DUCivR 37-1 DISCOVERY: MOTIONS AND DISPUTES; REFERRAL TO MAGISTRATE JUDGE

(a) Discovery Disputes.

(1) The parties must make reasonable efforts without court assistance to resolve a dispute arising under Fed. R. Civ. P. 26-37 and 45. At a minimum, those efforts must include a prompt written communication sent to the opposing party:

(A) identifying the discovery disclosure/request(s) at issue, the repsones(s) thereto, and specifying why those repsonses/objections are indequate, and;

(B) requesting to meet and confer, either in person or by telephone, with alternative dates and times to do so.

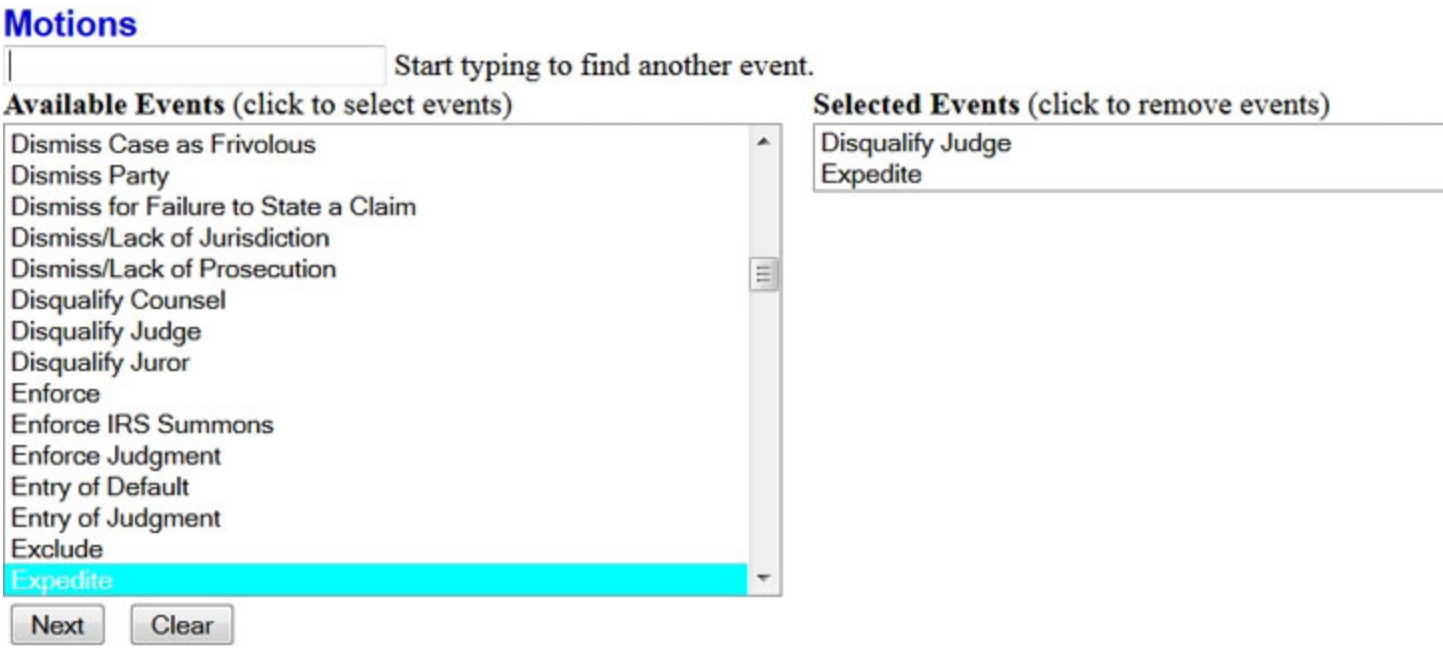
(2) If the parties cannot resolve the dispute, and they wish to have the Court mediate the dispute in accordance with Fed. R. Civ. P. 16(b)(3)(v), the parties (either individually or jointly) may contact chambers and request a discovery dispute conference.

(3) If the parties wish for the court to resolve the matter by order, the parties (either individually or jointly) must file a Short Form Discovery Motion, which should not exceed 500 words exclusive of caption and signature block.

(4) The Short Form Discovery Motion must include a certification that the parties made reasonable efforts to reach agreement on the disputed matters and recite the date, time, and place of such consultation and the names of all participating parties or attorneys. The filing party should include a copy of the offending discovery request/response (if it exists) as an exhibit to the Short Form Motion. Each party should also e-mail chambers a proposed order setting forth the relief requested in a word processing format.

(5) The parties must request expedited treatment as additional relief for the motion in CM/ECF to facilitate resolution of the dispute as soon as practicable. (After clicking the primary event, click Expedite.)

(6) The opposing party must file its response five business days [5] after the filing of the Motion, unless otherwise ordered. Any opposition should not exceed 500 words exclusive of caption and signature block.



(7) To resolve the dispute, the court may:

(A) decide the issue on the basis of the Short Form Discovery Motion after hearing from the parties to the dispute, either in writing or at a hearing, consistent with DUCivR 7-1(f);

(B) set a hearing, telephonic or otherwise, upon receipt of the Motion without waiting for any Opposition; and/or

(C) request further briefing and set a briefing schedule.

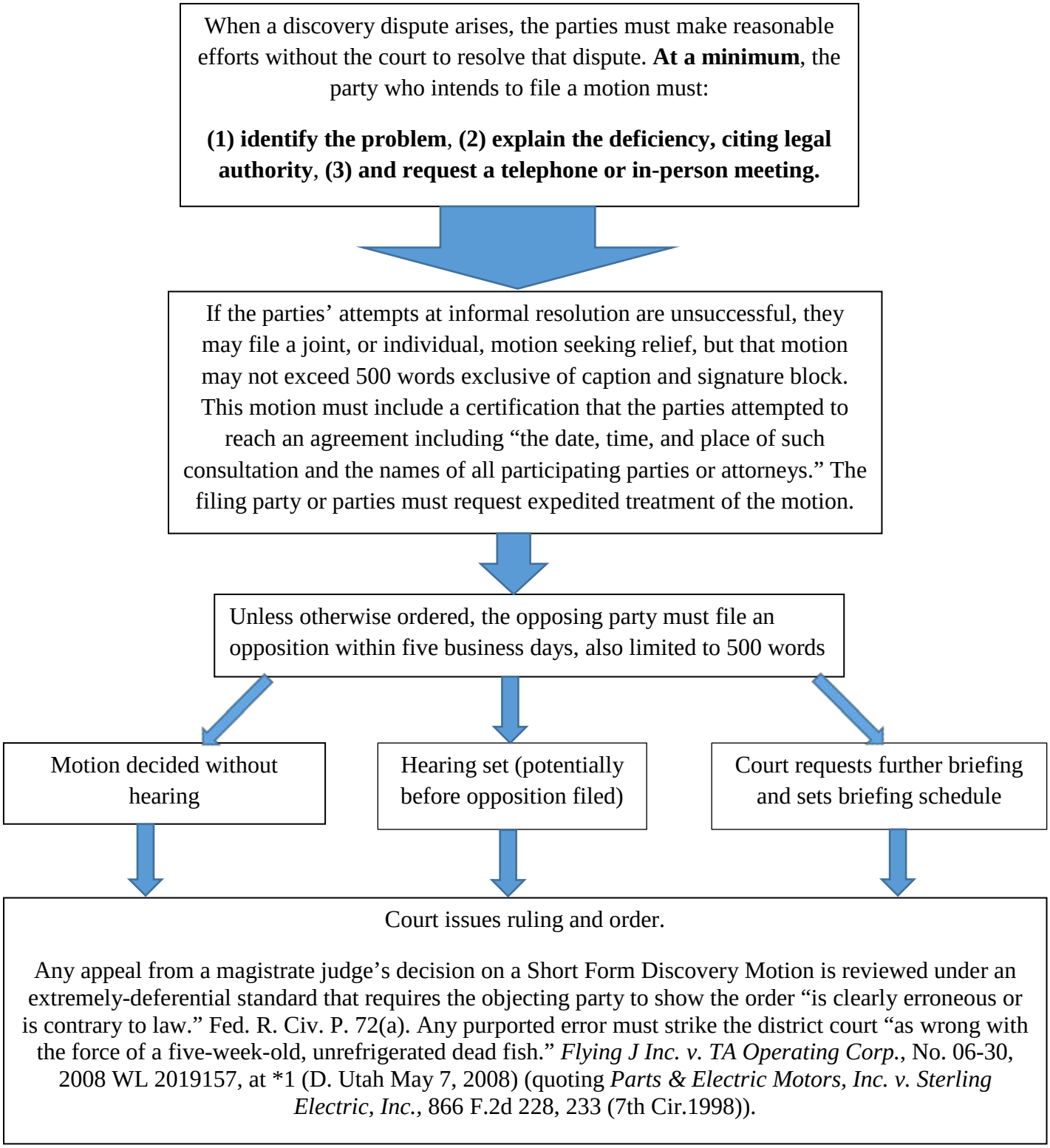
(8) If any party to the dispute believes it needs extended briefing, it should request such briefing in the short form motion or at a hearing, if one takes place. This request should accompany, and not replace, the substantive argument.

