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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

QUAKE GLOBAL, INC.,
Plaintiff,
v.
MARK KOSLOSKI, et al.,
Defendants.

Case No.: 20-cv-02468-DMS-JLB

ORDER:

(1) GRANTING JOINT MOTION FOR PROTECTIVE ORDER; AND

(2) ENTERING STIPULATED PROTECTIVE ORDER

[ECF No. 13]

Before the Court is the parties’ Joint Motion for Protective Order. (ECF No. 13.) Good cause appearing, the joint motion is **GRANTED**, and the parties’ Stipulated Protective Order¹ is entered as follows:

PROTECTIVE ORDER

In order to facilitate the exchange of information and documents that are normally kept confidential, the Parties stipulate as follows:

¹ The Court has modified paragraphs 6, 21, and 22 of the parties’ Stipulated Protective Order.

1 1. In this Protective Order, the words set forth below shall have the following
2 meanings:

3 a. “Proceeding” means the above-entitled proceeding, Case No. 3:20-cv-
4 02468-DMS-JLB.

5 b. “Court” means any judge to which this Proceeding may be assigned,
6 including Court staff participating in such proceedings.

7 c. “Confidential” means any information which is in the possession of a
8 Designating Party who believes in good faith that such information is entitled to
9 confidential treatment under Federal Rule of Civil Procedure 26(c).

10 d. “Confidential Materials” means any Documents, Testimony or
11 Information as defined below designated as “Confidential” pursuant to the
12 provisions of this Stipulation and Protective Order.

13 e. “Designating Party” means the Party that designates Materials as
14 “Confidential.”

15 f. “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge,
16 give, or make available Materials, or any part thereof, or any information contained
17 therein.

18 g. “Documents” means (i) any “Writing,” “Recording,” “Photograph,”
19 “Original,” and “Duplicate” as those terms are defined by Federal Rules of Evidence
20 Rule 1001 which have been or will be produced in discovery in this Proceeding by
21 any person, and (ii) any copies, reproductions, or summaries of all or any part of the
22 foregoing.

23 h. “Information” means the content of Documents or Testimony.

24 i. “Testimony” means all depositions, declarations or other testimony
25 taken or used in this Proceeding.

26 2. The Designating Party shall have the right to designate as “Confidential” any
27 Documents, Testimony or Information that the Designating Party in good faith believes to
28 contain non-public information that is entitled to confidential treatment under applicable

1 law, provided however, a party or non-party subject to this Protective Order may only
2 designate documents or other information in this action as confidential if the designating
3 party or non-party has an articulable, good faith basis to believe that each document or
4 other information designated as confidential qualifies for protection under Federal Rule of
5 Civil Procedure 26(c).

6 3. The entry of this Stipulation and Protective Order does not alter, waive,
7 modify, or abridge any right, privilege or protection otherwise available to any Party with
8 respect to the discovery of matters, including but not limited to any Party's right to assert
9 the attorney-client privilege, the attorney work product doctrine, or other privileges, or any
10 Party's right to contest any such assertion.

11 4. Any Documents, Testimony or Information to be designated as "Confidential"
12 must be clearly so designated before the Document, Testimony or Information is Disclosed
13 or produced. The "Confidential" designation should not obscure or interfere with the
14 legibility of the designated Information.

15 a. For Documents (apart from transcripts of depositions or other pretrial
16 or trial proceedings), the Designating Party must affix the legend "Confidential" on
17 each page of any Document containing such designated Confidential Material.

18 b. For Testimony given in depositions the Designating Party may either:

19 i. identify on the record, before the close of the deposition, all
20 "Confidential" Testimony, by specifying all portions of the Testimony that
21 qualify as "Confidential;" or

22 ii. designate the entirety of the Testimony at the deposition as
23 "Confidential" (before the deposition is concluded) with the right to identify
24 more specific portions of the Testimony as to which protection is sought
25 within 30 days following receipt of the deposition transcript. In circumstances
26 where portions of the deposition Testimony are designated for protection, the
27 transcript pages containing "Confidential" Information may be separately
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1 bound by the court reporter, who must affix to the top of each page the legend
2 “Confidential,” as instructed by the Designating Party.

