

No. 141, Original

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO AND
STATE OF COLORADO,

Defendants.

OFFICE OF THE SPECIAL MASTER

**STIPULATED PROTECTIVE ORDER REGARDING LAND IQ, LLC'S
EXPERT WITNESS REPORT AND TESTIMONY**

October 7, 2019

Land IQ has been retained by Plaintiff State of Texas as an expert in the above entitled action. Land IQ developed a proprietary analytical process it uses to generate and provide reports and analyses to its customers. Dr. Joel Kimmelshue of Land IQ used this proprietary process to develop the expert report it issued in connection with its expert disclosure in this action. The State of New Mexico desires to have access to Land IQ's proprietary analytical process in connection with its review of Land IQ's expert report prepared in this action. Texas and Land IQ assert federal and state trade secret protection for the proprietary analytical process and associated documentation they wish to safeguard. Texas and Land IQ are willing to make Land IQ's proprietary analytical process available for review to the Parties in this lawsuit in accordance with a protective order under Fed. R. Civ. P. 26(c) and New Mexico is willing to receive and use the proprietary analytical process pursuant to a protective order under Fed. R. Civ. P. 26(c). As a result, the Parties have agreed to the following Stipulated Protective Order.

It is hereby ordered:

1. **Definitions.** For the purpose of this Stipulated Protective Order, the following definitions apply:

a. "Protected Information"/"Protected Material." The terms "Protected Information" and "Protected Material" shall mean that information provided by Land IQ that it claims is protected by state and/or federal trade secret laws and which is being produced in this Action and which is designated as "Confidential Copyright, [date], Land IQ."

Protected Information/Protected Material shall not include the Input Files (defined as the raw data Land IQ used to generate its expert report) or Output

Files (defined as the data generated by Land IQ's proprietary process). Input Files and Output Files are not subject to the confidentiality provision of this Stipulated Protective Order.

Protected Information/Protected Material shall also not include materials or information that has already been disclosed as of the date of this agreement through routine disclosures under the Federal Rules of Civil Procedure, in deposition, or through discussions between counsel for Texas (and their experts) and counsel for New Mexico (and their experts).

b. "Authorized Person" means those individuals who have been expressly designated as provided in this Stipulated Protective Order to receive, access, view, possess, or use the Protected Information/Protected Material. No individual other than a properly designated Authorized Person is authorized to receive, access, view, possess, or use the Protected Information/Protected Material. An Authorized Person is expressly limited to: (1) a Party to the Action's counsel of record and employees of said counsel of record to whom it is reasonably necessary to disclose the Protected Information/Protected Material and who have signed the "Acknowledgment and Agreement to be Bound" (attached hereto as Appendix A) prior to receiving such Protected Information/Protected Material; (2) those individuals that have been or will be disclosed by a Party as an expert witness and to whom disclosure is reasonably necessary for the prosecution or defense of the Action and who have signed the "Acknowledgment and Agreement to be Bound" prior to receiving such Protected Information/Protected Material. An expert witness shall also include individuals who are directly

Files (defined as the data generated by Land IQ's proprietary process). Input Files and Output Files are not subject to the confidentiality provision of this Stipulated Protective Order.

Protected Information/Protected Material shall also not include materials or information that has already been disclosed as of the date of this agreement through routine disclosures under the Federal Rules of Civil Procedure, in deposition, or through discussions between counsel for Texas (and their experts) and counsel for New Mexico (and their experts).

b. "Authorized Person" means those individuals who have been expressly designated as provided in this Stipulated Protective Order to receive, access, view, possess, or use the Protected Information/Protected Material. No individual other than a properly designated Authorized Person is authorized to receive, access, view, possess, or use the Protected Information/Protected Material. An Authorized Person is expressly limited to: (1) a Party to the Action's counsel of record and employees of said counsel of record to whom it is reasonably necessary to disclose the Protected Information/Protected Material and who have signed the "Acknowledgment and Agreement to be Bound" (attached hereto as Appendix A) prior to receiving such Protected Information/Protected Material; (2) those individuals that have been or will be disclosed by a Party as an expert witness and to whom disclosure is reasonably necessary for the prosecution or defense of the Action and who have signed the "Acknowledgment and Agreement to be Bound" prior to receiving such Protected Information/Protected Material. An expert witness shall also include individuals who are directly

