

United States District Court  
Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: UBER TECHNOLOGIES, INC.,  
PASSENGER SEXUAL ASSAULT  
LITIGATION

MDL No. 3084 CRB

**PROTECTIVE ORDER**

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This Order Relates To:

ALL ACTIONS

Pursuant to Pretrial Order No. 4, the parties filed a Stipulated Protective Order and a letter brief outlining certain outstanding disputes on December 21, 2023. Dkt. No. 170. This Protective Order adopts those provisions on which the parties agreed and resolves the disputes identified in the parties' letter brief.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this Action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.5, below, that this Stipulated

1 Protective Order does not entitle them to file CONFIDENTIAL or HIGHLY  
2 CONFIDENTIAL ATTORNEYS’ EYES ONLY Information under seal; Civil Local Rule  
3 79-5 sets forth the procedures that must be followed and the standards that will be applied  
4 when a Party seeks permission from the court to file material under seal.

5 2. DEFINITIONS

6 2.1 Action: MDL No. 3084 and all related cases that have been or later are filed  
7 in, transferred to, or removed to MDL No. 3084.

8 2.2 Challenging Party: A Party or Non-Party that challenges the designation of  
9 information or items under this Order.

10 2.3 “CONFIDENTIAL” Information or Items: Any Discovery Material that the  
11 Producing Party believes in good faith contains financial or business plans or projections;  
12 proprietary business information, or other confidential research, design, development,  
13 financial, business or commercial information; information regarding or relating to a  
14 Party's insurance program; personnel information; personal information about any Party to  
15 this lawsuit or employees (current or former) or board members (current or former) of any  
16 Party to this lawsuit; the personal information and any identifying information of any Non-  
17 Party; non-public incident reports; executive committee selection; and any information  
18 regarding any Party or Non-Party not otherwise available to the public that is protected  
19 from disclosure by law, regulation, or contract.

20 2.4 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
21 (as well as their support staff).

22 2.5 Designating Party: A Party or Non-Party that designates information or items  
23 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
24 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES-ONLY.”

25 2.6 Disclosure or Discovery Material: All items or information, regardless of the  
26 medium or manner in which it is generated, stored, or maintained (including, among other  
27 things, Testimony, transcripts, and tangible things), that are produced or generated in  
28 disclosures or responses to discovery in this matter.

1           2.7    Expert: A person with specialized knowledge or experience in a matter  
2 pertinent to the litigation, along with his or her employees and support personnel, who has  
3 been retained by a Party or its Counsel to serve as an expert witness or as a consultant in  
4 this Action.

5           2.8    “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES-ONLY” Information  
6 or Items: Extremely sensitive “CONFIDENTIAL” Information or Items as defined in  
7 Section 2.3 that the Designating Party reasonably believes to be economically or  
8 competitively sensitive and warrants the extra layer of protection described below. By way  
9 of example, and not limitation, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES-  
10 ONLY” Information includes non-public information reflecting: transactional sales data;  
11 technical, sales, product and design research or analysis; research or analysis pertaining to  
12 drivers who use Uber’s platform; sales information related to specific customers or classes  
13 of customers; financial, marketing, or strategic business planning information; trade  
14 secrets; pricing information; information related to government or regulatory  
15 investigations; information relating to research, development, testing of, or plans for  
16 existing or proposed future products; information representing computer code and  
17 associated comments and revision histories, formulas, engineering specifications, or  
18 schematics that define or otherwise describe in detail the algorithms or structure of  
19 software or hardware designs; and communications that constitute, incorporate,  
20 summarize, or reference any “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES-  
21 ONLY” Information. In designating Discovery Material as Highly Confidential  
22 Information, the Producing or Designating Party shall do so in good faith consistent with  
23 the provisions of this Protective Order and rulings of the Court. Nothing herein shall be  
24 construed to allow for global designations of all documents as “HIGHLY  
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26           2.9    In-House Counsel: Attorneys who are employees of a party to this Action.  
27 In-House Counsel does not include Outside Counsel of Record or any other outside  
28 counsel.

1           2.10 Non-Party: Any natural person, partnership, corporation, association, or  
2 other legal entity not named as a Party to this Action.