(9) A party subpoenaing a non-party must include a copy of this rule with the subpoena. Any motion to quash, motion for a protective order, or motion to compel a subpoena will follow this procedure

(10) If disputes arise during a deposition that any party or witness believes can most efficiently be resolved by contacting the Court by phone, including disputes that give rise to a motion being made under Rule 30(d)(3), the parties to the deposition shall call the assigned judge and not wait to file a Short Form Discovery Motion.

(11) Any objection to a magistrate judge's order must be made according to Federal Rule of Civil Procedure 72(a), but must be made within fourteen (14) days of the magistrate judge's oral or written ruling, whichever comes first, and must request expedited treatment. DUCivR 72-3 continues to govern the handling of objections.

Short Form Discovery Flow Chart



IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

B&D DENTAL, Plaintiff, v. KOD CO, Defendant.	MEMORANDUM DECISION Case No. 2:13-cv-00236-TS-DBP District Judge Ted Stewart Magistrate Judge Dustin B. Pead

This matter was referred to the Court under 28 U.S.C. § 636(b)(1)(A). (Docket No. 54.) This case is before the Court on B&D Dental Corporation's ("B&D") motion to compel production of documents from Defendant KOD Co., Ltd. ("KOD").

I. Dispute

B&D argues that KOD's objections to B&D's document requests are not valid because KOD did not articulate a sufficiently specific basis for those objections. (Dkt. 71 at 8–10.) B&D also argues that KOD failed to produce any responsive documents to certain requests and that KOD's production responsive to most of the remaining requests has been incomplete. (*Id.* at 10–11.) Finally, B&D takes particular issue with KOD's inability to produce an executed copy of a Confidential Disclosure Agreement that KOD claims exists between it and B&D. (*Id.* at 11.) B&D seeks its costs for bringing the motion to compel. (*Id.* at 11–12.)

KOD, on the other hand, argues that the motion to compel was filed without a proper attempt to meet and confer and in direct contradiction to B&D's counsel's email indicating that KOD could produce documents on a rolling basis. (Dkt. 74 at 2–6.). Further, KOD asserts that the motion was brought for purposes other than the present litigation. (*Id.* at 8–9.)

II. Analysis

It is within the Court's discretion to deny a motion to compel for failure to comply with the meet-and-confer requirements set forth in Rule 37 and corresponding local rules. *See Schulte v. Potter*, 218 F. App'x 703, 709 (10th Cir. 2007). Rule 37 requires certification that the moving party has "in good faith conferred" with the opposing party in an effort to obtain discovery without court intervention. Fed. R. Civ. P. 37(a)(1). Likewise, the District of Utah's local rule requires counsel to demonstrate "a reasonable effort to reach agreement with opposing counsel on the matters set forth in the motion." D.U. Civ. R. 37-1. "When the dispute involves objections to requested discovery, parties do not satisfy the conference requirements simply by requesting or demanding compliance with the requests for discovery." *Cotracom Commodity Trading Co. v. Seaboard Corp.*, 189 F.R.D. 456, 459 (D. Kan. 1999).

Here, B&D has not sufficiently complied with the meet-and-confer requirements the local and federal rules. B&D states that the parties met to discuss KOD's discovery responses and B&D demanded compliance at various times, but this is insufficient. The last of counsels' discussions occurred on November 18, 2014. (Dkt. 71 at2.). Counsel reached an agreement that allowed KOD to provide discovery on a rolling basis. (Dkt. 71, Ex. L.) KOD sent its first partial production on December 1 and invited B&D's counsel to contact KOD's counsel with any questions. (Dkt. 71, Ex. M.) B&D responded to the production by email, indicating B&D's counsel would "let [KOD's counsel] know if we have any questions." (Dkt. 74, Ex. 2.) B&D's counsel expressed no dissatisfaction with KOD's attempts to provide rolling discovery prior to filing the present motion to compel on December 31, 2014.

B&D did not meet their obligation to meet and confer as required by the local and federal rules because their last communication with KOD's counsel was to express agreement to the

rolling production. Rules 37 and 37-1 set forth more than a requirement to hold a perfunctory meeting prior to filing a discovery motion. The rules require ongoing good faith and reasonable efforts to reach a resolution prior to filing a motion. Having a meeting, or multiple meetings, is only part of the process. Earnestly seeking a resolution is another.

The Court does not endeavor to be unduly formalistic in its enforcement of Rules 37 and 37-1, but the violation here caused problems attendant to parties not complying with their meet-and-confer obligations. The parties' briefing indicates the nature and extent of this dispute has not been well defined. Plaintiff seeks discovery responses, and attacks what it describes as boilerplate objections made by KOD. (Dkt. 71.) KOD does not appear to stand on the objections in question. Instead, KOD discusses difficulties in having records translated from Korean, difficulties shared by B&D. (Dkt. 74 at 7; Dkt. 72 at 2.) Additionally, KOD has provided a number of documents after B&D filed its motion. (Dkt. 75 at 5–6.) In some circumstances KOD's production after a motion to compel would be looked at unfavorably, but here, it does not appear inconsistent with the rolling production to which B&D agreed.

III. Ruling

Based on the foregoing, the Court **DENIES** Plaintiff's motion to compel without prejudice. The Court further finds that an award of costs is not justified. The parties are admonished to work together to find reasonable solutions. The Court will not set an artificial requirement regarding future conferences, but the parties should bear in mind the admonition of the District of Kansas on this subject:

> The parties need to address and discuss the propriety of asserted objections. They must deliberate, confer, converse, compare views, or consult with a view to resolve the dispute without judicial intervention. They must make genuine efforts to resolve the dispute by determining precisely what the requesting party is actually seeking; what responsive documents or information the discovering party

> is reasonably capable of producing; and what specific, genuine objections or other issues, if any, cannot be resolved without judicial intervention.

Cotracom Commodity Trading Co. v. Seaboard Corp., 189 F.R.D. 456, 459 (D. Kan. 1999).

Should these production issues remain unresolved after further discussion, the Court will entertain another motion. However, given the time and energy expended by both parties regarding the present discovery dispute, the Court will be more inclined to award costs and attorney fees in future motions. Both parties are encouraged to work together to make the discovery process as efficient and meaningful as possible.

IT IS SO ORDERED.

Dated this 3rd day of February, 2015.

By the Court:

Dustin B. Pead
United States Magistrate Judge

DUCivR 30-1 DEPOSITION OBJECTIONS

Objections during depositions to the form of the question must specifically identify the basis for the objection. Objections to the form may include, but are not limited to, the following objections:

- Ambiguous
- Vague or unintelligible
- Argumentative
- Compound
- Leading
- Mischaracterizes a witness's prior testimony
- Mischaracterizes the evidence
- Calls for a narrative
- Calls for speculation
- Asked and answered
- Lack of foundation
- Assumes facts not in evidence

If the basis for objection as to form is not timely made at the time of the question, the objection is waived. Objections that state more than the basis of the objection and have the effect of coaching the witness are not permitted and may be sanctionable.

MAKE DEPOSITIONS LESS STRANGE!

A PERSPECTIVE FROM THE (MOSTLY) ABSENT BUT INTERESTED JUDGE

ARE YOUR DEPOSITIONS EXPERIENCES BEST EXEMPLIFIED BY THE FORMER OR THE LATTER?

COMMON DEPOSITION FEELINGS (AS EXPRESSED BY SHAKESPEARE)

- "Wilt thou show the whole wealth of thy wit in an instant?" (Merchant of Venice)
- "Thou sodden-witted lord! Thou hast no more brain that I have in mine elbows!" (Troilus and Cressida)
- "You are idle shallow things: I am not of your element." (Twelfth Night)
- "Four of his five wits went halting off, and now is the whole man governed with one." (Much Ado About Nothing)
- "Thou art too base to be acknowledged." (The Winter's Tale)
- "Come, you are a tedious fool. To the purpose…" (Measure for Measure)
- "Pray you stand further away from me." (Anthony and Cleopatra)
- "Thou are the cap of all the fools alive." (Timon of Athens)
- "He hath out-villain'd villainy so far as that rarity redeems him." (All's Well That Ends Well)
- "Your affections are a sick man's appetite, who desires most that which would increase his evil." (Coriolanus)

GOAL = KEEP THE DEPOSITION "FLOWING" (NOT JUST "GOING")

- At District Court, we are occasionally tasked with a request for immediate intervention to address blatant attorney misconduct.
  - In egregious circumstances – which some of you have either seen firsthand or have read about – judicial intervention is the only alternative, with either accompanying or subsequent requests for sanction.
    - "Las Vegas lawyer accused of wielding handgun during deposition" (Las Vegas Review-Journal, October 5, 2016) (http://www.reviewjournal.com/crime/las-vegas-lawyer-accused-wielding-handgun-during-deposition)
    - Shortly after beginning the deposition of the plaintiff, the examining attorney "pulled the gun from its holster, preparing to point and shoot, all while gesturing me to come at him," reported the plaintiff.
    - Attorney response? "I always carry a gun because I'm an attorney and people don't like me."
    - Court reporter kept typing the whole time.

GOAL CONT.

