CONFIDENTIAL” shall place or affix on such document a “CONFIDENTIAL” notice or the equivalent. Where practicable, such notice shall be placed near the Bates number of each page of a document. In the case of computer, audiovisual, or other electronic or magnetic media, such notice shall be placed on the media and their protective cover, if any. If, due to the nature of the information in question, and/or the manner in which it is produced, it is impossible or impractical to physically affix a designation on the information itself, the party designating such information as “CONFIDENTIAL” shall specifically identify in a contemporaneous companion written communication the documents or objects so designated.
9. All Discovery Materials designated as “CONFIDENTIAL” shall be maintained under the control of Outside Counsel, who shall be responsible for preventing any disclosure not in accordance with the terms of this Order.
10. Prior to disclosure of Discovery Materials designated as “CONFIDENTIAL” to any third parties described in paragraph 7. (c), (d), and (f) above, counsel for the party seeking disclosure shall require such persons to read this Order and execute a Nondisclosure Agreement in the form attached hereto as Exhibit A, a copy of which shall be promptly provided to all other counsel of record.
    1. Nothing in this paragraph 10 shall be deemed to enlarge or restrict the right of any party to conduct discovery of any expert.
    2. Nothing in this Order shall be construed as requiring that the identity of routine outside suppliers of litigation support services, such as photocopying, scanning, or coding, graphics preparation and presentation consultants, witness preparation consultants, jury consultants, or trial presentation consultants be disclosed to the opposing party or counsel. However, any party utilizing such services is required to have such proposed service provider conduct a conflict check and execute the Nondisclosure Agreement attached hereto as Exhibit A, which executed Nondisclosure Agreement must be retained by Outside Counsel utilizing the services of the service provider in question.
11. Procedure at Depositions. Testimony given at a deposition may be designated “CONFIDENTIAL” by indicating on the record at the deposition or hearing, based on a good-faith belief that the designation complies with the provisions of this Protective Order, that the information is “CONFIDENTIAL” and is subject to the provisions of this Order.
    1. In the event that any question is asked at a deposition with respect to which it is asserted, on the record, that the answer requires the disclosure of information designated as “CONFIDENTIAL,” the question shall nonetheless be answered by the witness fully and completely. However, before the witness answers, all persons present, other than the witness, who are not included within those persons identified in paragraph 7 shall leave the room. Further, for persons otherwise included within those persons identified in paragraph 7, but not already bound by this Protective Order, they shall either sign the Nondisclosure Agreement, in which event they may remain in the room, or otherwise shall leave the room during the time in which information designated as “CONFIDENTIAL” is disclosed or discussed. When any document or other material designated as “CONFIDENTIAL” is introduced as an exhibit, counsel introducing such exhibit shall advise the court reporter that the exhibit contains such information. No deposition exhibit marked as “CONFIDENTIAL” shall be provided to any person who is not otherwise bound by this Protective Order or who did not sign (and/or is not entitled under paragraph 7 of this Protective Order to sign) the Nondisclosure Agreement, provided, however, that any witness who, in the ordinary course, authored, received, or sent a deposition exhibit marked as “CONFIDENTIAL” may be provided, for purposes of examination, with a copy of that exhibit during a deposition whether or not he or she is bound by this Protective Order or signed the Nondisclosure Agreement. The fact that a Party, witness, or producing party has not objected to designation of all or any portion of the deposition transcript as “CONFIDENTIAL” during the deposition itself does not waive such Party’s, witness’s, or producing party’s right to object to any such designation and seek release of that transcript from the terms and provisions of this Protective Order pursuant to paragraph 20.
12. Procedure at Hearing. At a hearing a counsel seeking to elicit testimony or to question a witness about, or discuss, a document or transcript designated as “CONFIDENTIAL,” shall advise the Court in advance of such questioning about counsel’s intentions so that the Court may properly determine what measures to put in place to safeguard the confidential nature of the information to be discussed.
13. Designation of Deposition and Hearing Transcripts. All portions of the transcript of a deposition or hearing containing information designated as “CONFIDENTIAL” shall be appropriately marked by the court reporter and shall be treated by the parties as set forth herein. Testimony in a deposition may also be designated “CONFIDENTIAL” by notifying the deposing party in writing within twenty-one days of the receipt of the transcript of those pages and lines or those exhibits that are claimed to be “CONFIDENTIAL,” as the case may be. No deposition may be read by anyone other than the deponent, the Outside Counsel for the parties, and those qualified to see Discovery Materials designated as “CONFIDENTIAL” under paragraph 7 during the twenty-one day period following receipt of the transcript of a deposition unless otherwise agreed upon among the attorneys. Upon being informed that certain portions of a deposition disclose “CONFIDENTIAL” information, each party must cause each copy of the transcript in its custody or control to be marked immediately and treated in conformity with the designations communicated.
14. Filing with the Court. Any Party or non-party that seeks to file information designated as “CONFIDENTIAL” under seal must provisionally file the document under seal together with a motion for leave to file the document under seal (a “sealing motion”). The sealing motion must be filed on the day that the document is provisionally filed under seal. The sealing motion must contain information sufficient for the Court to determine whether sealing is warranted, including the following:
    * 1. A non-confidential description of the material sought to be sealed;
      2. The circumstances that warrant sealed filing;
      3. The reason(s) why no reasonable alternative to a sealed filing exists;
      4. If applicable, a statement that the filer is filing the material under seal because another Party or person has designated the material under the terms of a protective order in a manner that triggered an obligation to file the material under seal and that the filer has unsuccessfully sought the consent of the designating Party or person to file the materials without being sealed;
      5. If applicable, a statement that any designating party that is not a party to the action is being served with a copy of the motion for leave;
      6. A statement that specifies whether the filer is requesting that the document be accessible only to counsel of record rather than to the Parties; and
      7. A statement that specifies how long the filer seeks to have the material maintained under seal and how the material is to be handled upon unsealing.