3           2.11 Outside Counsel of Record: Attorneys who are not employees of a party to  
4 this Action but are retained to represent or advise a party to this Action and have appeared  
5 in this Action on behalf of that party or are affiliated with a law firm which has appeared  
6 on behalf of that party.

7           2.12 Party: Any party to this Action, including all of its officers, directors,  
8 employees, consultants, retained Experts, and Outside Counsel of Record (and their  
9 support staff).

10          2.13 Privileged Material: Disclosure or Discovery Material subject to a claim of  
11 attorney-client privilege, work-product protection, or any other legally recognized  
12 privilege or immunity from production.

13          2.14 Producing Party: A Party or Non-Party that produces Disclosure or  
14 Discovery Material in this Action.

15          2.15 Professional Vendors: Persons or entities that provide litigation support  
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
17 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
18 their employees and subcontractors.

19          2.16 Protected Material: Any Disclosure or Discovery Material that is designated  
20 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES-ONLY.”

21          2.17 Receiving Party: A Party that receives Disclosure or Discovery Material  
22 from a Producing Party.

23          2.18 Testimony: All depositions, declarations, or other testimony taken, provided  
24 or used in this Action.

25    3.    SCOPE

26           The protections conferred by this Stipulation and Order cover not only Protected  
27 Material (as defined above), but also (1) any information copied or extracted from  
28 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected

1 Material; and (3) any Testimony, conversations, or presentations by Parties or their  
2 Counsel that might reveal Protected Material. However, the protections conferred by this  
3 Stipulation and Order do not cover the following information: (a) any information that is in  
4 the public domain at the time of disclosure to a Receiving Party or becomes part of the  
5 public domain after its disclosure to a Receiving Party as a result of publication not  
6 involving a violation of this Order, including becoming part of the public record through  
7 trial or otherwise; and (b) any information known to the Receiving Party prior to the  
8 disclosure or obtained by the Receiving Party after the disclosure from a source who  
9 obtained the information lawfully and under no obligation of confidentiality to the  
10 Designating Party. Any use of Protected Material at trial shall be governed by a separate  
11 agreement or order. Nothing in this Protective Order shall modify or abrogate the rights or  
12 responsibilities of the Parties under HIPAA or any other existing data privacy statute.

13 This Stipulation and Protective Order is without prejudice to the right of any Party  
14 to object to disclosing or producing any information or item. Similarly, no Party waives  
15 any right to object on any ground to use in evidence any of the material covered by the  
16 Stipulation and Protective Order. This stipulation and Protective Order is without prejudice  
17 to the right of any Party to seek further or additional protection of any materials or to  
18 modify this Stipulation and Protective Order in any way, including, without limitation, an  
19 Order that certain materials not be produced at all. This stipulation and Protective Order  
20 does not alter, waiver, modify, or abridge any right, privilege or protection otherwise  
21 available to any Party with respect to the discovery of matters, including, but not limited  
22 to, any Party's right to assert the attorney-client privilege, the attorney work product  
23 doctrine, or other privileges, or any Party's right to contest any such assertion.

24 In the event that additional parties join or are joined in this Action, they shall not  
25 have access to the materials designated as "CONFIDENTIAL" or "HIGHLY  
26 CONFIDENTIAL – ATTORNEYS' EYES-ONLY" pursuant to this Stipulation and  
27 Protective Order unless and until the additional parties have executed and, at the request of  
28 any Party, filed with the Court, their agreement to be bound by this Stipulation and

1 Protective Order in the form of their signing the Acknowledgment and Agreement to Be  
2 Bound (Exhibit A).<sup>1</sup>

3 Nothing in this Stipulation and Protective Order shall be construed to preclude any  
4 Party from asserting in good faith that certain Protected Materials require additional  
5 protection, such as protection of one Party's sensitive personal information from being  
6 disclosed to other Parties. The Parties shall meet and confer to agree upon the terms of  
7 such additional protection. If the parties cannot reach an agreement after meeting and  
8 conferring, the Designating Party shall seek an order from the Court as to any additional  
9 protections it seeks within 14 days of the parties' meet and confer.