- But assume the environment is not so toxic as to require judicial intervention or immediate suspension of the deposition, but is of such a level that things are "Breaking Bad." What should be done?
  - More specifically, where is the line between "zealous advocacy" on behalf of a client and abusive and improper tactics?
- The purpose of this discussion is to share with you some insight as to what types of misconduct a Magistrate Judge might commonly see, how such conduct is viewed by the judge, discuss possible remedies/sanction, and offer a few practical ideas to help you avoid as much trouble as you can.

COURT: GENERAL BUT CENTRAL CONCERN? "IMPROPER FRUSTRATION" OF DEPOSITIONS

- As you all know, a deposition is a powerful discovery mechanism but can present certain challenges, including interactions with attorneys (experience, reputation, actual conduct).
- The deposition's purpose is a question-and-answer conversation between the deposing attorney and the witness.
  - The defending attorneys role is, by design, intended to be limited.
  - Far-too-often reality? Defending attorneys occasionally impermissibly inject themselves by :
    - (1) making improper, frivolous, or speaking objections, including repetitive or long-winded objections designed to distract or disrupt,
    - (2) commanding deponents to not answer proper questions in the absence of a legitimate privilege claim, or
    - (3) attempting to influence the testimony of the deponent by making improper statements or commentary, including those that serve to mischaracterize or confuse the record, disguised as necessary to "protected the record."
    - All of these involve the same thing – the improper frustration of the deposing attorney's quest to obtain information.
  - The goal – stated or not – of some is to create such a scene that the deponent isn't sure who is in control.

START WITH THE FEDERAL RULES OF CIVIL PROCEDURE

- Practical solutions stem from the rules themselves.
- Fed.R.Civ.P. 30.
  - 30(c)(1): "[E]xamination and cross examination of a deponent [shall] proceed as they would at trial under the Federal Rules of Evidence."
  - 30(c)(2): All objections must be "noted for the record" and "stated concisely in a nonargumentative and non-suggestive manner." Even with the objection, "the examination still proceeds; the testimony is taken subject to any objection." The deponent must answer all questions except "when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3)."
- Fed.R.Civ.P. 32.
  - 32(d)(3)(A): Objections to "the competence, relevance, or materiality of testimony" are "not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time."
  - 32(d)(3)(B): Objections not raised in a deposition are waived if "it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time."

VIOLATION #1 = IMPROPER OBJECTIONS

- Likely proper objections under 30(c)(1):
  - (1) Compound
  - (2) Asked and answered
  - (3) Overbroad/calls for narrative
  - (4) Argumentative
  - (5) Calls for speculation
  - (6) Vague/confusing
  - (7) Assumes facts not in evidence
  - (8) Misstates the record
  - (9) Lacks foundation/calls for opinion from unqualified witness
  - (10) Leading

- What about relevance?
  - While not an absolute rule, objections of relevance are generally not regarded as valid deposition objections and time is limited, so it is hoped that the utility of the moment will outweigh unreasonable fishing.

NEW LOCAL RULE 2017

- RULE ON DEPOSITION OBJECTIONS
- Objections at depositions to the form of the question must specifically identify the basis for the objection. Objections to the form may include, but are not limited to, the following objections:
  1. Ambiguous
  2. Vague or unintelligible
  3. Argumentative
  4. Compound
  5. Leading
  6. Mischaracterizes a witness's prior testimony
  7. Mischaracterizes the evidence
  8. Calls for a narrative
  9. Calls for speculation
  10. Asked and answered
  11. Lack of foundation
  12. Assumes facts not in evidence

- If the basis for objection as to form is not timely made at the time of the question, the objection is waived. Objections that state more than the basis of the objection and have the effect of coaching the witness are not permitted and may be sanctionable.

IMPROPER OBJECTIONS CONT., INCLUDING VIOLATION #2 – INCORRECTLY COMMANDING DEPONENT NOT TO ANSWER

- What is improper?
  - Detailed objections
  - Private consultations with the witness
  - Instructions not to answer or how to answer
  - Colloquies
  - Interruptions
  - Personal attacks
- What is the court most concerned with?
  - Conduct that improperly or unfairly impedes, delays, and/or frustrates the fair examination of the deponent.
- What about privilege?
  - A person may instruct a witness not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under Rule 30(d)(4).

VIOLATION 3 – IMPROPER ATTEMPTS TO INFLUENCE THE DEPOSITION INCLUDING "COACHING THE WITNESS"

- Less subtle, but equally problematic conduct in depositions.
  - Recall James Fenimore Cooper's phrase of "horse-shedding the witness" (referring to attorneys who linger in carriage sheds near the courthouse to rehearse with their witnesses).
  - Problems arise when defending attorney acts as an intermediary, and the answers become influenced.
    - Model Rule of Professional Conduct 1.1 (competence) allows for – and requires – "adequate preparation" including "inquiry into and analysis of the legal elements of the problem."
    - Further, Model Rule 1.2(d) provides that counsel "may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law."
    - This does not allow for knowingly offering evidence known to be false or assisting a witness to testify falsely.
      - Preparing a witness to give a rehearsed answer is improper if done for the purpose of misleading or frustrating the inquiring part from obtaining legitimate discovery.

VIOLATION #3 CONT.

- Some judges prohibit conferences between the witness and defending counsel during both the deposition and during any recess.
  - (1) Lawyers do not have an absolute right to confer during the course of the client's deposition and neither can initiate private conversations once deposition is underway.
  - (2) Lawyer may prepare a client for deposition, but once it begins in earnest, the witness is required to answer questions without intervention or advice of counsel.
  - (3) Witness should ask the deposing attorney – rather than his or her own – for clarification if the question is not understood.
- Others apply similar twists

VIOLATION #4 – FAILURE TO PREPARE COMPANY REPRESENTATIVE

- In 30(b)(6) depositions, a party identifies the topics it wants to the opposing party's company to discussion, and the witness then testifies on behalf of the company.
- The rule requires that the person designated to represent the organization "shall testify as to matters known or reasonably available to the organization."
  - If the person(s) designated does not possess personal knowledge of the matters set forth in the deposition notice, the corporation is required to prepare them to give knowledgeable and binding answers for the corporation.
  - Consequences for failure to do so may not only implicate rules of professional conduct, negatively impact a client's case, and result in other sanctions too.

VIOLATION #4 CONT.

- Court sees circumstances in which the witness is unquestionably unprepared (usually accompanied by an admission of not having seen or reviewed the deposition notice) or selecting witnesses are clearly not suited to speak on behalf of the corporation.
- Some claim that they want to walk a fine line between preparation and coaching (5th Circuit case sanctions lawyers 10K plus removal from the case for telling witness to use terms like "high crime area" and "retaliation" to establish probable cause for arrests on behalf of defendants). But the court expects that attorneys can help the witness understand what the case is about, why he/she has been called to testify, and what the opposing side's theory or arguments have been (or might be) to help the witness understand what counsel may try to elicit. The attorney may also share his or her own arguments.

SANCTION POSSIBILITIES

- Fed.R.Civ.P. 37(a)(5)(A) provides that the attorney advising the witness to not answer or to provide an evasive or incomplete answer may be subject to sanctions.
- Rule 30(d)(2) authorizes the court to "impose an appropriate sanction, including the reasonable expenses and attorney fees." Because "appropriate" is discretionary, courts may and often do require payment for costs incurred in preparing the motion, costs incurred with first deposition, and costs that would accompany the second deposition (including maybe travel costs)).
  - One firm who conducted recent research on the imposition of sanctions claims a near 700% increase of 30(d)(2) sanctions in the last 10 years.
- Note: a finding of bad faith is not required to impose sanctions. The rule only requires a showing that the conduct frustrated the fair examination of the deponent.
  - And, while tangential to our discussion today, consider that sanctions may be warranted for failing to prevent the deponent from similar conduct, although this is more challenging.

SANCTION POSSIBILITIES CONT.

- Most effective requests engage in a two-step request that (1) clearly identifies the behavior that impeded, delayed, or frustrated the fair examination and (2) makes specific requests for "appropriate" sanction.
- Usually monetary, coupled with a motion to compel further testimony under Rule 37(a). This will include costs and fees relating to having to depose the witness twice, as well has costs and fees that accompany the motion to compel.
- But remember, it can be far more serious, including censure or disbarment, as well as dismissal of claim or cause of action (courts consider variety of factors, including the policy favoring disposition on the merits and the suitability of less drastic sanctions).

COMBO-STYLE SANCTIONS

- Courts are increasingly willing to consider deposition misconduct as a collective problem.
  - In *Redwood v. Dobson*, 476 F.3d 462 (7th Cir. 2007), the lawyer taking the deposition engaged in conduct that would likely trigger suspension to pursue a protective order under Rule 30(d)(3). The defending attorney himself gave improper speaking objections and incorrectly instructed the deponent not to answer. Further, the deponent (an attorney) incredulously claimed a failure to understand or remember.
  - The District Court found all had behaved badly and denied requests for sanctions for all parties.
  - The Seventh Circuit reversed ruling that "mutual enmity does not excuse [a] breakdown in decorum" and that the district court should have used its authority to maintain standards of civility and professionalism. They censured three lawyers (including deponent) and warned that "repetition of this performance, in any court within this circuit, will lead to sterner sanctions, including suspension or disbarment."
- Another court remarked, in response to another instance of a collective failure that "loaded guns, sharp objects and law degrees should be kept out of the reach of children." *AG Equip. Co. v. AIG Life Ins. Co.*, 2008 WL 5205192 (N.D. Ok., Dec. 10, 2008) (unpublished).

