

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RICHARD ALLEN CLARIDGE, individual and trustee of the Joint Revocable Trust of Richard Allen Claridge Jr. & Capri Lynn Winsor; CAPRI LYNN WINSER; individual and trustee of the Joint Revocable Trust of Richard Allen Claridge Jr. & Capri Lynn Winsor; TODD MICHERO, an individual; LORI MICHERO, an individual; BROOKE SAMPLE, individual and trustee of the First Amendment to the Brooke Sample Separate Property Trust; SCOTT A. WALKER, individual and trustee of The Walker Family Living Trust; and ELIZABETH L. WALKER, individual and trustee of The Walker Family Living Trust, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TIMOTHY J. LEFEVER, an individual; KENNETH W. MATTSON, an individual; LEFEVER MATTSON, INC., a corporation; KS MATTSON PARTNERS, LP, a limited partnership; LEFEVER MATTSON I, LLC, a limited liability company; HOME TAX SERVICE OF AMERICA, INC. (d/b/a LEFEVER MATTSON PROPERTY MANAGEMENT), a corporation; DIVI DIVI TREE, LP, a limited partnership; and SPECIALTY PROPERTIES PARTNERS, LP, a limited partnership,

Defendants.

Case No. 4:24-cv-04093-JST

**~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated

Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

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

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.10 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

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

2.13 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who

1 obtained the information lawfully and under no obligation of confidentiality to the Designating
 2 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

3 4. DURATION

4 Even after final disposition of this litigation, the confidentiality obligations imposed by
 5 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
 6 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
 7 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
 8 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
 9 including the time limits for filing any motions or applications for extension of time pursuant to
 10 applicable law.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
 13 or Non-Party that designates information or items for protection under this Order must take care
 14 to limit any such designation to specific material that qualifies under the appropriate standards.
 15 The Designating Party must designate for protection only those parts of material, documents,
 16 items, or oral or written communications that qualify – so that other portions of the material,
 17 documents, items, or communications for which protection is not warranted are not swept
 18 unjustifiably within the ambit of this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 20 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 21 unnecessarily encumber or slow the case development process or to impose unnecessary expenses
 22 and burdens on other parties) expose the Designating Party to potential sanctions.

23 If it comes to a Designating Party's attention that information or items that it designated
 24 for protection do not qualify for protection, that Designating Party must promptly notify all other
 25 Parties that it is withdrawing the mistaken or no longer appropriate designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order,
 27 or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
 28

1 protection under this Order must be clearly so designated before the material is disclosed or
2 produced or in compliance with Section 5.3.

3 Designation in conformity with this Order requires:

4 (a) For information in documentary form (e.g., paper or electronic documents,
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
6 Party affix the legend “CONFIDENTIAL” to each such document or, in the case of documents
7 produced in native format, by affixing the legend “CONFIDENTIAL” to a slip sheet produced
8 along with the document. A Party or Non-Party that makes original documents or materials
9 available for inspection need not designate them for protection until after the inspecting Party has
10 indicated which material it would like copied and produced. During the inspection and before the
11 designation, all of the material made available for inspection shall be deemed
12 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and
13 produced, the Producing Party must determine which documents, or portions thereof, qualify for
14 protection under this Order. Then, before producing the specified documents, the Producing Party
15 must affix the “CONFIDENTIAL” legend to each such document or, in the case of documents
16 produced in native format, by affixing the legend “CONFIDENTIAL” to a slip sheet produced
17 along with the document.

18 (b) For testimony given in deposition or in other pretrial or trial proceedings,
19 that the Designating Party identify, within 30 days of receipt of the transcript for any deposition,
20 or before the close of the hearing or other proceeding, all protected testimony.

21 Any party may designate information disclosed at a deposition for protection under this
22 Order by notifying all parties in writing not later than 30 days of receipt of the transcript of the
23 specific pages and lines of the transcript that should be treated as Protected Material thereafter.