10 4. DURATION

11 Even after final disposition of this litigation, the confidentiality obligations imposed  
12 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or  
13 a court order otherwise directs. Final disposition shall be deemed to be the later of (1)  
14 dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final  
15 judgment herein after the completion and exhaustion of all appeals, re-hearings, remands,  
16 trials, or reviews of this Action, including the time limits for filing any motions or  
17 applications for extension of time pursuant to applicable law.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
20 Party or Non-Party that designates information or items for protection under this Order  
21 must take care to limit any such designation to material that qualifies under the appropriate  
22 standards. The Designating Party must designate for protection only those materials,  
23 documents, items, or oral or written communications that qualify—so that other materials,  
24 documents, items, or communications for which protection is not warranted are not swept  
25 unjustifiably within the ambit of this Order. If only a limited and clearly delineated part of  
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28 <sup>1</sup> If additional non-natural persons are later added as parties to this action and this  
Protective Order is insufficient to address a party's needs for protection, the party may  
seek a modification of this Protective Order at that time.

1 the materials, documents, items, or oral or written communications qualify for protection,  
2 The Designating Party shall, to the extent practicable, make all reasonable efforts to  
3 designate for protection only those parts that qualify.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
5 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,  
6 to unnecessarily encumber or retard the case development process or to impose  
7 unnecessary expenses and burdens on other parties) may expose the Designating Party to  
8 sanctions, just as disclosure of Protected Material in violation of this order would do. If it  
9 comes to a Designating Party's attention that information or items that it designated for  
10 protection do not qualify for protection, that Designating Party must promptly notify all  
11 other Parties that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
13 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
14 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
15 must be clearly so designated before the material is disclosed or produced. Designation in  
16 conformity with this Order requires:

17 (a) For information in documentary form (e.g., paper or electronic documents,  
18 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
19 Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
20 ATTORNEYS' EYES ONLY" to every page of each document that contains Protected  
21 Material, or, in the case of an electronic document that is produced in native form or is  
22 impracticable to produce in a form with the affixed legend, by placing the legend on a  
23 placeholder document bearing the document's production number. If only a clearly  
24 delineated portion or portions of the material on a page qualifies for protection, the  
25 Producing Party, to the extent practicable, also must clearly identify the protected  
26 portion(s) (e.g., by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents or materials available for  
28 inspection need not designate them for protection until after the inspecting Party has

1 indicated which material it would like copied and produced. During the inspection and  
2 before the designation, all of the material made available for inspection shall be deemed  
3 “HIGHLY CONFIDENTIAL –ATTORNEYS’ EYES-ONLY.” After the inspecting Party  
4 has identified the documents it wants copied and produced, the Producing Party must  
5 determine which documents qualify for protection under this Order. Then, before  
6 producing the specified documents, the Producing Party must affix the  
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES-ONLY”  
8 legend to every page of each document that contains Protected Material, or, in the case of  
9 an electronic document that is produced in native form or is impracticable to produce in a  
10 form with the affixed legend, by placing the legend on a placeholder document bearing the  
11 document’s production number. If only a clearly delineated portion or portions of the  
12 material on a page qualifies for protection, the Producing Party, to the extent practicable,  
13 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in  
14 the margins).

15 (b) For Testimony given in deposition or in other pretrial or trial proceedings,  
16 that the Designating Party designates within thirty (30) days after receipt of a final  
17 transcript, all protected Testimony and specify the level of protection being asserted by  
18 giving written notice to the court reporter and all Parties. A Designating Party may specify  
19 at the deposition, hearing, or other proceeding, or up to 30 days after receipt of the  
20 transcript, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Transcribed deposition Testimony or  
22 exhibits to depositions that reveal Protected Material must be marked as  
23 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES-ONLY” by  
24 the court reporter. All rough or final Testimony transcripts shall be treated as “HIGHLY  
25 CONFIDENTIAL – ATTORNEYS’ EYES-ONLY” until thirty (30) days after receipt of  
26 the final transcript. After that period ends, only Testimony that has been properly  
27 designated for protection consistent with the provisions of this Section 5.2(b) shall be  
28 covered by the provisions of this Order. Should a pending motion or procedural  
requirement necessitate an earlier date, the parties shall meet and confer as to a reasonable



1 date for provision of the confidentiality designation notice.

