1 Where the Parties wish to have a confidentiality stipulation and protective order the parties in all civil cases, other than products liability cases, are encouraged to use this Stipulated Confidentiality

2 Order Form as an initial working draft to save time.

3 Where this Stipulated Confidentiality Order Form is used, then any proposed stipulated confidentiality order submitted to the Court MUST be accompanied by a “redlined’ or “compare”

4 version of this Form, so that the Court may readily see ALL MODIFICATIONS that were made to this Form. This procedure is intended to save you and the Court time, and promote faster processing

5 of these proposed orders.

6 This model form confidentiality stipulation and protective order (the “Stipulated Confidentiality

Order Form”) does not address, and may not be used in, products liability cases.

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12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF LOS ANGELES

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Plaintiffs,

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vs.

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Defendants.

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Case No.

LOS ANGELES MODEL STIPULATION AND PROTECTIVE

ORDER – CONFIDENTIAL

DESIGNATION ONLY

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23 **IT IS HEREBY STIPULATED** by and between the Parties to Plaintiffs v. Defendants, (*list*

24 *names of Plaintiffs and Defendants*), by and through their respective counsel of record, that in order

25 to facilitate the exchange of information and documents which may be subject to confidentiality

26 limitations on disclosure due to federal laws, state laws, and privacy rights, the Parties stipulate as

27 follows:

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1 1. In this Stipulation and Protective Order, the words set forth below shall have the

2 following meanings:

3 a. “Proceeding” means the above-entitled proceeding (*specify case number*).

4 b. “Court” means the Hon. (*list name of judge*), or any other judge to which this

5 Proceeding may be assigned, including Court staff participating in such proceedings.

6 c. “Confidential” means any information which is in the possession of a

7 Designating Party who believes in good faith that such information is entitled to confidential

8 treatment under applicable law.

9 d. “Confidential Materials” means any Documents, Testimony or Information as

10 defined below designated as “Confidential” pursuant to the provisions of this Stipulation and

11 Protective Order.

12 e. “Designating Party” means the Party that designates Materials as

13 “Confidential.”

14 f. “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge, give, or

15 make available Materials, or any part thereof, or any information contained therein.

16 g. “Documents” means (i) any “Writing,” “Original,” and “Duplicate” as those

17 terms are defined by California Evidence Code Sections 250, 255, and 260, which have been

18 produced in discovery in this Proceeding by any person, and (ii) any copies, reproductions, or

19 summaries of all or any part of the foregoing.

20 h. “Information” means the content of Documents or Testimony.

21 i. “Testimony” means all depositions, declarations or other testimony taken or

22 used in this Proceeding.

23 2. The Designating Party shall have the right to designate as “Confidential” any

24 Documents, Testimony or Information that the Designating Party in good faith believes to contain

25 non-public information that is entitled to confidential treatment under applicable law.

26 3. The entry of this Stipulation and Protective Order does not alter, waive, modify, or

27 abridge any right, privilege or protection otherwise available to any Party with respect to the

28 discovery of matters, including but not limited to any Party’s right to assert the attorney-client

1 privilege, the attorney work product doctrine, or other privileges, or any Party’s right to contest any

2 such assertion.

3 4. Any Documents, Testimony or Information to be designated as “Confidential” must

4 be clearly so designated before the Document, Testimony or Information is Disclosed or produced.

5 The parties may agree that the case name and number are to be part of the “Confidential”

6 designation. The ”Confidential” designation should not obscure or interfere with the legibility of

7 the designated Information.