RECENT EXAMPLE

- In a case from another district relating to a non-compete order, the judge found the defendant in contempt for failure to abide by that order. The Plaintiff issued notices of deposition for two individuals within the District of Utah on the matter of appropriate sanction for contempt.
- Attorney for defendant agreed to represent the two individuals (long story) and filed a Motion for a Protective Order the night before the depositions were to begin (long after the automatic staying provision). The depositions went forward as planned, but counsel instructed both witnesses not to answer several questions concerned that they involved trade secret privilege.
  - Attorney for Plaintiff offered to designate testimony attorney-eyes only, but it was rejected.

RECENT EXAMPLE CONT.

- Plaintiff filed a motion to compel seeking a new deposition for both witnesses and the court considered it in conjunction with the motion for protective order earlier filed.
- Court found unsubstantiated fears to support its request to protect information, particularly in light of the designation offer. Further, the questions asked were limited in scope and relevant to the underlying ruling by the District Judge. Even assuming some of the questions might have been better narrowed, the instructions not to answer were unjustified under the rule.
- Court denied motion for protective order, granted motion to compel new depositions (2 hours each), and awarded costs and expenses, including attorney fees despite no finding of bad faith. Denied those for motion to compel because of lack of bad faith, however.

CAPTURING THE MOMENT(S)

- The best way to capture misconduct depends on the manner in which it is being recorded.
- What should be done with nonverbal cues?
  - Any nonverbal conduct that could be sanctionable must be described contemporaneously on the record.
  - Consider verification from a witness (deponent or other person present).
- Video
  - If reputation precedes deposition, consider noticing a videotaped deposition which can both discourage and record misbehavior.
  - Rule 30 allows it without stipulation of counsel or court order (but not in contradiction to a protective order).
    - Video assists a judge in the determination as to what conduct occurred and whether it is sanctionable (and to what degree).
    - And video may assist in credibility determinations as well (demeanor, appearance), and words are often accompanied by physical expressions, intonation, and/or body language.

PRACTICAL CONSIDERATIONS DESIGNED TO KEEP THE DEPOSITION FLOWING

- (1) Know your case. You're less likely to fall victim to abusive tactics and will be able to meaningfully address them.
- (2) In the event of improper objections, know the rule and inform counsel that you expect them to comply in the future.
  - Reciprocation will not be viewed kindly, even if yours was not the initial blow.
- (3) Make a clear record. Have opposing counsel explain what he is doing and why he is doing it, followed by your understanding of the rule.
- (4) No matter your frustrations, keep your temper. Remember the purpose of the deposition – leave sanction for its time and place before the judge.
- (5) If you are unsure whether conduct is crossing the line, consider an emergency dispute resolution conference with the court.

DUCivR 26-2 STANDARD PROTECTIVE ORDER AND STAYS OF DEPOSITIONS

(a) Standard Protective Order

The court has increasingly observed that discovery in civil litigation is being unnecessarily delayed by the parties arguing and/or litigating over the form of a protective order. In order to prevent such delay and "to secure the just, speedy, and inexpensive determination of every action," the court finds that good cause exists to provide a rule to address this issue and hereby adopted this rule entering a Standard Protective Order.

(1) This rule shall apply in every case involving the disclosure of any information designated as confidential. Except as otherwise ordered, it shall not be a legitimate ground for objecting to or refusing to produce information or documents in response to an opposing party's discovery request (e.g. interrogatory, document request, request for admissions, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed.R. Civ. P. 26 (a)(1) that the discovery request or disclosure requirement is premature because a protective order has not been entered by the court. Unless the court enters a different protective order, pursuant to motion or stipulated motion, the Standard Protective Order available on the Forms page of the court's website http://www.utd.uscourts.gov shall govern and discovery under the Standard Protective Order shall proceed. The Standard Protective Order is effective by virtue of this rule and need not be entered in the docket of the specific case.

(2) Any party or person who believes that substantive rights are being impacted by application of the rule may immediately seek relief.

(b) Motion for Protective Order and Stay of Deposition

A party or a witness may stay a properly noticed oral deposition by filing a motion for a protective order or other relief by the third business day after service of the notice of deposition. The deposition will be stayed until the motion is determined. Motions filed after the third business day will not result in an automatic stay.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

_____, Plaintiffs, vs. _____, Defendants.	STANDARD PROTECTIVE ORDER Civil No. Honorable Magistrate

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and for good cause,

IT IS HEREBY ORDERED THAT:

1. Scope of Protection

This Standard Protective Order shall govern any record of information produced in this action and designated pursuant to this Standard Protective Order, including all designated deposition testimony, all designated testimony taken at a hearing or other proceeding, all designated deposition exhibits, interrogatory answers, admissions, documents and other discovery materials, whether produced informally or in response to interrogatories, requests for admissions, requests for production of documents or other formal methods of discovery.

This Standard Protective Order shall also govern any designated record of information produced in this action pursuant to required disclosures under any federal procedural rule or local rule of the Court and any supplementary disclosures thereto.

This Standard Protective Order shall apply to the parties and to any nonparty from whom discovery may be sought who desires the protection of this Protective Order.

Nonparties may challenge the confidentiality of the protected information by filing a motion to intervene and a motion to de-designate.

2. Definitions

(a) The term PROTECTED INFORMATION shall mean confidential or proprietary technical, scientific, financial, business, health, or medical information designated as such by the producing party.

(b) The term CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall mean PROTECTED INFORMATION that is so designated by the producing party. The designation CONFIDENTIAL - ATTORNEYS EYES ONLY may be used only for the following types of past, current, or future PROTECTED INFORMATION: (1) sensitive technical information, including current research, development and manufacturing information and patent prosecution information, (2) sensitive business information, including highly sensitive financial or marketing information and the identity of suppliers, distributors and potential or actual customers, (3) competitive technical information, including technical analyses or comparisons of competitor's products, (4) competitive business information, including non-public financial or marketing analyses or comparisons of competitor's products and strategic product planning, or (5) any other PROTECTED INFORMATION the disclosure of which to non-qualified people subject to this Standard Protective Order the producing party reasonably and in good faith believes would likely cause harm.

(c) The term CONFIDENTIAL INFORMATION shall mean all PROTECTED INFORMATION that is not designated as "CONFIDENTIAL - ATTORNEYS EYES ONLY" information.

(d) The term TECHNICAL ADVISOR shall refer to any person who is not a party to this action and/or not presently employed by the receiving party or a company affiliated through common ownership, who has been designated by the receiving party to receive another party's PROTECTED INFORMATION, including CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, and CONFIDENTIAL INFORMATION. Each party's TECHNICAL ADVISORS shall be limited to such person as, in the judgment of that party's counsel, are reasonably necessary for development and presentation of that party's case. These persons include outside experts or consultants retained to provide technical or other expert services such as expert testimony or otherwise assist in trial preparation.

3. Disclosure Agreements

(a) Each receiving party's TECHNICAL ADVISOR shall sign a disclosure agreement in the form attached hereto as Exhibit A. Copies of any disclosure agreement in the form of Exhibit A signed by any person or entity to whom PROTECTED INFORMATION is disclosed shall be provided to the other party promptly after execution by facsimile and overnight mail. No disclosures shall be made to a TECHNICAL ADVISOR for a period of five (5) business days after the disclosure agreement is provided to the other party.

(b) Before any PROTECTED INFORMATION is disclosed to outside TECHNICAL ADVISORS, the following information must be provided in writing to the producing party and received no less than five (5) business days before the intended date of disclosure to that outside TECHNICAL ADVISOR: the identity of that outside TECHNICAL ADVISOR, business address and/or affiliation and a current curriculum vitae of the TECHNICAL ADVISOR, and, if not contained in the TECHNICAL ADVISOR's

curriculum vitae, a brief description, including education, present and past employment and general areas of expertise of the TECHNICAL ADVISOR. If the producing party objects to disclosure of PROTECTED INFORMATION to an outside TECHNICAL ADVISOR, the producing party shall within five (5) business days of receipt serve written objections identifying the specific basis for the objection, and particularly identifying all information to which disclosure is objected. Failure to object within five (5) business days shall authorize the disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR. As to any objections, the parties shall attempt in good faith to promptly resolve any objections informally. If the objections cannot be resolved, the party seeking to prevent disclosure of the PROTECTED INFORMATION to the expert shall move within five (5) business days for an Order of the Court preventing the disclosure. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within five (5) business days, disclosure to the TECHNICAL ADVISOR shall be permitted. In the event that objections are made and not resolved informally and a motion is filed, disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR shall not be made except by Order of the Court.

(c) Any disclosure agreement executed by any person affiliated with a party shall be provided to any other party who, based upon a good faith belief that there has been a violation of this order, requests a copy.