2 Transcripts containing Protected Material shall have an obvious legend on the title  
3 page that the transcript contains Protected Material, and the title page shall be followed by  
4 a list of all pages (including line numbers as appropriate) that have been designated as  
5 Protected Material and the level of protection being asserted by the Designating Party. For  
6 paper copies of transcribed deposition Testimony, pages of transcribed deposition  
7 Testimony or exhibits to depositions that reveal Protected Material must be separately  
8 bound by the court reporter and may not be disclosed to anyone except as permitted under  
9 this Order. The Designating Party shall inform the court reporter of these requirements.  
10 Any failure of or refusal by the court reporter to comply with these procedures will not  
11 invalidate the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
12 EYES-ONLY” designation.

13 (c) For information produced in some form other than documentary and for any  
14 other tangible items, that the Producing Party affix in a prominent place on the exterior of  
15 the container or containers in which the information or item is stored the legend  
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES-ONLY.” If  
17 only a portion or portions of the information or item warrant protection, the Producing  
18 Party, to the extent practicable, shall identify the protected portion(s). When possible, in  
19 order to minimize the likelihood of inadvertent disclosure of information protected by this  
20 Order transmitted by electronic means, the Producing Party shall make a good faith effort  
21 to place the appropriate confidentiality designation in the subject of the electronic mail  
22 conveying the Protected Material and on the title of the digital document or media through  
23 which it is conveyed, or otherwise notify the Receiving Party of the fact that Protected  
24 Material is being conveyed. A failure to place the appropriate confidentiality designation  
25 in the subject of the electronic mail conveying the information and on the title of the digital  
26 document or media through which it is conveyed, or to otherwise notify the Receiving  
27 Party of the fact that information protected by this Order is being conveyed, does not,  
28 standing alone, waive the Designating Party’s right to secure protection under this Order  
for such material. However, a Designating Party cannot seek sanctions against the

1 Receiving Party if the Receiving Party fails to treat the produced information as  
2 “CONFIDENTIAL” until such time as the Designating Party corrects any error or  
3 omission as the confidential nature of said information or electronic mail in writing to the  
4 Receiving Party, unless the Receiving Party is otherwise on notice that the information is  
5 “CONFIDENTIAL” through, for example, a confidentiality stamp on the document.

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
7 to designate qualified information or items does not, standing alone, waive the Designating  
8 Party’s right to secure protection under this Order for such material. If any Producing Party  
9 inadvertently produces or disclosed Protected Material without marking it with an  
10 appropriate designation, the Producing Party or a Designating Party shall promptly notify  
11 the Receiving Party that the Protected Material should be treated in accordance with the  
12 terms of the Stipulated Protective Order, and shall forward appropriately stamped copies of  
13 the items in question. Within five (5) days of the receipt of the appropriately stamped  
14 copies of the items in question, the Receiving Party shall return or destroy the previously  
15 unmarked versions of the items and all copies thereof, and, additionally, must make all  
16 other reasonable efforts to assure that the material is treated in accordance with the  
17 provisions of this Order. The inadvertent disclosure shall not be deemed a waiver of  
18 confidentiality.

19 If any information was disclosed by a non-Designating Party to any person other  
20 than in the manner authorized by this Stipulation and Protective Order prior to notice of  
21 the inadvertent failure to designate, the non-Designating Party responsible for the  
22 disclosure shall bring all pertinent facts relating to such disclosure of such Protected  
23 Materials, to the extent such facts are known or reasonably knowable to the non-  
24 Designating Party, to the immediate attention of the Designating Party.

## 24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
26 of confidentiality at any time. Unless a prompt challenge to a Designating Party’s  
27 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
28 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party

1 does not waive its right to challenge a confidentiality designation by electing not to mount  
2 a challenge promptly after the original designation is disclosed.

3         6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
4 process by providing written notice of each designation it is challenging and describing the  
5 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
6 written notice must recite that the challenge to confidentiality is being made in accordance  
7 with this specific paragraph of the Protective Order. The parties shall attempt to resolve  
8 each challenge in good faith and must begin the process by conferring directly within 14  
9 days of the date of service of notice. In conferring, the Challenging Party must explain the  
10 basis for its belief that the confidentiality designation was not proper and must give the  
11 Designating Party an opportunity to review the designated material, to reconsider the  
12 circumstances, and, if no change in designation is offered, to explain the basis for the  
13 chosen designation. A Challenging Party may proceed to the next stage of the challenge  
14 process only if it has engaged in this meet and confer process first or establishes that the  
15 Designating Party is unwilling to participate in the meet and confer process in a timely  
16 manner.

