

ORIGINAL

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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF LOS ANGELES
 MAY 11 2012
 John A. Clarke, Executive Officer/Clerk
 By: KAREN TAPPER, Deputy

6 Attorneys for Defendant,
 JOHN CRANE INC. ✓

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 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

Fees paid on 4/3/11 \$295.00
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11 RICHARD KEENEY and HOWARD J. GARCIA,
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 13 Plaintiffs,
 14 v.
 15 A.W. CHESTERTON COMPANY, et al.
 16 Defendants.

Case No. BC 457255
 Assigned For All Purposes to the
 Honorable Amy S. Hogue, Dept. 34
 EX PARTE APPLICATION FOR:
 1. ORDER SHOWING CAUSE RE
 CONTEMPT; AND
 2. ORDER FOR RELIEF TO ALLEVIATE
 VIOLATION OF PROTECTIVE
 ORDER
 OR IN THE ALTERNATIVE, AN ORDER
 SHORTENING TIME FOR HEARING ON THE
 SAME RELIEF; DECLARATION OF CLAIRE
 C. WEGLARZ
 [Filed concurrently with (Proposed) Order]
 Hearing Date: May 11, 2012
 Time: 8:30 a.m.
 Dept: 34

Complaint Filed: March 15, 2011
 Trial Date: December 5, 2011

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

Plaintiffs' counsel has defied the authority of this Court by distributing confidential information that this Court placed under a protective order. To preserve the integrity of the Court and punish this flagrant violation of a Court order, plaintiffs' counsel should be held in contempt

CIT/CASRT EC457255 LEM/DEF #:
 RECEIPT #: CCH07417665
 DATE PAID: 05/10/12 03:17:58 PM
 PAYMENT: \$40.00
 RECEIVED:
 CHECK: 40.00
 CASH:
 CHANGE:
 CARD:

1 Plaintiffs' counsel violated this Court's order by disseminating JCI's confidential financial
2 information: Robert Johnson's report and the transcript of the deposition of Robert Johnson taken in
3 this matter: both of which contain JCI's confidential financial information ("Protected Materials").

4 JCI is aware of at least one instance of violation because plaintiffs' counsel in a Delaware
5 case, Levy Phillips & Konigsberg, LLP, served on April 30th an expert designation stating:

6 Mr. Johnson is a forensic economist. In the event that a punitive
7 damages phase of the trial is ordered, Mr. Johnson will testify as to
8 the defendant(s) health, wealth and economic status.

9 Mr. Johnson has been extensively examined both in depositions
10 and trials in asbestos litigation, including as to John Crane, Inc.
11 *[sic]* in *Richard Keeney et al v. A W Chesterton Company et al*,
12 No. 2:11-cv-10627-PA-AGR,¹ United States District Court,
13 District of Central California, and will testify as to that defendant
14 consistent with his testimony in that matter as well as his report in
15 that matter dated February 17, 2012, *[sic]* subject to updated
16 financial information. Further representative prior deposition
17 and/or trial testimony of Mr. Johnson will be provided upon
18 request.

19 On May 3, 2012, upon JCI's request to plaintiffs' counsel in the Delaware action, Holly C.
20 Peterson of Levy Phillips & Konigsberg, LLP, E-mailed to JCI counsel Johnson's final deposition
21 transcript and the January 17, 2012, report which both contain information that is subject to the
22 protective order issued by this Court.

23 There are only three parties that had access to the Protected Materials: JCI, the Farris Law
24 Firm on behalf of Richard Keeney and Howard Garcia, and HG Litigation. Neither JCI nor HG
25 Litigation gave these materials to Levy Phillips & Konigsberg, LLP. Thus, the answer as to who did
26 is clear: the Farris Law Firm. JCI knows the confidential information was disseminated, but does
27 not know the scope of the dissemination. Plaintiffs' counsel's disobedience of this Court's order
28 may have placed JCI's financial information into the hands of a countless number of unknown
persons.

¹ Case No. 2:11-cv-10627-PA-AGR in the United States District Court, District of Central California refers to JCI's petition for removal on diversity grounds filed on December 22, 2011, during trial of the state action. The case was remanded back to state court on December 27, 2011.

1 JCI is not a publically traded company, and its financial records, condition, and affairs are
2 generally a private matter. The dissemination of its confidential financial information may have a
3 serious detrimental impact on its business operations, investors, and employees. The potential
4 negative impact of the violation of this protective order is immense. It was not up to plaintiffs'
5 counsel to decide whether this information should be confidential. It was up to the Court, and the
6 Court ruled that it was. Not winning its argument with the Court, plaintiffs' counsel simply defied
7 the Court's order and dispersed the information as they saw fit. This utter defiance of the Court's
8 authority deserves substantial punishment to protect the integrity of the judicial process.