³ Colorado has agreed to a modified form of the "Acknowledgment and Agreement to be Bound."

employed by the expert to whom disclosure is reasonably necessary for the prosecution or defense of the Action and who have signed the “Acknowledgment and Agreement to be Bound” prior to receiving such Protected Information/Protected Material but shall not include interns, students, or other individuals that perform services for the expert on other than a long term (i.e., not of a fixed or limited duration) employee/employer basis; (3) the court and its personnel; and (4) court reporters and their staff who have signed the “Acknowledgment and Agreement to be Bound” prior to receiving the Protected Information/Protected Material. Counsel for a Party shall provide counsel for the other Parties to the Action a copy of each “Acknowledgment and Agreement to be Bound” after such document has been signed by an individual who will receive the Protected Information/Protected Material or at the time the individual is disclosed as an expert.

2. **Scope of Protective Order.** The protections conferred by this Stipulated Protective Order cover not only the Protected Information/Protected Material (as defined above), but also (1) information copied or extracted from such information/material; (2) copies, excerpts, summaries, or compilations of such information/material; (3) testimony, conversations, or presentations by Parties or their counsel that might reveal such information/material, and (4) all information derived from the Protected Information/Protected Material.

However, this Stipulated Protective Order does not cover the following information: (a) any information that is in the public domain at the time of disclosure to an Authorized Person or becomes part of the public domain after its disclosure to an

Authorized Person as a result of publication not involving a violation of this Stipulated Protective Order, including becoming part of the public record through trial or otherwise; and (b) any information in the Authorized Person's possession, custody, or control that the Authorized Person can establish by documentary evidence predates the disclosure of the Protected Information/Protected Material.

Any Party or other person or entity seeking to introduce the Protected Information/Protected Material at trial shall do so only after obtaining an Order that the Protected Information/Protected Material be sealed from public disclosure or disclosure to any individual or entity not expressly authorized to receive the Protected Information/Protected Material.

3. **Production of Protected Information.** Land IQ, or counsel for Texas, shall produce a copy via hard drive (or multiple copies via multiple hard drives), or other manner reasonably agreeable to the Parties, of the Protected Information/Protected Material once this Stipulated Protective Order has been executed by the Parties and entered by the Special Master and once all other conditions for the production of the information/material have been satisfied. Land IQ, or counsel for Texas, shall also produce the Input and Output Files to the attorney of record for any Party who has executed this Stipulated Protective Order once this Order has been entered by the Court. To date, New Mexico's counsel of record has requested three copies for use by New Mexico's counsel and their experts. The Protected Information/Protected Material Land IQ produce(s) shall contain a statement "Confidential Copyright, [date], Land IQ." The access, use, disclosure, and disposition of the Protected Information/Protected Material shall be subject to the terms of this Stipulated Protective Order.

4. **Copying Protected Information/Protected Material.** Each attorney of record signing this Stipulated Protective Order shall release the Protected Information/Protected Material only to Authorized Persons who are working on this case and only after that person has executed and filed with their counsel of record, the “Acknowledgment and Agreement to be Bound” attached hereto as Appendix A. Any Authorized Person who copies or prints the Protected Information/Protected Material shall assure that each copied or printed version contains the statement, “Confidential Copyright, [date], Land IQ.”

5. **Record Keeping.** Any Authorized Person receiving the Protected Information/Protected Material shall keep records of his/her receipt, storage, and use of the Protected Information/Protected Material by providing the information required on Appendices B and C. Authorized Persons shall keep the Appendices B and C up to date as required to maintain them as contemporaneous records of disclosures and use of the Protected Information/Protected Material. An Authorized Person shall provide copies of Appendices B and C with the information filled in as of the date of the request to counsel for Texas on request.