3 c. For Information produced in some form other than Documents, and for
4 any other tangible items, including, without limitation, compact discs or DVDs, the
5 Designating Party must affix in a prominent place on the exterior of the container or
6 containers in which the Information or item is stored the legend “Confidential.” If
7 only portions of the Information or item warrant protection, the Designating Party,
8 to the extent practicable, shall identify the “Confidential” portions.

9 5. The inadvertent production by any of the undersigned Parties or non-Parties
10 to the Proceedings of any Document, Testimony or Information during discovery in this
11 Proceeding without a “Confidential” designation, shall be without prejudice to any claim
12 that such item is “Confidential” and such Party shall not be held to have waived any rights
13 by such inadvertent production. In the event that any Document, Testimony or Information
14 that is subject to a “Confidential” designation is inadvertently produced without such
15 designation, the Party that inadvertently produced the document shall give written notice
16 of such inadvertent production within twenty (20) days of discovery of the inadvertent
17 production, together with a further copy of the subject Document, Testimony or
18 Information designated as “Confidential” (the “Inadvertent Production Notice”). Upon
19 receipt of such Inadvertent Production Notice, the Party that received the inadvertently
20 produced Document, Testimony or Information shall promptly destroy the inadvertently
21 produced Document, Testimony or Information and all copies thereof, or, at the expense
22 of the producing Party, return such together with all copies of such Document, Testimony
23 or Information to counsel for the producing Party and shall retain only the “Confidential”
24 designated Materials. Should the receiving Party choose to destroy such inadvertently
25 produced Document, Testimony or Information, the receiving Party shall notify the
26 producing Party in writing of such destruction within ten (10) days of receipt of written
27 notice of the inadvertent production. This provision is not intended to apply to any
28 inadvertent production of any Information protected by attorney–client or work product

1 privileges. In the event that this provision conflicts with any applicable law regarding
2 waiver of confidentiality through the inadvertent production of Documents, Testimony or
3 Information, such law shall govern.

4 6. In the event that counsel for a Party receiving Documents, Testimony or
5 Information in discovery designated as “Confidential” objects to such designation with
6 respect to any or all of such items, said counsel shall advise counsel for the Designating
7 Party, in writing, of such objections, the specific Documents, Testimony or Information to
8 which each objection pertains, and the specific reasons and support for such objections (the
9 “Designation Objections”). The Parties shall make a good faith attempt to resolve the
10 dispute by agreement. If the Parties are unable to resolve the dispute, the parties shall bring
11 the dispute to the Court’s attention in accordance with Judge Burkhardt’s Civil Chambers
12 Rules. The burden remains on the designating Party to demonstrate the propriety of the
13 designation. Until a motion is filed and resolved by the Court, all documents and materials
14 with which a confidential designation is being challenged shall be treated in the
15 confidential manner that they have been designated by the producing Party, person, or
16 entity as prescribed in this Order. Any motion filed pursuant to this paragraph shall identify
17 with specificity each and every document or piece of information for which a
18 confidentiality designation is being challenged and state the basis for such challenge.

19 7. Access to and/or Disclosure of Confidential Materials designated as
20 “Confidential” shall be permitted only to the following persons:

- 21 a. the Court;
- 22 b. (1) Attorneys of record in the Proceedings and their affiliated attorneys,
23 paralegals, clerical and secretarial staff employed by such attorneys who are actively
24 involved in the Proceedings and are not employees of any Party. (2) In-house
25 counsel to the undersigned Parties and the paralegal, clerical and secretarial staff
26 employed by such counsel. Provided, however, that each non-lawyer given access
27 to Confidential Materials shall be advised that such Materials are being Disclosed
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1 pursuant to, and are subject to, the terms of this Stipulation and Protective Order and
2 that they may not be Disclosed other than pursuant to its terms;