If a motion for leave to file under seal is filed by a party who is not the designating party, then the designating party shall, within ten days, file a supplemental brief supporting the sealing of the document. In the absence of a brief, the Court may summarily deny the motion for leave to file under seal and may direct that the document be unsealed.

Until the Court rules on the sealing motion, any document provisionally filed under seal shall be treated in accordance with its designation as “CONFIDENTIAL” pursuant to this Protective Order.

Within five business days of the filing or provisional filing of a document under seal, the filer shall file a public version of the document. The public version may bear redactions or omit material, but the redactions or omissions should be as limited as practicable. In the rare circumstance that an entire document is filed under seal, in lieu of filing a public version of the document, the filer must file a notice that the entire document has been filed under seal with a non-confidential description of the document that has been filed under seal.

When filing any such document with the Clerk of Superior Court for \_\_\_\_\_\_\_\_ County, the filer is instructed to submit the document to the Clerk’s office in a sealed envelope or other sealed container labeled “CONTAINS CONFIDENTIAL INFORMATION – PROVISIONALLY SEALED PURSUANT TO COURT ORDER” and to which is affixed a coversheet with the caption of this action, a non-confidential description of the contents sought to be filed provisionally under seal, and reference to this paragraph 14. The Clerk’s office shall consider this paragraph 14 as providing authority and direction to the Clerk of Court to accept such document for filing under seal until a further order from this Court directs otherwise.