(d) No party shall attempt to depose any TECHNICAL ADVISOR until such time as the TECHNICAL ADVISOR is designated by the party engaging the TECHNICAL ADVISOR as a testifying expert. Notwithstanding the preceding sentence, any party may depose a TECHNICAL ADVISOR as a fact witness provided that the party seeking such deposition has a good faith, demonstrable basis independent of the disclosure

agreement of Exhibit A or the information provided under subparagraph (a) above that such person possesses facts relevant to this action, or facts likely to lead to the discovery of admissible evidence; however, such deposition, if it precedes the designation of such person by the engaging party as a testifying expert, shall not include any questions regarding the scope or subject matter of the engagement. In addition, if the engaging party chooses not to designate the TECHNICAL ADVISOR as a testifying expert, the non-engaging party shall be barred from seeking discovery or trial testimony as to the scope or subject matter of the engagement.

4. Designation of Information

(a) Documents and things produced or furnished during the course of this action shall be designated as containing CONFIDENTIAL INFORMATION by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION

(b) Documents and things produced or furnished during the course of this action shall be designated as containing information which is CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY

(c) During discovery a producing party shall have the option to require that all or batches of materials be treated as containing CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY during inspection and to make its designation as to particular documents and things at the time copies of documents and things are furnished.

(d) A party may designate information disclosed at a deposition as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the reporter to so designate the transcript at the time of the deposition.

(e) A producing party shall designate its discovery responses, responses to requests for admission, briefs, memoranda and all other papers sent to the court or to opposing counsel as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY when such papers are served or sent.

(f) A party shall designate information disclosed at a hearing or trial as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the court, at the time the information is proffered or adduced, to receive the information only in the presence of those persons designated to receive such information and court personnel, and to designate the transcript appropriately.

(g) The parties will use reasonable care to avoid designating any documents or information as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY that is not entitled to such designation or which is generally available to the public. The parties shall designate only that part of a document or deposition that is CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, rather than the entire document or deposition. For example, if a party claims that a document contains pricing information that is CONFIDENTIAL – ATTORNEYS EYES ONLY, the party will designate only that part of the document setting forth the specific pricing information as ATTORNEYS EYES ONLY, rather than the entire document.

(h) In multi-party cases, Plaintiffs and/or Defendants shall further be able to designate documents as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS for documents that shall not be disclosed to other parties.

5. Disclosure and Use of Confidential Information

Information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be disclosed by the receiving party only to Qualified Recipients. All Qualified Recipients shall hold such information received from the disclosing party in confidence, shall use the information only for purposes of this action and for no other action, and shall not use it for any business or other commercial purpose, and shall not use it for filing or prosecuting any patent application (of any type) or patent reissue or reexamination request, and shall not disclose it to any person, except as hereinafter provided. All information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be carefully maintained so as to preclude access by persons who are not qualified to receive such information under the terms of this Order.

In multi-party cases, documents designated as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall not be disclosed to other plaintiffs and/or defendants.

6. Qualified Recipients

For purposes of this Order, “Qualified Recipient" means

(a) For CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY:

(1) Outside counsel of record for the parties in this action, and the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in the action, outside copying services, document management services and graphic services;

(2) Court officials involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

(3) Any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;

(4) Any outside TECHNICAL ADVISOR employed by the outside counsel of record, subject to the requirements in Paragraph 3 above; and

(5) Any witness during the course of discovery, so long as it is stated on the face of each document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document. Where it is not stated on the face of the confidential document being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document, the party seeking disclosure may nonetheless disclose the confidential document to the witness, provided that: (i) the party seeking disclosure has a reasonable basis for believing that the witness in fact received or reviewed the document, (ii) the party seeking disclosure provides advance notice to the party that produced the document, and (iii) the party that produced the document does

not inform the party seeking disclosure that the person to whom the party intends to disclose the document did not in fact receive or review the documents. Nothing herein shall prevent disclosure at a deposition of a document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to the officers, directors, and managerial level employees of the party producing such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, or to any employee of such party who has access to such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY in the ordinary course of such employee's employment.

(b) FOR CONFIDENTIAL INFORMATION:

(1) Those persons listed in paragraph 6(a);

(2) In-house counsel for a party to this action who are acting in a legal capacity and who are actively engaged in the conduct of this action, and the secretary and paralegal assistants of such counsel to the extent reasonably necessary;

(3) The insurer of a party to litigation and employees of such insurer to the extent reasonably necessary to assist the party's counsel to afford the insurer an opportunity to investigate and evaluate the claim for purposes of determining coverage and for settlement purposes; and

(4) Employees of the parties.

7. Use of Protected Information

(a) In the event that any receiving party's briefs, memoranda, discovery requests, requests for admission or other papers of any kind which are served or filed shall include another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, the papers shall be appropriately designated pursuant to paragraphs 4(a) and (b), and pursuant to DUCivR 5.2, and shall be treated accordingly.

(b) All documents, including attorney notes and abstracts, which contain another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall be handled as if they were designated pursuant to paragraph 4(a) or (b).

(c) Documents, papers and transcripts filed with the court which contain any other party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be filed in sealed envelopes and labeled according to DUCivR 5-2.

(d) To the extent that documents are reviewed by a receiving party prior to production, any knowledge learned during the review process will be treated by the receiving party as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY until such time as the documents have been produced, at which time any stamped classification will control. No photograph or any other means of duplication, including but not limited to electronic means, of materials provided for review prior to production is permitted before the documents are produced with the appropriate stamped classification.

(e) In the event that any question is asked at a deposition with respect to which a party asserts that the answer requires the disclosure of CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, such question shall nonetheless be answered by the witness fully and completely. Prior to answering, however, all persons present shall be advised of this Order by the party making the confidentiality assertion and, in the case of information designated as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY at the request of such party, all persons who are not allowed to obtain such information pursuant to this Order, other than the witness, shall leave the room during the time in which this information is disclosed or discussed.

(f) Nothing in this Protective Order shall bar or otherwise restrict outside counsel from rendering advice to his or her client with respect to this action and, in the course thereof, from relying in a general way upon his examination of materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, provided, however, that in rendering such advice and in otherwise communicating with his or her clients, such counsel shall not disclose the specific contents of any materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY.

8. Inadvertent Failure to Designate

(a) In the event that a producing party inadvertently fails to designate any of its information pursuant to paragraph 4, it may later designate by notifying the receiving parties in writing. The receiving parties shall take reasonable steps to see that the information is thereafter treated in accordance with the designation.

(b) It shall be understood however, that no person or party shall incur any liability hereunder with respect to disclosure that occurred prior to receipt of written notice of a belated designation.

9. Challenge to Designation

(a) Any receiving party may challenge a producing party's designation at any time. A failure of any party to expressly challenge a claim of confidentiality or any document designation shall not constitute a waiver of the right to assert at any subsequent time that the same is not in-fact confidential or not an appropriate designation for any reason.

(b) Notwithstanding anything set forth in paragraph 2(a) and (b) herein, any receiving party may disagree with the designation of any information received from the producing party as CONFIDENTIAL INFORMATION or CONFIDENTIAL

INFORMATION – ATTORNEYS EYES ONLY. In that case, any receiving party desiring to disclose or to permit inspection of the same otherwise than is permitted in this Order, may request the producing party in writing to change the designation, stating the reasons in that request. The producing party shall then have five (5) business days from the date of receipt of the notification to:

(i) advise the receiving parties whether or not it persists in such designation; and

(ii) if it persists in the designation, to explain the reason for the particular designation.

(c) If its request under subparagraph (b) above is turned down, or if no response is made within five (5) business days after receipt of notification, any producing party may then move the court for a protective order or any other order to maintain the designation. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within five (5) business days, the information will be de-designated to the category requested by the receiving party. In the event objections are made and not resolved informally and a motion is filed, disclosure of information shall not be made until the issue has been resolved by the Court (or to any limited extent upon which the parties may agree).

No party shall be obligated to challenge the propriety of any designation when made, and failure to do so shall not preclude a subsequent challenge to the propriety of such designation.

(d) With respect to requests and applications to remove or change a designation, information shall not be considered confidential or proprietary to the producing party if:

(i) the information in question has become available to the public through no violation of this Order; or

(ii) the information was known to any receiving party prior to its receipt from the producing party; or

(iii) the information was received by any receiving party without restrictions on disclosure from a third party having the right to make such a disclosure.

10. Inadvertently Produced Privileged Documents

The parties hereto also acknowledge that regardless of the producing party's diligence an inadvertent production of attorney-client privileged or attorney work product materials may occur. In accordance with Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502, they therefore agree that if a party through inadvertence produces or provides discovery that it believes is subject to a claim of attorney-client privilege or attorney work product, the producing party may give written notice to the receiving party that the document or thing is subject to a claim of attorney-client privilege or attorney work product and request that the document or thing be returned to the producing party. The receiving party shall return to the producing party such document or thing. Return of the document or thing shall not constitute an admission or concession, or permit any inference, that the returned document or thing is, in fact, properly subject to a claim of attorney-client privilege or attorney work product, nor shall it foreclose any party from moving the Court pursuant to Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502 for an Order that such document or thing has been improperly designated or should be produced.

