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2 SUPERIOR COURT OF CALIFORNIA  
3 COUNTY OF SAN FRANCISCO  
4 COMPLEX LITIGATION  
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7 CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

13 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing  
14 written notice of the designations it is challenging and generally describing the basis for the challenges.  
15 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the  
16 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective  
17 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by  
18 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 10  
19 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its  
20 belief that the confidentiality designation was not proper and must give the Designating Party an  
21 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
22 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed  
23 to the next stage of the challenge process only if it has engaged in this meet and confer process first or  
24 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely  
25 manner.

26 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention through  
27 the procedure set forth above, they must hold an informal in-person conference with the Court. If the  
28 Parties still cannot resolve the challenge, the Designating Party shall file and serve a motion to retain

1 confidentiality within 10 days of the informal in-person conference. Each such motion must be  
2 accompanied by a competent declaration affirming that the movant has complied with the meet and confer  
3 requirements imposed in the preceding paragraph. Failure by the Designating Party to timely make such a  
4 motion shall automatically waive the confidentiality designation for each challenged designation. In  
5 addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if  
6 there is good cause for doing so, including a challenge to the designation of a deposition transcript or any  
7 portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent  
8 declaration affirming that the movant has complied with the meet and confer requirements imposed by the  
9 preceding paragraph. The burden of persuasion in any such challenge proceeding shall be on the  
10 Designating Party. The Court recommends that the parties obtain a court reporter for the hearing on this  
11 motion. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
12 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. The  
13 party losing any motion concerning the confidentiality of materials will pay the successful party's  
14 attorneys' fees incurred in the making of or opposing the motion if the losing position was not  
15 substantially justified. Unless the Designating Party has waived the confidentiality designation by failing  
16 to file a motion to retain confidentiality as described above, all parties shall continue to afford the material  
17 in question the level of protection to which it is entitled under the Producing Party's designation until the  
18 court rules on the challenge.