3 c. those officers, directors, partners, members, employees and agents of
4 all non-designating Parties that counsel for such Parties deems necessary to aid
5 counsel in the prosecution and defense of this Proceeding; provided, however, that
6 prior to the Disclosure of Confidential Materials to any such officer, director,
7 partner, member, employee or agent, counsel for the Party making the Disclosure
8 shall deliver a copy of this Stipulation and Protective Order to such person, shall
9 explain that such person is bound to follow the terms of such Order, and shall secure
10 the signature of such person on a statement in the form attached hereto as Exhibit A;

11 d. court reporters in this Proceeding (whether at depositions, hearings, or
12 any other proceeding);

13 e. any deposition, trial or hearing witness in the Proceeding who
14 previously has had access to the Confidential Materials, or who is currently or was
15 previously an officer, director, partner, member, employee or agent of an entity that
16 has had access to the Confidential Materials;

17 f. any deposition or non-trial hearing witness in the Proceeding who
18 previously did not have access to the Confidential Materials; provided, however, that
19 each such witness given access to Confidential Materials shall be advised that such
20 Materials are being Disclosed pursuant to, and are subject to, the terms of this
21 Stipulation and Protective Order and that they may not be Disclosed other than
22 pursuant to its terms;

23 g. mock jury participants, provided, however, that prior to the Disclosure
24 of Confidential Materials to any such mock jury participant, counsel for the Party
25 making the Disclosure shall deliver a copy of this Stipulation and Protective Order
26 to such person, shall explain that such person is bound to follow the terms of such
27 Order, and shall secure the signature of such person on a statement in the form
28 attached hereto as Exhibit A.

1 h. outside experts or expert consultants consulted by the undersigned
2 Parties or their counsel in connection with the Proceeding, whether or not retained
3 to testify at any oral hearing; provided, however, that prior to the Disclosure of
4 Confidential Materials to any such expert or expert consultant, counsel for the Party
5 making the Disclosure shall deliver a copy of this Stipulation and Protective Order
6 to such person, shall explain its terms to such person, and shall secure the signature
7 of such person on a statement in the form attached hereto as Exhibit A. It shall be
8 the obligation of counsel, upon learning of any breach or threatened breach of this
9 Stipulation and Protective Order by any such expert or expert consultant, to promptly
10 notify counsel for the Designating Party of such breach or threatened breach; and

11 i. any other person that the Designating Party agrees to in writing.

12 8. Confidential Materials shall be used by the persons receiving them only for
13 the purposes of preparing for, conducting, participating in the conduct of, and/or
14 prosecuting and/or defending the Proceeding, and not for any business or other purpose
15 whatsoever.

16 9. Any Party to the Proceeding (or other person subject to the terms of this
17 Stipulation and Protective Order) may ask the Court, after appropriate notice to the other
18 Parties to the Proceeding, to modify or grant relief from any provision of this Stipulation
19 and Protective Order.

20 10. Entering into, agreeing to, and/or complying with the terms of this Stipulation
21 and Protective Order shall not:

22 a. operate as an admission by any person that any particular Document,
23 Testimony or Information marked "Confidential" contains or reflects trade secrets,
24 proprietary, confidential or competitively sensitive business, commercial, financial
25 or personal information; or

26 b. prejudice in any way the right of any Party (or any other person subject
27 to the terms of this Stipulation and Protective Order):

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1 i. to seek a determination by the Court of whether any particular
2 Confidential Material should be subject to protection as “Confidential” under
3 the terms of this Stipulation and Protective Order; or

4 ii. to seek relief from the Court on appropriate notice to all other
5 Parties to the Proceeding from any provision(s) of this Stipulation and
6 Protective Order, either generally or as to any particular Document, Material
7 or Information.

8 11. Any Party to the Proceeding who has not executed this Stipulation and
9 Protective Order as of the time it is presented to the Court for signature may thereafter
10 become a Party to this Stipulation and Protective Order by its counsel’s signing and dating
11 a copy thereof and filing the same with the Court and serving copies of such signed and
12 dated copy upon the other Parties to this Stipulation and Protective Order.

