

MATERIAL shall include the document, information, or material so designated, and the contents thereof.

2. Whenever any party or other person believes in good faith that material produced in this case contains CONFIDENTIAL MATERIAL but has not been designated as CONFIDENTIAL MATERIAL, that party or person may designate such material CONFIDENTIAL MATERIAL.

3. All CONFIDENTIAL MATERIAL shall be designated as such by marking the words "CONFIDENTIAL MATERIAL" on the face of the document in a conspicuous location, and on each page of any document that contains CONFIDENTIAL MATERIAL.

4. The designation of CONFIDENTIAL MATERIAL may be made at the time of copying of documents for production to the receiving party, and need not be made before the documents are made available for inspection. Any CONFIDENTIAL MATERIAL designation that is inadvertently omitted at the time of copying may be corrected by written notification to counsel for all receiving parties, and all receiving parties shall thereafter mark and treat all copies of the material as CONFIDENTIAL MATERIAL. Materials designated as CONFIDENTIAL MATERIAL after copying shall be fully subject to this Protective Order as if they had been initially so designated; provided, however, that the receiving party shall have no liability to the designating party for any acts or omissions occurring prior to the receipt of such written notification. Any filing previously submitted to the Court containing material newly designated CONFIDENTIAL MATERIAL shall be placed under seal as required by paragraph 10 of this Protective Order.

5. Except upon the prior written consent of the designating party, CONFIDENTIAL MATERIAL shall be used solely for purposes of this action and may be disclosed solely in accordance with the terms of this Protective Order, except that nothing shall prevent any person from making use of any information designated as CONFIDENTIAL MATERIAL if such information: (a) was or becomes available to the public through no fault of a receiving person; (b) was or is lawfully obtained from a source not subject to the Protective Order; or (c) is exempted from the operation of this Protective Order by the written consent of the designating party.

6. With the exception of court personnel and court reporters, access to CONFIDENTIAL MATERIAL shall be limited to "Authorized Persons." For purposes of this Protective Order, an Authorized Person includes: (a) outside counsel to the parties having responsibility for this action and their legal associates, paralegals, and other support staff; (b) two in-house counsel and one other employee of each corporate or organizational party, provided that such individuals are identified to all other parties in the litigation before any CONFIDENTIAL MATERIAL is disclosed to them; (c) consulting or testifying experts and their employees; and (d) any other person upon whom the producing party may agree.

7. CONFIDENTIAL MATERIAL shall not be disclosed to any Authorized Person under paragraph 5 above unless and until: (a) for purposes of paragraph 5(a) above, such person has been advised of the existence of this Protective Order and has been instructed that he or she is bound by its terms; or (b) for purposes of paragraphs 5(b) through (d) above, such person has been shown a copy of this Protective Order and has executed the acknowledgement form which is attached to this Protective Order as Exhibit

A. Each party's counsel of record shall be responsible for maintaining a file of executed acknowledgement forms signed by persons to whom the party has disclosed

CONFIDENTIAL MATERIAL.

8. CONFIDENTIAL MATERIAL may be shown to any employee or former employee of the designating party during a deposition of such employee, provided that the deponent is informed of the requirements of this Protective Order and, if required to do so under paragraph 6 above, signs a Non-Disclosure Agreement prior to being shown the CONFIDENTIAL MATERIAL. Absent written agreement of counsel to both parties, in the event that a deponent fails or refuses to execute a Non-Disclosure Agreement required under paragraph 6 above, no CONFIDENTIAL MATERIAL may be disclosed to the deponent until the party seeking to make the disclosure has secured from a court that has jurisdiction over the deponent an order directing the deponent to maintain the confidentiality of the information pursuant to the terms of this Protective Order.

9. Any deposition testimony containing or concerning CONFIDENTIAL MATERIAL or concerning the subject matter of such material shall also be considered CONFIDENTIAL MATERIAL and shall be protected from disclosure according to the terms of this Protective Order. All depositions and transcripts thereof shall, at the direction of any counsel, be treated as CONFIDENTIAL MATERIAL in their entirety for thirty (30) days after the counsel has received the transcript. Within thirty (30) days of receipt of the deposition transcript, counsel desiring to protect any testimony shall provide counsel for all other parties with a designation of the portions of the transcript that are to be treated as CONFIDENTIAL MATERIAL.

10. CONFIDENTIAL MATERIAL that is appended as an exhibit to, or is discussed or referred to in, any affidavits, briefs, memoranda, or other documents

submitted to the Court shall be filed under seal. The Clerk of Court shall maintain such information or documents under seal, and the information or documents shall be made available only to persons authorized by this Protective Order or by further order of the Court, entered after an appropriate motion has been made.

11. Nothing in this Protective Order shall prevent any party from using or disclosing in any manner it chooses material that it has itself designated as CONFIDENTIAL MATERIAL.

12. Each designating party shall make a good faith effort to designate as CONFIDENTIAL MATERIAL only those documents, information, or tangible items the public disclosure of which it reasonably believes would result in the disclosure of trade secrets, proprietary material, or other confidential business information. In the event that the receiving party disagrees with the designation by the designating party of any information as CONFIDENTIAL MATERIAL, the parties shall first try to resolve such dispute on an informal basis before presenting the dispute to the Court. No information designated as CONFIDENTIAL MATERIAL shall, however, be revealed, except in accordance with this Protective Order until such time as the designation has been withdrawn, either voluntarily by the party that supplied such information, or pursuant to an order of the Court.

13. In the event the receiving party is requested or required to disclose any CONFIDENTIAL MATERIAL, it shall notify the designating party in writing of such request or requirement as soon as possible, and in any event no fewer than five (5) business days before making such required disclosure, so that the designating party may seek an appropriate protective order or waive compliance with this Protective Order. In

the absence of such a protective order or upon the receipt of a waiver hereunder, only the CONFIDENTIAL MATERIAL required to be disclosed by law may be disclosed to the party compelling disclosure. Reasonable efforts shall be made to obtain from the party to whom disclosure is made written assurances of confidential treatment of the CONFIDENTIAL MATERIAL disclosed.

14. Nothing in this Protective Order shall operate as an admission that any particular document or item of information is, or is not, admissible in evidence at the trial of this action.

15. Within thirty (30) days after the final disposition of this case, including disposition of any and all appeals, the parties shall either destroy or return all CONFIDENTIAL MATERIAL to the producing party and all notes or summaries containing such CONFIDENTIAL MATERIAL and, further, each party shall certify to the other parties that such steps have been completed.

16. In the event that a party or other person inadvertently produces information that is protected by the attorney-client privilege, work product doctrine, or any other privilege, within a reasonable time after the producing party discovers the inadvertent disclosure the producing party may make a written request to the other parties to return the inadvertently produced privileged document. All parties who received the inadvertently produced material shall either return the material or destroy it immediately upon receipt of the request and no use shall be made of such information (including, without limitation, any documents containing or comprising such information) by the receiving parties, nor shall it be disclosed to anyone by the receiving parties. By returning or destroying the document, the receiving parties are not waiving their right to

later challenge the substantive privilege claim; except that they may not challenge the privilege claim by arguing that the inadvertent production waived the privilege.

17. The provisions of this Protective Order shall remain in full force and effect following the final disposition of this case unless waived by the written consent of the persons that designated material as CONFIDENTIAL MATERIAL under the terms of this Protective Order.

SO ORDERED:

Hon. Emmet G. Sullivan
U.S. District Court Judge