1. Inadvertent Disclosure of Confidential Information with Improper Designation by Designating Person. Delivery by a producing Party or person of documents containing confidential information without properly designating the documents as “CONFIDENTIAL” at the time of its production shall not necessarily constitute a waiver of protection of such information, provided that the disclosing person or its counsel promptly notifies all receiving persons upon realizing the failure to properly designate, specifically identifying the documents claimed to be “CONFIDENTIAL”. Any person who is notified that confidential information has been inadvertently produced without proper designation shall treat the information as if it had been appropriately designated as “CONFIDENTIAL” unless and until the Court determines upon proper request by an affected party or person that such designation is improper. Such receiving person shall make reasonable efforts to notify all other persons to whom it has provided the information that such material shall be treated and handled in accordance with this Protective Order and to recover all copies of such confidential information in the possession of a person not within the group of persons identified in paragraph 7 or persons so identified who have not signed a copy of the Nondisclosure Agreement as provided in paragraph 11. Disclosure by a receiving Party, prior to designation as “CONFIDENTIAL,” of information that has been produced without designation but is subsequently designated as “CONFIDENTIAL” shall not be a violation of this Protective Order.
2. Inadvertent Production of Privileged or Protected Information. Inadvertent disclosure or production of Discovery Materials that are subject to the attorney-client privilege, the work-product doctrine, the joint-defense or common-interest privilege, or any other privilege or immunity from discovery shall not constitute a waiver of, or an estoppel as to any claim of, such privilege, immunity, or protection. Any party who has received such Discovery Materials, upon learning that such Discovery Materials are subject to a claim of privilege, whether through its own review of such materials or upon request of the producing or another party, shall immediately destroy or return such Discovery Materials to the party who produced them no later than five days from either learning of the inadvertent production or receiving a written request by the producing or other party for the return of the inadvertently produced Discovery Materials, and the receiving party shall not retain or keep any copy, electronic copy, hard copy, or otherwise, of the Discovery Materials or notes regarding the Discovery Materials or their contents.
3. Notification of Subpoenas. In the event that any person, who has received or is in possession of, information designated as “CONFIDENTIAL” produced by another Party or a non-party, subsequently receives from anyone who is not bound by this Protective Order any subpoena or other compulsory request seeking the production or other disclosure of such information, that person (to the extent permitted by law to do so) shall immediately notify in writing all other parties including the person who designated the material as “CONFIDENTIAL,” specifying the material sought and enclosing a copy of the subpoena or other form of compulsory process in order to provide the designating person and other affected parties, to the extent possible, the opportunity to intervene and seek to prohibit the disclosure of the material or obtain protection of such information. Unless otherwise ordered by a court or other tribunal with appropriate jurisdiction, or as otherwise required by law, in no event shall any person produce or disclose “CONFIDENTIAL” information before notice is given to the person who designated such material as “CONFIDENTIAL.”
4. Violation by any person or entity of any term of this Order or of the Nondisclosure Agreement attached hereto as Exhibit A may be punishable as contempt of court in the Court’s discretion upon a proper showing. Any person or entity that produces “CONFIDENTIAL” information in response to a discovery request or subpoena in this action is intended to be a beneficiary of this Order and of the Nondisclosure Agreement attached hereto as Exhibit A and may pursue all remedies available for violation thereof. No provision of this Order shall be deemed to require any person or entity not a party to this action to respond to any discovery request or subpoena, except as may otherwise be required by law.
5. Disclosure of Confidential Information By Receiving Party. If a Party or other person receiving “CONFIDENTIAL” information learns that, by inadvertence or otherwise, it has disclosed such information under circumstances not authorized under this Protective Order, such receiving Party or person shall immediately: (i) notify in writing the person who designated the information as “CONFIDENTIAL” of the unauthorized disclosures; (ii) use its best efforts to retrieve all copies of the confidential information; and (iii) inform the person or persons to whom unauthorized disclosure was made of the terms of this Protective Order.
6. Nothing in this Order shall be taken as assent by a non-designating party that designated information is in fact “CONFIDENTIAL,” or is entitled to protection under Rule 26(c) of the North Carolina Rules of Civil Procedure, nor shall it prevent or prohibit any party or non-party from seeking such additional or further protection as it deems necessary to protect documents or information subject to discovery or otherwise provided in this action. If counsel for the non-designating party believes that a confidentiality designation is not appropriate or justified, counsel for the non-designating party may notify counsel for the designating party of its belief that the information should or should not be so designated or should or should not be disclosable to persons other than those allowed by this Order. A party shall not be obligated to challenge the propriety of a designation or non-designation at the time the designation is originally made, and the failure to do so shall not preclude a subsequent challenge thereto, subject to a claim by opposing parties of laches or undue delay. Such a challenge shall be in writing, shall be delivered by e-mail to counsel for the designating party, shall be provided contemporaneously to all other parties to this litigation, and shall particularly identify the documents or information that the non-designating party contends should be differently designated. The parties shall use their best efforts to resolve such disputes promptly and informally. If the parties do not reach agreement on the correct designation of the information within ten business days of service of a challenge (as extended by agreement of all affected parties), the non-designating party may file a motion setting forth the non-designating party’s reasons as to why the designation should be changed. Unless and until the Court issues a ruling that the information may be disclosed to persons other than those authorized by this Order, the contested designation or non-designation shall remain in place and treated consistently with the terms of this Order.
7. Nothing herein and no action taken under this Order shall constitute a waiver or admission that any specific document, material, testimony, object or item: (1) is relevant and subject to discovery; (2) is or is not a trade secret or confidential proprietary information; (3) constitutes or does not constitute confidential information; or (4) is or is not admissible in evidence at trial or at any hearing. The production of any documents or information that the producing party claims to be privileged shall be governed by the facts and applicable law.
8. Use at Hearing or Trial. The Parties and any other person who has designated documents as “CONFIDENTIAL” shall have the right to request that any hearing, trial, or portions of any hearing or trial involving the use or presentation of “CONFIDENTIAL” information be conducted *in camera*. The business of the Court, however, is presumptively open, and the person making any such request shall bear the burdens of proof and persuasion to overcome that presumption.
9. Conclusion of Litigation. At the conclusion of this litigation, any Party or person (other than those persons identified in paragraph 7.a., f., and g.) in possession of information designated as “CONFIDENTIAL” not produced or designated by that Party or person shall make commercially reasonable efforts to destroy all copies of any document, file, or other material that contains or reflects such confidential information within sixty calendar days of the disposition or final termination of this case (or if a post-hearing motion or appeal is filed, sixty calendar days after the disposition of those matters). Notwithstanding the foregoing, Outside Counsel for a Party may retain two archival copies of court filings (one in electronic form; one in hard copy form) and two copies of deposition and trial transcripts (including two copies of exhibits thereto) (one in electronic form; one in hard copy form), as well as any materials constituting attorney work product, containing confidential information produced by any other Party, which materials will remain subject to this Protective Order. At the conclusion of such sixty-day period, the party in receipt of information designated as “CONFIDENTIAL” shall notify the producing party of compliance with this paragraph. Nothing in this Paragraph shall permit Outside Counsel, the Parties, or anyone else associated with the case from requesting that the Clerk of Court remove anything from the official court file, unless required by law or Court order.
10. The restrictions set forth in any of the preceding paragraphs of this Order shall not apply to information that:
    1. Was, is, or becomes public knowledge or publicly accessible not in violation of this Order; or
    2. Was lawfully possessed by the non-designating party prior to the date of this Order.
11. Nothing in this Order shall preclude any party or non-party from applying to this Court for relief from any provision hereof, or from asserting that certain discovery materials should receive greater or lesser confidentiality protection than that provided herein, in accordance with Rule 26(c) of the North Carolina Rules of Civil Procedure or other applicable law.
12. Nothing in this Order shall prevent or restrict any person from using or disclosing in any manner its own “CONFIDENTIAL” information that it has produced or disclosed in this litigation.
13. Nothing in this Order shall prevent disclosure beyond the terms of this Order of any information designated as “CONFIDENTIAL” where the parties to this action (and, if applicable, a non-party producing and designating such information) consent, or if the Court, on motion filed by the party seeking to make such disclosure, orders that disclosure may be made in accordance with any applicable law.
14. Survival. This Order shall continue in full force and effect after the termination of this litigation, including all appeals, and the Court shall retain jurisdiction necessary to interpret and enforce the provisions of this Order. The entry of this Protective Order shall be without prejudice to the rights of any person to apply for additional or different protection where it is deemed appropriate. This Protective Order is subject to modification or termination by the Court upon a showing of good cause.
15. Notices. All notices required or permitted to be provided by this Protective Order shall be made by e-mail. In the event that notification by e-mail is impractical, a notice shall be made by either: (i) personal hand-delivery of the notice to counsel of record or an unrepresented affected person; or (ii) sending the notice by a courier for overnight delivery to counsel of record or an unrepresented affected person.