17         6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
18 intervention, the Parties may agree to seek informal conference with the Court. If the  
19 Parties still cannot resolve the challenge or do not have such a conference, the Designating  
20 Party must file and serve a motion to retain or challenge confidentiality within 14 days of  
21 conferring on the challenged designation or an informal conference with the court,  
22 whichever is later. Each such motion must be accompanied by a competent declaration  
23 affirming that the movant has complied with the meet and confer requirements imposed in  
24 the preceding paragraph. Unless prompt intervention to resolve a dispute over a  
25 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
26 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party  
27 does not waive its right to challenge a confidentiality designation by electing not to seek an  
28 informal conference with the Court promptly after the Parties have completed the  
procedure set forth above. The procedures set out in this provision shall be procedural

1 only, and shall not affect the burden on challenging or maintaining a designation as  
2 established under applicable law.

3 6.4 Frivolous challenges. Frivolous challenges, and those made for an improper  
4 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties),  
5 may expose the Challenging Party to sanctions. Unless the Designating Party has waived  
6 the confidentiality designation by failing to file a motion to retain confidentiality as  
7 described above, all parties shall continue to afford the material in question the level of  
8 protection to which it is entitled under the Producing Party’s designation until the court  
9 rules on the challenge.

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
12 disclosed or produced by another Party or by a Non-Party in connection with this case only  
13 for prosecuting, defending, or attempting to settle this Action or the consolidated action  
14 captioned In re Uber Rideshare Cases, Case No. CJC-21-005188, so long as such use is  
15 permitted herein. Such Protected Material may be disclosed only to the categories of  
16 persons and under the conditions described in this Order. When the litigation has been  
17 terminated, a Receiving Party must comply with the provisions of section 13 below  
(FINAL DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a location  
19 and in a secure manner that ensures that access is limited to the persons authorized under  
20 this Order.

21 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
22 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
23 may disclose any information or item designated “CONFIDENTIAL” only to:

24 (a) The Receiving Party’s Outside Counsel of Record in this Action, as well as  
25 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
26 disclose the information for this litigation;

27 (b) The officers, directors, and employees, including current and former  
28 employees, as well as In-House Counsel, of the Receiving Party to whom disclosure is

1 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
2 Agreement to Be Bound” (Exhibit A);

3 (c) Experts (as defined in this Order) or insurers of the Receiving Party to whom  
4 disclosure is reasonably necessary for this litigation and who have signed the  
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) The court and its personnel, and any appellate court in this litigation;

7 (e) Court reporters, stenographers, or videographers and their staff and  
8 Professional Vendors to whom disclosure is reasonably necessary for this litigation.

9 (f) Professional jury or trial consultants, mock jurors, and Professional Vendors  
10 to whom disclosure is reasonably necessary for this litigation and who have signed the  
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (g) During their depositions, potential or actual witnesses in the Action to whom  
13 disclosure is reasonably necessary and who have signed the “Acknowledgment and  
14 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or  
15 ordered by the court. If a potential or actual witness refuses to sign Exhibit A, the witness  
16 shall be permitted to see Protected Material, but will not be permitted to retain such  
17 material. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
18 Protected Material must be separately bound by the court reporter and may not be  
19 disclosed to anyone except as permitted under this Order.

20 (h) The author or recipient of a document containing the information or a  
21 custodian or other person who otherwise possessed or knew the information, or any current  
22 employee of the Designating Party.

23 (i) Special masters or discovery referees appointed by the Court.

24 (j) Mediators or settlement officers, and their supporting personnel, mutually  
25 agreed upon by the Parties engaged in settlement discussion.

26 (k) Any other person as to whom the Designating Party has consented to  
27 disclosure in advance.

28 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES-  
ONLY” Information or Items. Unless otherwise ordered by the court or permitted in

1 writing by the Designating Party, a Receiving Party may disclose any information or item  
2 designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES-ONLY” to:

3 (a) The Receiving Party’s Outside Counsel of Record in this Action, as well as  
4 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
5 disclose the information for this litigation.