11. Inadvertent Disclosure

In the event of an inadvertent disclosure of another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to a non-Qualified Recipient, the party making the inadvertent disclosure shall promptly upon learning of the disclosure: (i) notify the person to whom the disclosure was made that it contains CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY subject to this Order; (ii) make all reasonable efforts to preclude dissemination or use of the CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by the person to whom disclosure was inadvertently made including, but not limited to, obtaining all copies of such materials from the non-Qualified Recipient; and (iii) notify the producing party of the identity of the person to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to ensure against the dissemination or use of the information.

12. Limitation

This Order shall be without prejudice to any party's right to assert at any time that any particular information or document is or is not subject to discovery, production or admissibility on the grounds other than confidentiality.

13. Conclusion of Action

(a) At the conclusion of this action, including through all appeals, each party or other person subject to the terms hereof shall be under an obligation to destroy or return to the producing party all materials and documents containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY and to certify to the producing party such destruction or return. Such return or destruction

shall not relieve said parties or persons from any of the continuing obligations imposed upon them by this Order.

(b) After this action, trial counsel for each party may retain one archive copy of all documents and discovery material even if they contain or reflect another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. Trial counsel's archive copy shall remain subject to all obligations of this Order.

(c) The provisions of this paragraph shall not be binding on the United States, any insurance company, or any other party to the extent that such provisions conflict with applicable Federal or State law. The Department of Justice, any insurance company, or any other party shall notify the producing party in writing of any such conflict it identifies in connection with a particular matter so that such matter can be resolved either by the parties or by the Court.

14. Production by Third Parties Pursuant to Subpoena

Any third party producing documents or things or giving testimony in this action pursuant to a subpoena, notice or request may designate said documents, things, or testimony as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. The parties agree that they will treat CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY produced by third parties according to the terms of this Order.

15. Compulsory Disclosure to Third Parties

If any receiving party is subpoenaed in another action or proceeding or served with a document or testimony demand or a court order, and such subpoena or demand or court order seeks CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION –

ATTORNEYS EYES ONLY of a producing party, the receiving party shall give prompt written notice to counsel for the producing party and allow the producing party an opportunity to oppose such subpoena or demand or court order prior to the deadline for complying with the subpoena or demand or court order. No compulsory disclosure to third parties of information or material exchanged under this Order shall be deemed a waiver of any claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction.

16. Jurisdiction to Enforce Standard Protective Order

After the termination of this action, the Court will continue to have jurisdiction to enforce this Order.

17. Modification of Standard Protective Order

This Order is without prejudice to the right of any person or entity to seek a modification of this Order at any time either through stipulation or Order of the Court.

18. Confidentiality of Party's own Documents

Nothing herein shall affect the right of the designating party to disclose to its officers, directors, employees, attorneys, consultants or experts, or to any other person, its own information. Such disclosure shall not waive the protections of this Standard Protective Order and shall not entitle other parties or their attorneys to disclose such information in violation of it, unless by such disclosure of the designating party the information becomes public knowledge. Similarly, the Standard Protective Order shall not preclude a party from showing its own information, including its own information that is filed under seal by a party, to its officers, directors, employees, attorneys, consultants or experts, or to any other person.

SO ORDERED AND ENTERED BY THE COURT PURSUANT TO DUCivR 26-2 EFFECTIVE AS OF THE COMMENCE OF THE ACTION.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

_____, Plaintiffs, vs. _____, Defendant.	DISCLOSURE AGREEMENT Honorable Magistrate Judge

I, _____, am employed by _____. In connection with this action, I am:

_____ a director, officer or employee of _____ who is directly assisting in this action;

_____ have been retained to furnish technical or other expert services or to give testimony (a "TECHNICAL ADVISOR");

_____ Other Qualified Recipient (as defined in the Protective Order) (Describe:_____).

I have read, understand and agree to comply with and be bound by the terms of the Standard Protective Order in the matter of _____, Civil Action No. _____, pending in the United States District Court for the District of Utah. I further state that the Standard Protective Order entered by the Court, a copy of which has been given to me and which I have read, prohibits me from using any PROTECTED INFORMATION, including documents, for any purpose not appropriate or necessary to my participation in this action or disclosing such documents or information to

any person not entitled to receive them under the terms of the Standard Protective Order. To the extent I have been given access to PROTECTED INFORMATION, I will not in any way disclose, discuss, or exhibit such information except to those persons whom I know (a) are authorized under the Standard Protective Order to have access to such information, and (b) have executed a Disclosure Agreement. I will return, on request, all materials containing PROTECTED INFORMATION, copies thereof and notes that I have prepared relating thereto, to counsel for the party with whom I am associated. I agree to be bound by the Standard Protective Order in every aspect and to be subject to the jurisdiction of the United States District Court for the District of Utah for purposes of its enforcement and the enforcement of my obligations under this Disclosure Agreement. I declare under penalty of perjury that the foregoing is true and correct.

_____
Signed by Recipient

_____
Name (printed)

Date: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

_____, Plaintiffs, vs. _____, Defendants.	STANDARD PROTECTIVE ORDER Civil No. Honorable Magistrate

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and for good cause,

IT IS HEREBY ORDERED THAT:

1. Scope of Protection

This Standard Protective Order shall govern any record of information produced in this action and designated pursuant to this Standard Protective Order, including all designated deposition testimony, all designated testimony taken at a hearing or other proceeding, all designated deposition exhibits, interrogatory answers, admissions, documents and other discovery materials, whether produced informally or in response to interrogatories, requests for admissions, requests for production of documents or other formal methods of discovery.

This Standard Protective Order shall also govern any designated record of information produced in this action pursuant to required disclosures under any federal procedural rule or local rule of the Court and any supplementary disclosures thereto.

This Standard Protective Order shall apply to the parties and to any nonparty from whom discovery may be sought who desires the protection of this Protective Order.

Nonparties may challenge the confidentiality of the protected information by filing a motion to intervene and a motion to de-designate.

2. Definitions

(a) The term PROTECTED INFORMATION shall mean confidential or proprietary technical, scientific, financial, business, health, or medical information designated as such by the producing party.

(b) The term CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall mean PROTECTED INFORMATION that is so designated by the producing party. The designation CONFIDENTIAL - ATTORNEYS EYES ONLY may be used only for the following types of past, current, or future PROTECTED INFORMATION: (1) sensitive technical information, including current research, development and manufacturing information and patent prosecution information, (2) sensitive business information, including highly sensitive financial or marketing information and the identity of suppliers, distributors and potential or actual customers, (3) competitive technical information, including technical analyses or comparisons of competitor's products, (4) competitive business information, including non-public financial or marketing analyses or comparisons of competitor's products and strategic product planning, or (5) any other PROTECTED INFORMATION the disclosure of which to non-qualified people subject to this Standard Protective Order the producing party reasonably and in good faith believes would likely cause harm.

(c) The term CONFIDENTIAL INFORMATION shall mean all PROTECTED INFORMATION that is not designated as "CONFIDENTIAL - ATTORNEYS EYES ONLY" information.

(d) For ~~purposes of~~ entities covered by the Health Insurance Portability

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and Accountability Act of 1996 ("HIPAA"), the term CONFIDENTIAL INFORMATION shall include Confidential Health Information.~~, and be shall constitute a subset of CONFIDENTIAL INFORMATION, and shall be designated as "CONFIDENTIAL INFORMATION" and subject to all other terms and conditions governing the treatment of Confidential Information.~~ Confidential Health Information shall mean information supplied in any form, or any portion thereof, that identifies an individual or subscriber in any manner and relates to the past, present, or future care, services, or supplies relating to the physical or mental health or condition of such individual or subscriber, the provision of health care to such individual or subscriber, or the past, present, or future payment for the provision of health care to such individual or subscriber. Confidential Health Information includes ~~shall include, but is not limited to,~~ claim data, claim forms, grievances, appeals, or other documents or records that contain any patient health information required to be kept confidential under any state or federal law, including 45 C.F.R. Parts 160 and 164 promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (*see* 45 C.F.R. §§ 164.501 & 160.103), and the following subscriber, patient, or member identifiers:

(1) names;

(2) all geographic subdivisions smaller than a State, including street address, city, county, precinct, and zip code;

(3) all elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, age, and date of death;

(4) telephone numbers;

(5) fax numbers;

(6) electronic mail addresses;

(7) social security numbers;

(8) medical record numbers;

(9) health plan beneficiary numbers;

(10) account numbers;

(11) certificate/license numbers;

(12) vehicle identifiers and serial numbers, including license plate numbers;

(13) device identifiers and serial numbers;

(14) web universal resource locators ("URLs");

(15) internet protocol ("IP") address numbers;

(16) biometric identifiers, including finger and voice prints;

(17) full face photographic images and any comparable images; and/or any other unique identifying number, characteristic, or code.

(e) The term TECHNICAL ADVISOR shall refer to any person who is not a party to this action and/or not presently employed by the receiving party or a company affiliated through common ownership, who has been designated by the receiving party to receive another party's PROTECTED INFORMATION, including CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, and CONFIDENTIAL INFORMATION. Each party's TECHNICAL ADVISORS shall be limited to such person as, in the judgment of that party's counsel, are reasonably necessary for development and presentation of that party's case. These persons include outside

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experts or consultants retained to provide technical or other expert services such as expert testimony or otherwise assist in trial preparation.