13 12. Any Information that may be produced by a non-Party witness in discovery in
14 the Proceeding pursuant to subpoena or otherwise may be designated by such non-Party as
15 “Confidential” under the terms of this Stipulation and Protective Order, and any such
16 designation by a non-Party shall have the same force and effect, and create the same duties
17 and obligations, as if made by one of the undersigned Parties hereto. Any such designation
18 shall also function as a consent by such producing Party to the authority of the Court in the
19 Proceeding to resolve and conclusively determine any motion or other application made by
20 any person or Party with respect to such designation, or any other matter otherwise arising
21 under this Stipulation and Protective Order.

22 13. If any person subject to this Stipulation and Protective Order who has custody
23 of any Confidential Materials receives a subpoena or other process (“Subpoena”) from any
24 government or other person or entity demanding production of Confidential Materials, the
25 recipient of the Subpoena shall promptly give notice of the same by electronic mail
26 transmission, followed by either express mail or overnight delivery to counsel of record for
27 the Designating Party, and shall furnish such counsel with a copy of the Subpoena. Upon
28 receipt of this notice, the Designating Party may, in its sole discretion and at its own cost,

1 move to quash or limit the Subpoena, otherwise oppose production of the Confidential
2 Materials, and/or seek to obtain confidential treatment of such Confidential Materials from
3 the subpoenaing person or entity to the fullest extent available under law. The recipient of
4 the Subpoena may not produce any Documents, Testimony or Information pursuant to the
5 Subpoena prior to the date specified for production on the Subpoena.

6 14. Nothing in this Stipulation and Protective Order shall be construed to preclude
7 either Party from asserting in good faith that certain Confidential Materials require
8 additional protection. The Parties shall meet and confer to agree upon the terms of such
9 additional protection.

10 15. If, after execution of this Stipulation and Protective Order, any Confidential
11 Materials submitted by a Designating Party under the terms of this Stipulation and
12 Protective Order is Disclosed by a non-Designating Party to any person other than in the
13 manner authorized by this Stipulation and Protective Order, the non-Designating Party
14 responsible for the Disclosure shall bring all pertinent facts relating to the Disclosure of
15 such Confidential Materials to the immediate attention of the Designating Party.

16 16. This Stipulation and Protective Order is entered into without prejudice to the
17 right of any Party to knowingly waive the applicability of this Stipulation and Protective
18 Order to any Confidential Materials designated by that Party. If the Designating Party uses
19 Confidential Materials in a non-Confidential manner, then the Designating Party shall
20 advise that the designation no longer applies.

21 17. No document shall be filed under seal unless counsel secures a court order
22 allowing the filing of a document under seal. An application to file a document under seal
23 shall be served on opposing counsel, and on the person or entity that has custody and
24 control of the document, if different from opposing counsel. If the application to file under
25 seal a document designated as confidential is being made by the non-designating party,
26 then, upon request, the designating party must promptly provide the applicant with a legal
27 basis for the confidential designation to include within the application. If opposing counsel,
28 or the person or entity that has custody and control of the document, wishes to oppose the

1 application, he/she must contact the chambers of the judge who will rule on the application,
2 to notify the judge's staff that an opposition to the application will be filed. If an application
3 to file a document under seal is filed, a redacted version of the document(s) shall be e-filed
4 contemporaneously with the application to file under seal. A courtesy copy of the
5 unredacted document(s) shall be delivered to Judge Burkhardt's Chambers.

6 18. The Parties shall meet and confer regarding the procedures for use of
7 Confidential Materials at trial and shall move the Court for entry of an appropriate order.

8 19. Absent an *ex parte* motion made within 10 calendar days of the termination
9 of the case, the parties understand that the Court will destroy any confidential documents
10 in its possession.

11 20. Nothing in this Stipulation and Protective Order shall affect the admissibility
12 into evidence of Confidential Materials or abridge the rights of any person to seek judicial
13 review or to pursue other appropriate judicial action with respect to any ruling made by the
14 Court concerning the issue of the status of Protected Material.