8 a. For Documents (apart from transcripts of depositions or other pretrial or trial

9 proceedings), the Designating Party must affix the legend “Confidential” on each page of any

10 Document containing such designated Confidential Material.

11 b. For Testimony given in depositions the Designating Party may either:

12 i. identify on the record, before the close of the deposition, all

13 “Confidential” Testimony, by specifying all portions of the Testimony that qualify as

14 “Confidential;” or

15 ii. designate the entirety of the Testimony at the deposition as

16 “Confidential” (before the deposition is concluded) with the right to identify more

17 specific portions of the Testimony as to which protection is sought within 30 days

18 following receipt of the deposition transcript. In circumstances where portions of the

19 deposition Testimony are designated for protection, the transcript pages containing

20 “Confidential” Information may be separately bound by the court reporter, who must

21 affix to the top of each page the legend “Confidential,” as instructed by the

22 Designating Party.

23 c. For Information produced in some form other than Documents, and for any

24 other tangible items, including, without limitation, compact discs or DVDs, the Designating Party

25 must affix in a prominent place on the exterior of the container or containers in which the

26 Information or item is stored the legend “Confidential.” If only portions of the Information or item

27 warrant protection, the Designating Party, to the extent practicable, shall identify the “Confidential”

28 portions.

1 5. The inadvertent production by any of the undersigned Parties or non-Parties to the

2 Proceedings of any Document, Testimony or Information during discovery in this Proceeding

3 without a “Confidential” designation, shall be without prejudice to any claim that such item is

4 “Confidential” and such Party shall not be held to have waived any rights by such inadvertent

5 production. In the event that any Document, Testimony or Information that is subject to a

6 “Confidential” designation is inadvertently produced without such designation, the Party that

7 inadvertently produced the document shall give written notice of such inadvertent production within

8 twenty (20) days of discovery of the inadvertent production, together with a further copy of the

9 subject Document, Testimony or Information designated as “Confidential” (the “Inadvertent

10 Production Notice”). Upon receipt of such Inadvertent Production Notice, the Party that received

11 the inadvertently produced Document, Testimony or Information shall promptly destroy the

12 inadvertently produced Document, Testimony or Information and all copies thereof, or, at the

13 expense of the producing Party, return such together with all copies of such Document, Testimony

14 or Information to counsel for the producing Party and shall retain only the “Confidential” designated

15 Materials. Should the receiving Party choose to destroy such inadvertently produced Document,

16 Testimony or Information, the receiving Party shall notify the producing Party in writing of such

17 destruction within ten (10) days of receipt of written notice of the inadvertent production. This

18 provision is not intended to apply to any inadvertent production of any Information protected by

19 attorney-client or work product privileges. In the event that this provision conflicts with any

20 applicable law regarding waiver of confidentiality through the inadvertent production of Documents,

21 Testimony or Information, such law shall govern.

22 6. In the event that counsel for a Party receiving Documents, Testimony or Information

23 in discovery designated as “Confidential” objects to such designation with respect to any or all of

24 such items, said counsel shall advise counsel for the Designating Party, in writing, of such

25 objections, the specific Documents, Testimony or Information to which each objection pertains, and

26 the specific reasons and support for such objections (the “Designation Objections”). Counsel for the

27 Designating Party shall have thirty (30) days from receipt of the written Designation Objections to

28 either (a) agree in writing to de-designate Documents, Testimony or Information pursuant to any or

1 all of the Designation Objections and/or (b) file a motion with the Court seeking to uphold any or all

2 designations on Documents, Testimony or Information addressed by the Designation Objections

3 (the “Designation Motion”). Pending a resolution of the Designation Motion by the Court, any and

4 all existing designations on the Documents, Testimony or Information at issue in such Motion shall

5 remain in place. The Designating Party shall have the burden on any Designation Motion of

6 establishing the applicability of its “Confidential” designation. In the event that the Designation

7 Objections are neither timely agreed to nor timely addressed in the Designation Motion, then such

8 Documents, Testimony or Information shall be de-designated in accordance with the Designation

9 Objection applicable to such material.

10 7. Access to and/or Disclosure of Confidential Materials designated as “Confidential”

11 shall be permitted only to the following persons:

12 a. the Court;

13 b. (1) Attorneys of record in the Proceedings and their affiliated attorneys,

14 paralegals, clerical and secretarial staff employed by such attorneys who are actively involved in the

15 Proceedings and are not employees of any Party. (2) In-house counsel to the undersigned Parties

16 and the paralegal, clerical and secretarial staff employed by such counsel. Provided, however, that