3. Disclosure Agreements

(a) Each receiving party's TECHNICAL ADVISOR shall sign a disclosure agreement in the form attached hereto as Exhibit A ("Disclosure Agreement"). Copies of the Disclosure Agreement ~~in the form of Exhibit A~~ signed by any person or entity to whom PROTECTED INFORMATION is disclosed shall be provided to the other party promptly after execution by facsimile and overnight mail. No disclosures shall be made to a TECHNICAL ADVISOR until ~~for a period of~~ ~~five (5) business~~seven (7) ~~-~~days after the executed D~~d~~isclosure A~~a~~greement is ~~provided to~~served on the other party.

(b) Before any PROTECTED INFORMATION is disclosed to outside TECHNICAL ADVISORS, the following information must be provided in writing to the producing party and received no less than ~~five (5) business~~seven (7) days before the intended date of disclosure to that outside TECHNICAL ADVISOR: the identity of that outside TECHNICAL ADVISOR, business address and/or affiliation and a current curriculum vitae of the TECHNICAL ADVISOR, and, if not contained in the TECHNICAL ADVISOR's curriculum vitae, a brief description, including education, present and past employment and general areas of expertise of the TECHNICAL ADVISOR. If the producing party objects to disclosure of PROTECTED INFORMATION to an outside TECHNICAL ADVISOR, the producing party shall within ~~five (5) business~~seven (7) days of receipt serve written objections identifying the specific basis for the objection, and particularly identifying all information to which disclosure is objected. Failure to object within ~~five (5) business~~seven (7) days shall authorize the disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR. As to any

objections, the parties shall attempt in good faith to promptly resolve any objections informally. If the objections cannot be resolved, the party seeking to prevent disclosure of the PROTECTED INFORMATION to the expert shall move within ~~five (5) business~~seven (7) days for an Order of the Court preventing the disclosure. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within ~~five (5) business~~seven (7) days, disclosure to the TECHNICAL ADVISOR shall be permitted. In the event that objections are made and not resolved informally and a motion is filed, disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR shall not be made except by Order of the Court.

(c) Any disclosure agreement executed by any person affiliated with a party shall be provided to any other party who, based upon a good faith belief that there has been a violation of this order, requests a copy.

(d) No party shall attempt to depose any TECHNICAL ADVISOR until such time as the TECHNICAL ADVISOR is designated by the party engaging the TECHNICAL ADVISOR as a testifying expert. Notwithstanding the preceding sentence, any party may depose a TECHNICAL ADVISOR as a fact witness provided that the party seeking such deposition has a good faith, demonstrable basis independent of the D~~d~~isclosure A~~a~~greement ~~of Exhibit A~~ or the information provided under subparagraph (a) above that such person possesses facts relevant to this action, or facts likely to lead to the discovery of admissible evidence; however, such deposition, if it precedes the designation of such person by the engaging party as a testifying expert, shall not include any questions regarding the scope or subject matter of the engagement. In addition, if the engaging party chooses not to designate the TECHNICAL ADVISOR as a testifying expert, the non-

engaging party shall be barred from seeking discovery or trial testimony as to the scope or subject matter of the engagement.

4. Designation of Information

(a) Documents and things produced or furnished during the course of this action shall be designated as containing CONFIDENTIAL INFORMATION, ~~including Confidential Health Information,~~ by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION

(b) Documents and things produced or furnished during the course of this action shall be designated as containing information which is CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY

(c) During discovery, a producing party shall have the option to require that all or batches of materials be treated as containing CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY during inspection and to make its designation as to particular documents and things at the time copies of documents and things are furnished.

(d) A party may designate information disclosed at a deposition as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the reporter to so designate the transcript at the time of the deposition.

(e) A producing party shall designate its discovery responses, responses to requests for admission, briefs, memoranda, and all other papers sent to the court or to

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opposing counsel as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY when such papers are served or sent.

(f) A party shall designate information disclosed at a hearing or trial as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the court, at the time the information is proffered or adduced, to receive the information only in the presence of those persons designated to receive such information and court personnel, and to designate the transcript appropriately.

(g) The parties will use reasonable care to avoid designating any documents or information as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY that is not entitled to such designation or which is generally available to the public. The parties shall designate only that part of a document or deposition that is CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, rather than the entire document or deposition. For example, if a party claims that a document contains pricing information that is CONFIDENTIAL – ATTORNEYS EYES ONLY, the party will designate only that part of the document setting forth the specific pricing information as ATTORNEYS EYES ONLY, rather than the entire document.

(h) In multi-party cases, Plaintiffs and/or Defendants shall further be able to designate documents as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS for documents that shall not be disclosed to other parties.

5. Disclosure and Use of Confidential Information

Information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be disclosed by the receiving party only to Qualified Recipients. All Qualified Recipients shall hold such information received from the disclosing party in confidence, shall use the information only for purposes of this action and for no other action, and shall not use it for any business or other commercial purpose, and shall not use it for filing or prosecuting any patent application (of any type) or patent reissue or reexamination request, and shall not disclose it to any person, except as hereinafter provided. All information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be carefully maintained so as to preclude access by persons who are not qualified to receive such information under the terms of this Order.

In multi-party cases, documents designated as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall not be disclosed to other plaintiffs and/or defendants.

~~In the event that any receiving party's briefs, memoranda, discovery requests, requests for admission or other papers of any kind which are served or filed shall include another party's CONFIDENTIAL INFORMATION, the papers shall be appropriately designated and shall be treated accordingly.~~

~~All documents, including attorney notes and abstracts, which contain another party's CONFIDENTIAL INFORMATION, shall be handled as if they were designated pursuant to paragraph 3.~~

~~Documents, papers and transcripts filed with the court that contain any other party's CONFIDENTIAL INFORMATION shall be filed under seal.~~

6. Qualified Recipients

For purposes of this Order, “Qualified Recipient" means

(a) For CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY:

(1) Outside counsel of record for the parties in this action, and the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in the action, outside copying services, document management services and graphic services;

(2) Court officials involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

(3) Any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;

(4) Any outside TECHNICAL ADVISOR employed by the outside counsel of record, subject to the requirements in Paragraph 3 above; ~~and~~

(5) Any witness during the course of discovery, so long as it is stated on the face of each document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document. Where it is not stated on the face of the confidential document being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document, the party seeking disclosure may nonetheless disclose the confidential document to the witness, provided that: (i) the party seeking disclosure has a reasonable basis for believing that the

witness in fact received or reviewed the document, (ii) the party seeking disclosure provides advance notice to the party that produced the document, and (iii) the party that produced the document does not inform the party seeking disclosure that the person to whom the party intends to disclose the document did not in fact receive or review the documents. Nothing herein shall prevent disclosure at a deposition of a document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to the officers, directors, and managerial level employees of the party producing such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, or to any employee of such party who has access to such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY in the ordinary course of such employee's employment; and.

(6) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the parties, and his or her staff, provided that such individuals agree in writing, inpursuant to the Disclosure Agreementform attached at Appendix A, to be bound by the terms of this Order.

(b) FOR CONFIDENTIAL INFORMATION:

(1) Those persons listed in paragraph 6(a);

(2) In-house counsel for a party to this action who are acting in a legal capacity and who are actively engaged in the conduct of this action, and the secretary and paralegal assistants of such counsel to the extent reasonably necessary;

(3) The insurer of a party to litigation and employees of such insurer to the extent reasonably necessary to assist the party's counsel to afford the insurer an opportunity to investigate and evaluate the claim for purposes of determining coverage and for settlement purposes; and

(4) Representatives, officers, or employees of a party as necessary to assist outside counsel with this litigation.~~in the preparation and trial of this action~~~~Employees of the parties.~~

7. Use of Protected Information

(a) In the event that any receiving party's briefs, memoranda, discovery requests, requests for admission, or other papers of any kind that ~~which~~ are served or filed ~~shall~~ include another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, the papers must ~~shall~~ be appropriately designated pursuant to paragraphs 4(a) and (b)~~,~~ and governed ~~pursuant to~~by DUCivR 5-3.~~.2, and shall be treated accordingly.~~

(b) All documents, including attorney notes and abstracts~~,~~, that ~~which~~ contain another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall be handled as if they were designated pursuant to paragraph 4(a) or (b).

(c) Documents, papers, and transcripts that are filed with the court and ~~which~~ contain any other party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be filed in sealed envelopes and filed in accordance with DUCivR 5-3. ~~labeled according to DUCivR 5-2.~~

(d) To the extent that documents are reviewed by a receiving party prior to production, any knowledge learned during the review process will be treated by the receiving party as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY until such time as the documents have been produced, at which time any stamped classification will control. No photograph or any other means of duplication, including but

not limited to electronic means, of materials provided for review prior to production is permitted before the documents are produced with the appropriate stamped classification.

(e) In the event that any question is asked at a deposition with respect to which a party asserts that the answer requires the disclosure of CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, such question shall nonetheless be answered by the witness fully and completely. Prior to answering, however, all persons present shall be advised of this Order by the party making the confidentiality assertion and, in the case of information designated as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY at the request of such party, all persons who are not allowed to obtain such information pursuant to this Order, other than the witness, shall leave the room during the time in which this information is disclosed or discussed.