6 (b) Designated In-House Counsel of the Receiving Party who has signed the  
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (c) Experts of the Receiving Party who have signed the “Acknowledgment and  
9 Agreement to Be Bound” (Exhibit A);

10 (d) The Court and its personnel, and any appellate court in this litigation.

11 (e) Court reporters and their staff, professional jury or trial consultants, mock  
12 jurors, and Professional Vendors to whom disclosure to whom disclosure is reasonably  
13 necessary for this litigation and who have signed the “Acknowledgment and Agreement to  
14 be Bound.” (Exhibit A);

15 (f) The author or recipient of a document containing the information or a  
16 custodian or other person who otherwise possessed or knew the information; and

17 (g) Special masters, mediators, or other third parties retained by the parties for  
18 settlement purposes or resolution of discovery disputes or mediation;

19 (h) During their depositions, potential or actual witnesses in the Action to whom  
20 disclosure is reasonably necessary and who have signed the “Acknowledgment and  
21 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or  
22 ordered by the Court. If a potential or actual witness refuses to sign Exhibit A, the witness  
23 shall be permitted to see Protected Material, but will not be permitted to retain such  
24 material. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
25 Protected Material must be separately bound by the court reporter and may not be  
disclosed to anyone except as permitted under this Order.

26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
27 OTHER LITIGATION

28 If a Party is served with a subpoena or a court order issued in other litigation that

1 compels disclosure of any information or items designated in this Action as  
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES-ONLY,”  
3 that Party must:

4 (a) Promptly notify in writing the Designating Party. Such notification shall  
5 include a copy of the subpoena or court order;

6 (b) Promptly notify in writing the party who caused the subpoena or order to  
7 issue in the other litigation that some or all of the material covered by the subpoena or  
8 order is subject to this Protective Order. Such notification shall include a copy of this  
9 Stipulated Protective Order; and

10 (c) Cooperate with respect to all reasonable procedures sought to be pursued by  
11 the Designating Party whose Protected Material may be affected.

12 If the Designating Party timely seeks a protective order, the Party served with the  
13 subpoena or court order shall not produce any information designated in this Action as  
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES-ONLY”  
15 before a determination by the court from which the subpoena or order issued, unless the  
16 Party has obtained the Designating Party’s permission. The Designating Party shall bear  
17 the burden and expense of seeking protection in that court of its Protected Material– and  
18 nothing in these provisions should be construed as authorizing or encouraging a Receiving  
19 Party in this Action to disobey a lawful directive from another court.

20 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN  
21 THIS LITIGATION

22 (a) The terms of this Order are applicable to information produced by a Non-  
23 Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY  
24 CONFIDENTIAL – ATTORNEYS’ EYES-ONLY.” Such information produced by Non-  
25 Parties in connection with this litigation is protected by the remedies and relief provided by  
26 this Order. Nothing in these provisions should be construed as prohibiting a Non-Party  
27 from seeking additional protections.

28 (b) In the event that a Party is required, by a valid discovery request, to produce  
a Non-Party’s Protected Material in its possession, and the Party is subject to an agreement

1 with the Non-Party not to produce the Non-Party’s Protected Material, then the Party shall:

2 (1) Promptly notify in writing the Requesting Party and the Non-Party that some  
3 or all of the information requested is subject to a confidentiality agreement with a Non-  
4 Party;

5 (2) Promptly provide the Non-Party with a copy of the Stipulated Protective  
6 Order in this litigation, the relevant discovery request(s), and a reasonably specific  
7 description of the information requested; and

8 (3) Make the information requested available for inspection by the Non-Party.

9 (c) If the Non-Party fails to object or seek a protective order from this court  
10 within 14 days of receiving the notice and accompanying information, the Receiving Party  
11 may produce the Non-Party’s Protected Material responsive to the discovery request. If the  
12 Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
13 information in its possession or control that is subject to the confidentiality agreement with  
14 the Non-Party before a determination by the court. Absent a court order to the contrary, the  
15 Non-Party shall bear the burden and expense of seeking protection in this court of its  
16 Protected Material.