17 each non-lawyer given access to Confidential Materials shall be advised that such Materials are

18 being Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective Order

19 and that they may not be Disclosed other than pursuant to its terms;

20 c. those officers, directors, partners, members, employees and agents of all non-

21 designating Parties that counsel for such Parties deems necessary to aid counsel in the prosecution

22 and defense of this Proceeding; provided, however, that prior to the Disclosure of Confidential

23 Materials to any such officer, director, partner, member, employee or agent, counsel for the Party

24 making the Disclosure shall deliver a copy of this Stipulation and Protective Order to such person,

25 shall explain that such person is bound to follow the terms of such Order, and shall secure the

26 signature of such person on a statement in the form attached hereto as Exhibit A;

27 d. court reporters in this Proceeding (whether at depositions, hearings, or any

28 other proceeding);

1 e. any deposition, trial or hearing witness in the Proceeding who previously has

2 had access to the Confidential Materials, or who is currently or was previously an officer, director,

3 partner, member, employee or agent of an entity that has had access to the Confidential Materials;

4 f. any deposition or non-trial hearing witness in the Proceeding who previously

5 did not have access to the Confidential Materials; provided, however, that each such witness given

6 access to Confidential Materials shall be advised that such Materials are being Disclosed pursuant

7 to, and are subject to, the terms of this Stipulation and Protective Order and that they may not be

8 Disclosed other than pursuant to its terms;

9 g. mock jury participants, provided, however, that prior to the Disclosure of

10 Confidential Materials to any such mock jury participant, counsel for the Party making the

11 Disclosure shall deliver a copy of this Stipulation and Protective Order to such person, shall explain

12 that such person is bound to follow the terms of such Order, and shall secure the signature of such

13 person on a statement in the form attached hereto as Exhibit A.

14 h. outside experts or expert consultants consulted by the undersigned Parties or

15 their counsel in connection with the Proceeding, whether or not retained to testify at any oral

16 hearing; provided, however, that prior to the Disclosure of Confidential Materials to any such expert

17 or expert consultant, counsel for the Party making the Disclosure shall deliver a copy of this

18 Stipulation and Protective Order to such person, shall explain its terms to such person, and shall

19 secure the signature of such person on a statement in the form attached hereto as Exhibit A. It shall

20 be the obligation of counsel, upon learning of any breach or threatened breach of this Stipulation

21 and Protective Order by any such expert or expert consultant, to promptly notify counsel for the

22 Designating Party of such breach or threatened breach; and

23 i. any other person that the Designating Party agrees to in writing.

24 8. Confidential Materials shall be used by the persons receiving them only for the

25 purposes of preparing for, conducting, participating in the conduct of, and/or prosecuting and/or

26 defending the Proceeding, and not for any business or other purpose whatsoever.

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1 9. Any Party to the Proceeding (or other person subject to the terms of this Stipulation

2 and Protective Order) may ask the Court, after appropriate notice to the other Parties to the

3 Proceeding, to modify or grant relief from any provision of this Stipulation and Protective Order.

4 10. Entering into, agreeing to, and/or complying with the terms of this Stipulation and

5 Protective Order shall not:

6 a. operate as an admission by any person that any particular Document,

7 Testimony or Information marked “Confidential” contains or reflects trade secrets, proprietary,

8 confidential or competitively sensitive business, commercial, financial or personal information; or

9 b. prejudice in any way the right of any Party (or any other person subject to the

10 terms of this Stipulation and Protective Order):

11 i. to seek a determination by the Court of whether any particular

12 Confidential Material should be subject to protection as “Confidential” under the

13 terms of this Stipulation and Protective Order; or

14 ii. to seek relief from the Court on appropriate notice to all other Parties

15 to the Proceeding from any provision(s) of this Stipulation and Protective Order,

16 either generally or as to any particular Document, Material or Information.