(f) Nothing in this Protective Order shall bar or otherwise restrict outside counsel from rendering advice to his or her client with respect to this action and, in the course thereof, from relying in a general way upon his examination of materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, provided, however, that in rendering such advice and in otherwise communicating with his or her clients, such counsel shall not disclose the specific contents of any materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY.

8. Inadvertent Failure to Designate

(a) In the event that a producing party inadvertently fails to designate any of its information pursuant to paragraph 4, it may later designate by notifying the

receiving parties in writing. The receiving parties shall take reasonable steps to see that the information is thereafter treated in accordance with the designation.

(b) It shall be understood however, that no person or party shall incur any liability hereunder with respect to disclosure that occurred prior to receipt of written notice of a belated designation.

9. Challenge to Designation

(a) Any receiving party may challenge a producing party's designation at any time. A failure of any party to expressly challenge a claim of confidentiality or any document designation shall not constitute a waiver of the right to assert at any subsequent time that the same is not in-fact confidential or not an appropriate designation for any reason.

(b) ~~Notwithstanding anything set forth in paragraph 2(a) and (b) herein, a~~Any receiving party may disagree with the designation of any information received from the producing party as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. In that case, any receiving party desiring to disclose or to permit inspection of the same otherwise than is permitted in this Order, may request the producing party in writing to change the designation of a document or documents, stating ~~the~~ with particularity the reasons for ~~in~~ that request, and specifying the category to which the challenged document(s) should be de-designated~~.~~ The producing party shall then have ~~five (5) business~~seven (7) days from the date of ~~receipt~~ service of the ~~notification~~ request to:

(i) advise the receiving parties whether or not it persists in such designation; and

(ii) if it persists in the designation, to explain the reason for the particular designation and to state its intent to seek a protective order or any other order to maintain the designation.

(c) If no response is made within ~~five (5) business~~seven (7) days after ~~receipt~~service of the request under subparagraph (b), the information will be de-designated to the category requested by the receiving party. If, however, the~~its~~ request under subparagraph (b) above is ~~turned down~~responded to under subparagraph (b)(i) and (ii), ~~or if no response is made within five (5) business~~seven (7) ~~days after receipt of notification, any~~ the producing party may then move the court for a protective order or any other order to maintain the designation. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within ~~five (5) business~~seven (7) days after the statement to seek an order under subparagraph (b)(ii), the information will be de-designated to the category requested by the receiving party. In the event objections are made and not resolved informally and a motion is filed, disclosure of information shall not be made until the issue has been resolved by the Court (or to any limited extent upon which the parties may agree).

No party shall be obligated to challenge the propriety of any designation when made, and failure to do so shall not preclude a subsequent challenge to the propriety of such designation.

(d) With respect to requests and applications to remove or change a designation, information shall not be considered confidential or proprietary to the producing party if:

(i) the information in question has become available to the public through no violation of this Order; or

(ii) the information was known to any receiving party prior to its receipt from the producing party; or

(iii) the information was received by any receiving party without restrictions on disclosure from a third party having the right to make such a disclosure.

10. Inadvertently Produced Privileged Documents

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The parties hereto also acknowledge that regardless of the producing party's diligence an inadvertent production of attorney-client privileged or attorney work product materials may occur. In accordance with Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502, they therefore agree that if a party through inadvertence produces or provides discovery that it believes is subject to a claim of attorney-client privilege or attorney work product, the producing party may give written notice to the receiving party that the document or thing is subject to a claim of attorney-client privilege or attorney work product and request that the document or thing be returned to the producing party. The receiving party shall return to the producing party such document or thing. Return of the document or thing shall not constitute an admission or concession, or permit any inference, that the returned document or thing is, in fact, properly subject to a claim of attorney-client privilege or attorney work product, nor shall it foreclose any party from moving the Court pursuant to Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502 for an Order that such document or thing has been improperly designated or should be produced.

11. Inadvertent Disclosure

In the event of an inadvertent disclosure of another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to a non-Qualified Recipient, the party making the inadvertent disclosure shall promptly upon learning of the disclosure: (i) notify the person to whom the disclosure was made that it contains CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY subject to this Order; (ii) make all reasonable efforts to preclude dissemination or use of the CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by the person to whom disclosure was inadvertently made including, but not limited to, obtaining all copies of such materials from the non-Qualified Recipient; and (iii) notify the producing party of the identity of the person to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to ensure against the dissemination or use of the information.

12. Limitation

This Order shall be without prejudice to any party's right to assert at any time that any particular information or document is or is not subject to discovery, production or admissibility on the grounds other than confidentiality.

13. Conclusion of Action

(a) At the conclusion of this action, including through all appeals, each party or other person subject to the terms hereof shall be under an obligation to destroy or return to the producing party all materials and documents containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY and to certify to the producing party such destruction or return. Such return or destruction

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shall not relieve said parties or persons from any of the continuing obligations imposed upon them by this Order.

(b) After this action, trial counsel for each party may retain one archive copy of all documents and discovery material even if they contain or reflect another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. Trial counsel's archive copy shall remain subject to all obligations of this Order.

(c) The provisions of this paragraph shall not be binding on the United States, any insurance company, or any other party to the extent that such provisions conflict with applicable Federal or State law. The Department of Justice, any insurance company, or any other party shall notify the producing party in writing of any such conflict it identifies in connection with a particular matter so that such matter can be resolved either by the parties or by the Court.

14. Production by Third Parties Pursuant to Subpoena

Any third party producing documents or things or giving testimony in this action pursuant to a subpoena, notice or request may designate said documents, things, or testimony as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. The parties agree that they will treat CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY produced by third parties according to the terms of this Order.

15. Compulsory Disclosure to Third Parties

If any receiving party is subpoenaed in another action or proceeding or served with a document or testimony demand or a court order, and such subpoena or demand or court order seeks CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION –

ATTORNEYS EYES ONLY of a producing party, the receiving party shall give prompt written notice to counsel for the producing party and allow the producing party an opportunity to oppose such subpoena or demand or court order prior to the deadline for complying with the subpoena or demand or court order. No compulsory disclosure to third parties of information or material exchanged under this Order shall be deemed a waiver of any claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction.

16. Jurisdiction to Enforce Standard Protective Order

After the termination of this action, the Court will continue to have jurisdiction to enforce this Order.

17. Modification of Standard Protective Order

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This Order is without prejudice to the right of any person or entity to seek a modification of this Order at any time either through stipulation or Order of the Court.

18. Confidentiality of Party's ~~O~~own Documents

Nothing herein shall affect the right of the designating party to disclose to its officers, directors, employees, attorneys, consultants or experts, or to any other person, its own information. Such disclosure shall not waive the protections of this Standard Protective Order and shall not entitle other parties or their attorneys to disclose such information in violation of it, unless by such disclosure of the designating party the information becomes public knowledge. Similarly, the Standard Protective Order shall not preclude a party from showing its own information, including its own information that is filed under seal by a party, to its officers, directors, employees, attorneys, consultants or experts, or to any other person.

SO ORDERED AND ENTERED BY THE COURT PURSUANT TO DUCivR 26-2 EFFECTIVE AS OF THE COMMENCE OF THE ACTION.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

_____,	DISCLOSURE AGREEMENT
Plaintiffs,	Honorable
vs.	Magistrate Judge
_____,	
Defendant.	

I, _____, am employed by _____. In connection with this action, I am:

_____ a director, officer or employee of _____ who is directly assisting in this action;

_____ have been retained to furnish technical or other expert services or to give testimony (a "TECHNICAL ADVISOR");

_____ Other Qualified Recipient (as defined in the Protective Order) (Describe:_____).

I have read, understand and agree to comply with and be bound by the terms of the Standard Protective Order in the matter of _____, Civil Action No. _____, pending in the United States District Court for the District of Utah. I further state that the Standard Protective Order entered by the Court, a copy of which has been given to me and which I have read, prohibits me from using any PROTECTED INFORMATION, including documents, for any purpose not appropriate or necessary to my participation in this action or disclosing such documents or information to

any person not entitled to receive them under the terms of the Standard Protective Order. To the extent I have been given access to PROTECTED INFORMATION, I will not in any way disclose, discuss, or exhibit such information except to those persons whom I know (a) are authorized under the Standard Protective Order to have access to such information, and (b) have executed a Disclosure Agreement. I will return, on request, all materials containing PROTECTED INFORMATION, copies thereof and notes that I have prepared relating thereto, to counsel for the party with whom I am associated. I agree to be bound by the Standard Protective Order in every aspect and to be subject to the jurisdiction of the United States District Court for the District of Utah for purposes of its enforcement and the enforcement of my obligations under this Disclosure Agreement. I declare under penalty of perjury that the foregoing is true and correct.

_____
Signed by Recipient

_____
Name (printed)

Date: _____

(E) *Payment.* Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and

(ii) for discovery under (D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

(5) *Claiming Privilege or Protecting Trial-Preparation Materials.*

(A) *Information Withheld.* When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) *Information Produced.* If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) PROTECTIVE ORDERS.

(1) *In General.* A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;