24 To the extent possible, the court reporter shall ~~segregate~~^{segregate} into separate transcripts
25 information designated for protection with blank, consecutively numbered pages being provided
26 in a nondesignated main transcript. The separate transcript containing Protected Material shall
27 have page numbers that correspond to the blank pages in the main transcript.
28

Counsel for a party or a nonparty witness shall have the right to exclude from depositions any person who is not authorized to ~~receive~~^{receive} Protected Material information under this Order, but such right of exclusion shall be applicable only during periods of ~~examination~~^{examination} or testimony during which Protected Material is ~~used~~^{used} or discussed.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In

1 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
 2 designation was not proper and must give the Designating Party an opportunity to review the
 3 designated material, to reconsider the circumstances, and, if no change in designation is offered,
 4 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
 5 stage of the challenge process only if it has engaged in this meet and confer process first or
 6 establishes that the Designating Party is unwilling to participate in the meet and confer process in
 7 a timely manner.

8 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 9 intervention, the parties shall file a joint letter brief that describes the disputed issue (and in
 10 compliance with Civil Local Rule 79-5, if applicable), consistent with the Court's Standing Order
 11 regarding discovery matters.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating
 13 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
 14 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 15 sanctions. Until the matter is resolved, by agreement among the parties or by the Court, all parties
 16 shall continue to afford the material in question the level of protection to which it is entitled under
 17 the Producing Party's designation until the court rules on the challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 20 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 21 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 22 the categories of persons and under the conditions described in this Order. When the litigation has
 23 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
 24 DISPOSITION).

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

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
 2 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 3 information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
 5 employees of Outside Counsel of Record to whom it is reasonably necessary to disclose the
 6 information for this litigation;

7 (b) the officers, directors, and employees (including House Counsel) of the
 8 Receiving Party, or any Receiving Party who is an individual, to whom disclosure is reasonably
 9 necessary for this litigation;

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

13 (d) the court and its personnel;

14 (e) mediators, special masters, or others engaged in this action who have
 15 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (f) court reporters and their staff, professional jury or trial consultants, mock
 17 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
 18 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (g) during their depositions, witnesses in the action to whom disclosure is
 20 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
 21 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.; and

22 (h) the author or recipient of a document containing the information or a
 23 custodian or other person who otherwise possessed or knew the information.

24 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 25 LITIGATION

26 If a Party is served with a subpoena or a court order issued in other litigation that compels
 27 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
 28 must:

1 (a) promptly notify in writing the Designating Party. Such notification shall
2 include a copy of the subpoena or court order;

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

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by
8 the Designating Party whose Protected Material may be affected.

9 If the Designating Party timely seeks a protective order, the Party served with the
10 subpoena or court order shall not produce any information designated in this action as
11 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
12 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
13 shall bear the burden and expense of seeking protection in that court of its confidential material –
14 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
15 Party in this action to disobey a lawful directive from another court.

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

18 (a) The terms of this Order are applicable to information produced by a Non-
19 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
20 Parties in connection with this litigation is protected by the remedies and relief provided by this
21 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
22 additional protections.

23 (b) In the event that a Party is required, by a valid discovery request, to
24 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
25 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
26 Party shall:

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

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

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

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

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

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

provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

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

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

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5 is denied by the court, then the Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by the court.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such

1 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
 2 compilations, summaries, and any other format reproducing or capturing any of the Protected
 3 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
 4 submit a written certification to the Producing Party (and, if not the same person or entity, to the
 5 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
 6 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
 7 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
 8 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 9 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
 10 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
 11 product, and consultant and expert work product, even if such materials contain Protected
 12 Material. Any such archival copies that contain or constitute Protected Material remain subject to
 13 this Protective Order as set forth in Section 4 (DURATION).

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15
 16 Dated: September 6, 2024

/s/ Michael K. Sheen
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17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18
19 DATED: September 10, 2024



The Honorable Jon S. Tigar
United States District Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of _____ **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____