17 11. Any Party to the Proceeding who has not executed this Stipulation and Protective

18 Order as of the time it is presented to the Court for signature may thereafter become a Party to this

19 Stipulation and Protective Order by its counsel’s signing and dating a copy thereof and filing the

20 same with the Court, and serving copies of such signed and dated copy upon the other Parties to this

21 Stipulation and Protective Order.

22 12. Any Information that may be produced by a non-Party witness in discovery in the

23 Proceeding pursuant to subpoena or otherwise may be designated by such non-Party as

24 “Confidential” under the terms of this Stipulation and Protective Order, and any such designation by

25 a non-Party shall have the same force and effect, and create the same duties and obligations, as if

26 made by one of the undersigned Parties hereto. Any such designation shall also function as a

27 consent by such producing Party to the authority of the Court in the Proceeding to resolve and

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1 conclusively determine any motion or other application made by any person or Party with respect to

2 such designation, or any other matter otherwise arising under this Stipulation and Protective Order.

3 13. If any person subject to this Stipulation and Protective Order who has custody of any

4 Confidential Materials receives a subpoena or other process (“Subpoena”) from any government or

5 other person or entity demanding production of Confidential Materials, the recipient of the

6 Subpoena shall promptly give notice of the same by electronic mail transmission, followed by either

7 express mail or overnight delivery to counsel of record for the Designating Party, and shall furnish

8 such counsel with a copy of the Subpoena. Upon receipt of this notice, the Designating Party may,

9 in its sole discretion and at its own cost, move to quash or limit the Subpoena, otherwise oppose

10 production of the Confidential Materials, and/or seek to obtain confidential treatment of such

11 Confidential Materials from the subpoenaing person or entity to the fullest extent available under

12 law. The recipient of the Subpoena may not produce any Documents, Testimony or Information

13 pursuant to the Subpoena prior to the date specified for production on the Subpoena.

14 14. Nothing in this Stipulation and Protective Order shall be construed to preclude either

15 Party from asserting in good faith that certain Confidential Materials require additional protection.

16 The Parties shall meet and confer to agree upon the terms of such additional protection.

17 15. If, after execution of this Stipulation and Protective Order, any Confidential

18 Materials submitted by a Designating Party under the terms of this Stipulation and Protective Order

19 is Disclosed by a non-Designating Party to any person other than in the manner authorized by this

20 Stipulation and Protective Order, the non-Designating Party responsible for the Disclosure shall

21 bring all pertinent facts relating to the Disclosure of such Confidential Materials to the immediate

22 attention of the Designating Party.

23 16. This Stipulation and Protective Order is entered into without prejudice to the right of

24 any Party to knowingly waive the applicability of this Stipulation and Protective Order to any

25 Confidential Materials designated by that Party. If the Designating Party uses Confidential

26 Materials in a non-Confidential manner, then the Designating Party shall advise that the designation

27 no longer applies.

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1 17. Where any Confidential Materials, or Information derived from Confidential

2 Materials, is included in any motion or other proceeding governed by California Rules of Court,

3 Rules 2.550 and 2.551, the party shall follow those rules. With respect to discovery motions or

4 other proceedings not governed by California Rules of Court, Rules 2.550 and 2.551, the following

5 shall apply: If Confidential Materials or Information derived from Confidential Materials are

6 submitted to or otherwise disclosed to the Court in connection with discovery motions and

7 proceedings, the same shall be separately filed under seal with the clerk of the Court in an envelope

8 marked: “CONFIDENTIAL – FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER

9 AND WITHOUT ANY FURTHER SEALING ORDER REQUIRED.”

10 18. The Parties shall meet and confer regarding the procedures for use of Confidential

11 Materials at trial and shall move the Court for entry of an appropriate order.

12 19. Nothing in this Stipulation and Protective Order shall affect the admissibility into

13 evidence of Confidential Materials, or abridge the rights of any person to seek judicial review or to

14 pursue other appropriate judicial action with respect to any ruling made by the Court concerning the

15 issue of the status of Protected Material.