9 For these reasons, good cause exists to set on an expedited basis an order to show cause re
10 contempt for plaintiffs' counsel's violation of the protective order. To determine the scope of the
11 violation and to help determine what relief is in order, JCI requests that the Court issue an order
12 requiring plaintiffs' counsel to:

- 13 • Identify all persons to whom plaintiffs' attorneys (or agents of them) made the
14 Protected Materials accessible;
- 15 • Provide the web address and web administrator of any website on which the
16 Protected Materials may have been or were posted;
- 17 • Provide a list of all persons who have access to any website on which the
18 Protected Materials may have been or were posted;
- 19 • Post notice on any website on which the Protected Materials may have been or
20 were posted stating that the Protected Materials were posted in violation of a
21 protective order, and that all copies of the Protected Materials, hard and
22 electronic, must be immediately destroyed;
- 23 • Send a notice to everyone who had access to the Protected Materials stating
24 that the Protected Materials were disseminated in violation of a protective
25 order, and that all copies of the Protected Materials, hard and electronic, must
26 be immediately destroyed;
- 27 • Provide a declaration to JCI from everyone who had access to the Protected
28 Materials that they have not further disseminated the materials and that they
have destroyed all copies/versions/forms of the Protected Materials; and
- Produce for deposition the person most knowledgeable about the
dissemination of the Protected Materials in violation of the protected order.

29 Upon an order of contempt, JCI requests the Court impose on plaintiffs' counsel a fine of
30 \$1,000 and imprisonment of five days for each act of contempt. JCI has knowledge that at least 5

1 plaintiffs' attorneys have been given access to the Protected Materials which constitutes at least 5
2 separate acts of contempt. JCI also requests all costs and attorneys fees incurred by it in the filing
3 and hearing of this application and the preparation and attendance for the contempt hearing. Lastly,
4 JCI requests this Court order plaintiffs' counsel² to self-report their contempt citations to the
5 California Bar as they are required to do per law.


6 An order to show cause re: contempt may issue upon *ex parte* application upon proper notice
7 of the application.³ Proper notice has been given. However, if this Court is unable to grant all the
8 relief requested on an *ex parte* basis, JCI respectfully requests that this Court set a hearing date on
9 shortened notice for a motion to seek the relief requested herein, and deem this *ex parte* Application
10 as JCI's moving papers filed and served at the time of this hearing.

11 PLEASE TAKE NOTICE that JCI will apply for the relief requested herein on May 14,
12 2012, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 34 of the above-
13 captioned Court, located at 111 North Hill Street, Los Angeles, California 90012. Plaintiffs' counsel
14 and Levy Phillips & Konigsberg, LLP, have been timely notified by facsimiled letter by JCI of this
15 *ex parte* application.⁴

16 This Application is made pursuant to California Rules of Court, Rule 3.1332 and is based on
17 this Notice, the Declaration of Claire C. Weglarz, the memorandum of points and authorities filed
18 and served herewith, and on such other oral and documentary evidence which may be presented at
19 the hearing.
20

21 Dated: May 10, 2012

HAWKINS PARNELL THACKSTON & YOUNG LLP

22 By: 
23 Robert E. Thackston
24 Claire C. Weglarz
25 Attorneys for Defendant
26 JOHN CRANE INC.

27 ² Ms. Simona Farrise and Mr. Carlos Guzman were counsel of record for plaintiffs in this case.

28 ³ Cal. Rules of Court, Rule 3.1207.

⁴ See letter attached as Exhibit A to the Weglarz Declaration. See also Weglarz Declaration ¶ 2.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

JCI requests this Court hold plaintiffs' counsel in contempt for her violations of a protective order issued by this Court. Plaintiffs' counsel violated this Court's order by disseminating to third parties JCI's confidential financial information: Robert Johnson's report and the transcript of the deposition of Robert Johnson taken in this matter, both of which contain JCI's confidential financial information ("Protected Materials"). Specifically, plaintiffs' counsel disseminated the Protected Materials to the law firm of Levy Phillips & Konigsberg, LLP. On May 3, 2012, Holly C. Peterson of Levy Phillips & Konigsberg, LLP, E-mailed to JCI counsel Johnson's transcript and report which contain information that is subject to the protective order issued by this Court.

There are only three parties that had access to the Protected Materials: JCI, the Farrise Law Firm on behalf of Richard Keeney and Howard Garcia, and HG Litigation. Neither JCI nor HG Litigation gave these materials to Levy Phillips & Konigsberg, LLP. Thus, the answer as to who did is clear: the Farrise Law Firm. JCI knows the confidential information was disseminated, but does not know the scope of the dissemination. Plaintiffs' counsel's disobedience of this Court's order may have placed JCI's financial information into the hands of a countless number of unknown persons.