SO ORDERED, this the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

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**EXHIBIT A**

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| STATE OF NORTH CAROLINA  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY | IN THE GENERAL COURT OF JUSTICE  SUPERIOR COURT DIVISION  \_\_\_\_ CVS \_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  Plaintiff(s),  v.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  Defendant(s). | **NONDISCLOSURE AGREEMENT** |
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The undersigned, having read the Consent Protective Order (the “Protective Order”) entered in this action, understands the terms thereof, and intending to be legally bound thereby, agrees as follows:

1. All information and documents disclosed to the undersigned pursuant to the Protective Order shall be used only in connection with the above-captioned action (the “Litigation”) and shall not be used for any business or other purpose.

2. Such information and documents shall be disclosed to and discussed only with the parties’ outside counsel and other persons so authorized pursuant to the terms of the Protective Order, who have in accordance with the provisions of the Protective Order executed a similar Nondisclosure Agreement. Neither such documents or information nor information acquired or extracted from such documents or information will be divulged or made accessible to any other person, company, firm, news organization, or any other person or entity whatsoever, except in compliance with the Protective Order and this Nondisclosure Agreement. This Nondisclosure Agreement does not limit the right of the Signatory to testify at trial in this action or to prepare documents or other materials for submission at trial in this action.

3. The undersigned agrees to take all appropriate and necessary precautions to avoid loss or inadvertent disclosure of documents or information covered by the Protective Order.

4. The undersigned further agrees to return to the attorney from whom he or she received such documents and information, all information and documents in his or her possession or control (including all abstracts, summaries, descriptions, lists, synopses, pleadings, or other writings reflecting or revealing such information) and covered by the Protective Order, within thirty (30) days after the termination of this Litigation, including all appeals, or within thirty (30) days after the undersigned is no longer associated with this Litigation, whichever comes first.

5. The undersigned acknowledges that a violation of the terms of the Protective Order may subject the undersigned and/or his/her employer to sanctions, including, but not limited to, punishment for civil contempt.

Dated:

Signature

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Printed Name

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Address

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Employer(s)