16 20. This Stipulation and Protective Order shall continue to be binding after the

17 conclusion of this Proceeding and all subsequent proceedings arising from this Proceeding, except

18 that a Party may seek the written permission of the Designating Party or may move the Court for

19 relief from the provisions of this Stipulation and Protective Order. To the extent permitted by law,

20 the Court shall retain jurisdiction to enforce, modify, or reconsider this Stipulation and Protective

21 Order, even after the Proceeding is terminated.

22 21. Upon written request made within thirty (30) days after the settlement or other

23 termination of the Proceeding, the undersigned Parties shall have thirty (30) days to either (a)

24 promptly return to counsel for each Designating Party all Confidential Materials and all copies

25 thereof (except that counsel for each Party may maintain in its files, in continuing compliance with

26 the terms of this Stipulation and Protective Order, all work product, and one copy of each pleading

27 filed with the Court [and one copy of each deposition together with the exhibits marked at the

28 deposition)]\*, (b) agree with counsel for the Designating Party upon appropriate methods and

1 certification of destruction or other disposition of such Confidential Materials, or (c) as to any

2 Documents, Testimony or other Information not addressed by sub-paragraphs (a) and (b), file a

3 motion seeking a Court order regarding proper preservation of such Materials. To the extent

4 permitted by law the Court shall retain continuing jurisdiction to review and rule upon the motion

5 referred to in sub-paragraph (c) herein. \*[The bracketed portion of this provision shall be subject to

6 agreement between counsel for the Parties in each case.]

7 22. After this Stipulation and Protective Order has been signed by counsel for all Parties,

8 it shall be presented to the Court for entry. Counsel agree to be bound by the terms set forth herein

9 with regard to any Confidential Materials that have been produced before the Court signs this

10 Stipulation and Protective Order.

11 23. The Parties and all signatories to the Certification attached hereto as Exhibit A agree

12 to be bound by this Stipulation and Protective Order pending its approval and entry by the Court. In

13 the event that the Court modifies this Stipulation and Protective Order, or in the event that the Court

14 enters a different Protective Order, the Parties agree to be bound by this Stipulation and Protective

15 Order until such time as the Court may enter such a different Order. It is the Parties’ intent to be

16 bound by the terms of this Stipulation and Protective Order pending its entry so as to allow for

17 immediate production of Confidential Materials under the terms herein.

18 This Stipulation and Protective Order may be executed in counterparts.

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Dated:

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22 Dated:

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By: By:

Attorneys for Plaintiffs

Attorneys for Defendants

1 **ORDER**

2

3 Order.

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**GOOD CAUSE APPEARING**, the Court hereby approves this Stipulation and Protective

**IT IS SO ORDERED.**

6 Dated:

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THE HONORABLE

1 **EXHIBIT A**

2 **CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS**

3 I hereby acknowledge that I, [NAME],

4 [POSITION AND EMPLOYER], am

5 about to receive Confidential Materials supplied in connection with the Proceeding, **(INSERT**

6 **CASE NO.)**. I certify that I understand that the Confidential Materials are provided to me subject to

7 the terms and restrictions of the Stipulation and Protective Order filed in this Proceeding. I have

8 been given a copy of the Stipulation and Protective Order; I have read it, and I agree to be bound by

9 its terms.

10 I understand that Confidential Materials, as defined in the Stipulation and Protective Order,

11 including any notes or other records that may be made regarding any such materials, shall not be

12 Disclosed to anyone except as expressly permitted by the Stipulation and Protective Order. I will

13 not copy or use, except solely for the purposes of this Proceeding, any Confidential Materials

14 obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by the

15 Court in the Proceeding.

16 I further understand that I am to retain all copies of all Confidential Materials provided to me

17 in the Proceeding in a secure manner, and that all copies of such Materials are to remain in my

18 personal custody until termination of my participation in this Proceeding, whereupon the copies of

19 such Materials will be returned to counsel who provided me with such Materials.

20 I declare under penalty of perjury, under the laws of the State of California, that the

21 foregoing is true and correct. Executed this day of , 20 , at .

22 DATED:

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BY:

Signature Title Address

City, State, Zip

Telephone Number