15 21. This Stipulation and Protective Order shall continue to be binding after the
16 conclusion of this Proceeding and all subsequent proceedings arising from this Proceeding,
17 except that a Party may seek the written permission of the Designating Party or may move
18 the Court for relief from the provisions of this Stipulation and Protective Order. To the
19 extent permitted by law, and only with the Court's agreement in an order of dismissal, the
20 Court shall retain jurisdiction to enforce, modify, or reconsider this Stipulation and
21 Protective Order, even after the Proceeding is terminated. The Court may modify the terms
22 and conditions of the Order for good cause, or in the interest of justice, or on its own order
23 at any time in these proceedings.

24 22. Upon written request made within thirty (30) days after the settlement or other
25 termination of the Proceeding, the undersigned Parties shall have thirty (30) days to either
26 (a) promptly return to counsel for each Designating Party all Confidential Materials and all
27 copies thereof (except that counsel for each Party may maintain in its files, in continuing
28 compliance with the terms of this Stipulation and Protective Order, all work product, and

1 one copy of each pleading filed with the Court (b) agree with counsel for the Designating
2 Party upon appropriate methods and certification of destruction or other disposition of such
3 Confidential Materials, or (c) as to any Documents, Testimony or other Information not
4 addressed by sub-paragraphs (a) and (b), if the court has retained jurisdiction, file a motion
5 seeking a Court order regarding proper preservation of such Materials. To the extent
6 permitted by law, and only with the Court’s agreement in an order of dismissal, the Court
7 shall retain continuing jurisdiction to review and rule upon the motion referred to in sub-
8 paragraph (c) herein.

9 23. After this Stipulation and Protective Order has been signed by counsel for all
10 Parties, it shall be presented to the Court for entry. Counsel agree to be bound by the terms
11 set forth herein with regard to any Confidential Materials that have been produced before
12 the Court signs this Stipulation and Protective Order.

13 24. Absent a separate court order, this Protective Order and the parties’ stipulation
14 thereto does not change, amend, or circumvent any court rule or local rule.

15 25. The Parties and all signatories to the Certification attached hereto as Exhibit
16 A agree to be bound by this Stipulation and Protective Order pending its approval and entry
17 by the Court. In the event that the Court modifies this Stipulation and Protective Order, or
18 in the event that the Court enters a different Protective Order, the Parties agree to be bound
19 by this Stipulation and Protective Order until such time as the Court may enter such a
20 different Order. It is the Parties’ intent to be bound by the terms of this Stipulation and
21 Protective Order pending its entry so as to allow for immediate production of Confidential
22 Materials under the terms herein.

23 **IT IS SO ORDERED.**

24 Dated: March 12, 2021

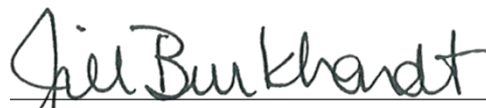
25 
26 Hon. Jill L. Burkhardt
27 United States Magistrate Judge
28

EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I, _____ (name) hereby acknowledge that I, _____ (Position and Employer) hereby acknowledge that I am about to receive Confidential Materials supplied in connection with the Proceeding, Case No. 3:20-cv-02468-DMS-JLB. I certify that I understand that the Confidential Materials are provided to me subject to the terms and restrictions of the Stipulation and Protective Order filed in this Proceeding. I have been given a copy of the Stipulation and Protective Order; I have read it, and I agree to be bound by its terms.

I understand that Confidential Materials, as defined in the Stipulation and Protective Order, including any notes or other records that may be made regarding any such materials, shall not be Disclosed to anyone except as expressly permitted by the Stipulation and Protective Order. I will not copy or use, except solely for the purposes of this Proceeding, any Confidential Materials obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by the Court in the Proceeding.

I further understand that I am to retain all copies of all Confidential Materials provided to me in the Proceeding in a secure manner, and that all copies of such Materials are to remain in my personal custody until termination of my participation in this Proceeding, whereupon the copies of such Materials will be returned to counsel who provided me with such Materials.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct. Executed on _____ (Date).

Dated: _____

By: _____

Signature: _____

Title: _____

Address: _____

Phone: _____