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
19 Protected Material to any person or in any circumstance not authorized under this  
20 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the  
21 Designating Party of the unauthorized disclosures, (b) use reasonable efforts to retrieve all  
22 unauthorized copies of the Protected Material, (c) inform the person or persons to whom  
23 unauthorized disclosures were made of all the terms of this Order, and (d) request such  
24 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is  
25 attached hereto as Exhibit A.

26 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
27 PROTECTED MATERIAL

28 11.1. Pursuant to Federal Rule of Evidence 502(d), if a Producing Party  
inadvertently discloses information (including both paper documents and electronically



1 stored information) subject to protection by the attorney-client privilege, the work-product,  
2 joint defense or other similar doctrine, or by another legal privilege protecting information  
3 from discovery, such disclosure shall not constitute a waiver or forfeiture of any privilege  
4 or other protection in this or any other action, provided that the Producing Party notifies  
5 the Receiving Party of the inadvertent production, in writing, within a reasonable amount  
6 of time of the discovery of the inadvertent production; however, if the discovery is made  
7 after the final Pretrial Conference is held, the Producing Party may seek protection for the  
8 privileges and doctrines contained in the paragraph for produced information only by  
9 further order of the Court.

10 11.2 When a Producing Party gives notice to Receiving Parties that certain  
11 inadvertently produced material is subject to a claim of privilege or other protection, the  
12 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure  
13 26(b)(5)(B).

14 11.3 This stipulated Order set forth in this section and its subparts does not  
15 constitute a concession by any Party that any documents are subject to protection by the  
16 attorney-client privilege, the work-product, joint defense or other similar doctrine, or by  
17 another legal privilege. This agreement also is not intended to waive or limit in any way  
18 any Party's right to contest any privilege claims that may be asserted with respect to any of  
19 the documents produced except to the extent stated in the agreement.

20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
22 person to seek its modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
24 Protective Order, no Party waives any right it otherwise would have to object to disclosing  
25 or producing any information or item on any ground not addressed in this Stipulated  
26 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
27 evidence of any of the material covered by this Protective Order.

28 12.3 Right to Additional Protection. Nothing in this Order shall be construed to  
preclude either Party from asserting in good faith that certain Protected Material requires

1 additional protection. The Parties shall meet and confer to agree upon the terms of such  
2 additional protection. If the parties cannot reach an agreement after meeting and  
3 conferring, the Designating Party shall seek an order from the Court as to any additional  
4 protections it seeks within 14 days of the parties' meet and confer.

5 12.4 This Order shall be binding upon the Parties to this action, upon their  
6 attorneys, and upon the Parties' and their attorneys' successors, executors, personal  
7 representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions,  
8 employees, agents, independent contractors, and other persons or organizations over which  
9 they have control. The Parties, their attorneys and employees of such attorneys, and their  
10 expert witnesses, consultants and representatives retained in connection with this Action  
11 each expressly stipulates to the personal jurisdiction of this Court for the purpose of any  
12 proceeding brought by a Party to this Action to enforce this Stipulation and Protective  
13 Order.

14 12.5 Filing Protected Material. Without written permission from the Designating  
15 Party or a court order secured after appropriate notice to all interested persons, a Party may  
16 not file in the public record in this Action, or any other action, any Protected Material. A  
17 Party that seeks to file under seal any Protected Material must comply with Civil Local  
18 Rule 79-5. Protected Material may only be filed under seal pursuant to a court order  
19 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local  
20 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected  
21 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
22 protection under the law. If a Receiving Party's request to file Protected Material under  
23 seal pursuant to Civil Local Rule 79-5 is denied by the court, then the Receiving Party may  
24 file the information in the public record pursuant to Civil Local Rule 79-5 unless otherwise  
25 instructed by the court. While a motion to seal is pending before the Court, no Party shall  
26 make use in open court, in public, or in any way inconsistent with the protection in this  
27 order of any Disclosure or Discovery Material that is subject to that motion to seal without  
28 the consent of the Designating Party or the permission of the Court.


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13. FINAL DISPOSITION

Within 90 days after the final disposition of this Action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all reasonably accessible copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 90 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, Expert reports and work product, attorney work product, and consultant work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute as Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

**IT IS SO ORDERED.**

Dated: December 28, 2023

  
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CHARLES R. BREYER  
United States District Judge