6. **Requirements for Handling Protected Information/Protected Material.** Every person receiving a copy of the Protected Information/Protected Material pursuant to this Stipulated Protective Order:

- a. Shall keep all copies of the Protected Information/Protected Material in a secure location, for example within their office or within their personal possession if on work related travel, and in a manner that ensures that

access to the information and material is limited to only the persons authorized under this Stipulated Protective Order;

b. Shall not move or remove the Protected Information/Protected Material produced in an electronic form from the hard drive(s) that it is provided on;

c. Shall make no unauthorized copies in any format of the Protected Information/Protected Material or the electronic storage devices the information/material is provided on;

d. Shall not provide either the original or a copy in any format of the Protected Information/Protected Material to any person except an Authorized Person, and shall not otherwise disclose the Protected Information/Protected Material to any unauthorized person in any matter whatsoever;

e. Shall use the Protected Information/Protected Material solely for the purposes of this case, and shall not use the Protected Information/Protected Material provided to him/her pursuant to this Stipulated Protective Order for any purpose not authorized by this Stipulated Protective Order whatsoever, including for his/her own gain or profit;

f. Shall return to counsel for Texas, all copies of the Protected Information/Protected Material and all copies of such information and all documents and information derived from or containing any Protected Information/Protected Material, and all Input Files, Output Files, either (1) upon completion of this lawsuit, (2) upon agreement of the Parties, or (3) upon order of the Special Master, whichever comes first; and

g. Shall destroy all notes and papers analyzing the Protected Information/Protected Material that might contain or might be derived from such information/materials after completion of this lawsuit.

7. **Limitations on Use of Protected Information/Protected Material.** The Protected Information/Protected Material shall not be used in this case, including without limitation depositions, trial, and hearings, so as to disclose the proprietary information in any manner not expressly authorized by this Stipulated Protective Order, including, but not limited to, in any way that enables any unauthorized person to copy or reproduce them; however, the Parties acknowledge that there may be depositions, expert report, and testimony that addresses the Protected Information/Protected Material. For their study, analysis, preparation for, and testimony in this case, any Authorized Person receiving a copy of the Protected Information/Protected Material pursuant to this Stipulated Protective Order is authorized to use the Protected Information/Protected Material for the purpose of prosecuting or defending this action.

8. **Modification of Protected Information/Protected Material.** The Protected Information/Protected Material and any modification to the Protected Information/Protected Material shall be treated as the property of Land IQ.

9. **Duration of Agreement.** Even after final disposition of this Action, the confidentiality obligations, including the obligation to keep all Protected Information/Protected Material confidential and to not use such information for any unauthorized purpose, imposed by this agreement shall remain in effect until Land IQ agrees otherwise in writing or as otherwise ordered by a Court of competent jurisdiction.

10. Nothing in this Stipulated Protective Order shall be construed to limit the rights of Texas or Land IQ to seek relief, including injunctive relief, for violations of their rights under federal trade secret laws or any other applicable law if any person violates this Stipulated Protective Order.

SO ORDERED this ____ day of _____ 2019.

Honorable Michael A. Melloy
Special Master

Dated: 10/4/19

THE UNITED STATES OF AMERICA

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James J. DuBois
Stephen Macfarlane
U.S. Department of Justice
Attorneys for the United States of America

Dated: 10/4/2019

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Stuart L. Somach
Stuart L. Somach, Counsel of Record
Somach Simmons & Dunn, P.C.
Attorneys for the State of Texas

Dated: 10/4/2019

STATE OF NEW MEXICO

David Roman
David Roman
Robles, Rael and Anaya
Attorneys for the State of New Mexico

STATE OF COLORADO

Dated: 10-7-19

A handwritten signature in cursive script, appearing to read "Chad M. Wallace", written over a horizontal line.

Chad M. Wallace
Sr. Assistant Attorney General
Colorado Department of Law
Counsel of Record for the State of Colorado

APPENDIX A

No. 141, Original

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO AND
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Defendants.

OFFICE OF THE SPECIAL MASTER

ACKNOWLEDGMENT OF 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 Agreement and
related Order that was issued by the Special Master on [date] in the case entitled *State of
Texas v. State of New Mexico and State of Colorado*, United States Supreme Court Case
No. 141. I agree to comply with and to be bound by all the terms of this Agreement and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt as well as liability for actual and/or liquidated
damages, punitive damages, and injunctive relief. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this Agreement to any
person or entity except in strict compliance with the provisions of the Agreement.

I further understand that I am to retain all copies of all of the Protected
Information/Protected Material provided to me in this action in a secure manner, and that
all copies of such materials or any derivatives thereof are to remain in my personal
custody until termination of my participation in this action, whereupon all materials

provided to me or derivatives thereof will be returned to counsel who provided me with such materials.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Agreement and 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 agent for service of process in connection with this action or any proceedings related to enforcement of this Order.

Dated this _____ day of _____ 20__.

(Signature)

(Typed name of individual)

(Typed title or capacity in which employed)

(Typed name of party/amicus by whom employed)

provided to me or derivatives thereof will be returned to counsel who provided me with such materials.

~~I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Agreement and Order, even if such enforcement proceedings occur after termination of this action.~~ ² CMW

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

Dated this _____ day of _____ 20__.

(Signature)

(Typed name of individual)

(Typed title or capacity in which employed)

(Typed name of party/amicus by whom employed)

² Colorado, its employees, or its agents are not bound by the deleted jurisdiction provision.

APPENDIX B

No. 141, Original

IN THE
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STATE OF TEXAS,

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v.

STATE OF NEW MEXICO AND
STATE OF COLORADO,

Defendants.

OFFICE OF THE SPECIAL MASTER

IDENTIFICATION OF ELECTRONIC STORAGE DEVICES

	Supplied electronic device containing Protected Information OR onto which Protected Information is uploaded to, downloaded from, or used to access Protected Information. (Please specify manufacture, model, and serial number.)	Individual(s) that uploaded, downloaded, or accessed Protected Information	Individual(s) that have access to Electronic Device	Source from which Protected Information is uploaded to or accessed by Electronic Device	Source to which Protected Information is uploaded to or accessed by Electronic Device
1					
2					
3					
4					
5					

APPENDIX C

No. 141, Original

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO AND
STATE OF COLORADO,

Defendants.

OFFICE OF THE SPECIAL MASTER

IDENTIFICATION OF HARD COPY DOCUMENTS

	Description of Document	Individual(s) that created document	Date document created	Individual(s) that created document	Individual(s) that had access to document
1					

No. 141, Original

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SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO AND
STATE OF COLORADO,

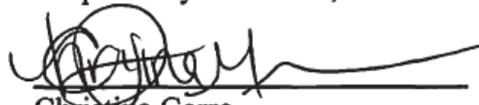
Defendants.

OFFICE OF THE SPECIAL MASTER

CERTIFICATE OF SERVICE

This is to certify that on this 7th day of October 2019, I caused a true and correct copy of **STIPULATED PROTECTIVE ORDER REGARDING LAND IQ, LLC'S EXPERT WITNESS REPORT AND TESTIMONY** to be served upon all parties and amici curiae, by and through the attorneys of record and/or designated representatives for each party and amicus curiae in this original action. As permitted by order of the Special Master, and agreement among the parties, service was effected by electronic mail to those individuals listed on the attached service list, which reflects all updates and revisions through the current date.

Respectfully submitted,



Christina Garro

Dated: October 7, 2019

SERVICE LIST

SPECIAL MASTER
(Service via E-Mail and U.S. Mail)

Honorable Michael J. Melloy

Special Master
United States Circuit Judge
111 Seventh Avenue, S.E. Box 22
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Michael E. Gans, Clerk of the Court
United States Court of Appeals – Eighth Circuit
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