JCI is not a publically traded company, and its financial records, condition, and affairs are generally a private matter. The dissemination of its confidential financial information may have a serious detrimental impact on its business operations, investors, and employees. The potential negative impact of the violation of this protective order is immense. It was not up to plaintiffs' counsel to decide whether this information should be confidential. It was up to the Court, and the Court ruled that it was. Not winning its argument with the Court, plaintiffs' counsel simply defied the Court's order and dispersed the information as they saw fit. This utter defiance of the Court's authority deserves substantial punishment to protect the integrity of the judicial process.

For the reasons discussed herein, good cause exists to set on an expedited basis an order to show cause re contempt for plaintiffs' counsel's violation of the protective order. To determine the

1 scope of the violation and to help determine what relief is in order, JCI requests that the Court issue
2 an order requiring plaintiffs' counsel to:

- 3 • Identify all persons to whom plaintiffs' attorneys (or agents of them) made the
4 Protected Materials accessible;
- 5 • Provide the web address and web administrator of any website on which the
6 Protected Materials may have been or were posted;
- 7 • Provide a list of all persons who have access to any website on which the
8 Protected Materials may have been or were posted;
- 9 • Post notice on any website on which the Protected Materials may have been or
10 were posted stating that the Protected Materials were posted in violation of a
11 protective order, and that all copies of the Protected Materials, hard and
12 electronic, must be immediately destroyed;
- 13 • Send a notice to everyone who had access to the Protected Materials stating
14 that the Protected Materials were disseminated in violation of a protective
15 order, and that all copies of the Protected Materials, hard and electronic, must
16 be immediately destroyed;
- 17 • Provide a declaration to JCI from everyone who had access to the Protected
18 Materials that they have not further disseminated the materials and that they
19 have destroyed all copies/versions/forms of the Protected Materials; and
- 20 • Produce for deposition the person most knowledgeable about the
21 dissemination of the Protected Materials in violation of the protected order.

22 Upon an order of contempt, JCI requests that the Court impose on plaintiffs' counsel a fine of
23 \$1,000 and imprisonment of five days for each act of contempt. JCI has knowledge that at least 5
24 plaintiffs' attorneys have been given access to the Protected Materials, which constitutes at least 5
25 separate acts of contempt. JCI also requests all costs and attorneys fees incurred by it in the filing
26 and hearing of this application and the preparation and attendance for the contempt hearing.⁵ Lastly,
27 JCI requests this Court order plaintiffs' counsel⁶ to self-report their contempt citations to the
28 California Bar as they are required to do per law.⁷

29 _____
30 ⁵ See Code of Civil Pro. § 1218.

31 ⁶ Ms. Simona Farrise and Mr. Carlos Guzman were counsel of record for plaintiffs in this case.

32 ⁷ Bus. & Prof. Code § 6068(o)(3) [mandatory upon contempt citation].

1 II. STATEMENT OF FACTS

2 The facts surrounding the issuance of the protective order are as follows:

- 3 A. On January 17, 2012, Judge Hogue issued a protective order as to
4 information disclosed in the following documents: 2009, 2010, and 2011
JCI balance sheets and income statements.⁸
- 5 B. On January 17, 2012, Robert Johnson drafted a report stating his opinions
6 about the financial condition of JCI. His report discloses the JCI financial
information subject to the January 17, 2012 protective order.⁹
- 7 C. On January 19, 2012, Barry Schirm deposed Robert Johnson in connection
8 with JCI's financial condition. Mr. Johnson testified about the JCI
financial information subject to the January 17, 2012 protective order.¹⁰
- 9 D. On January 24, 2012, the Court issued a protective order extending its
10 January 17, 2012, protective order to "all parties and those acting as their
agents or in concert with them," including HG Litigation.¹¹ This
11 protective order specifically includes "any such information provided by
way of documents for [sic] testimony in connection with this Court's
12 order during trial that the defendant produce matters in anticipation of the
possibility the jury will return a finding of malice, oppression or fraud."¹²
- 13 E. Plaintiffs' counsel attempted to revoke and vacate the January 24, 2012,
14 protective order, but Judge Hogue denied this request on February 28,
2012.¹³
- 15 F. JCI became suspicious that plaintiffs' counsel was violating the protective
16 order when they refused a settlement offer for Mr. Keeney calling any
17

18 ⁸ See January 17, 2012 trial transcript, pp. 92:10-93:8 and 94:21-25, attached to the Weglarz
19 Declaration as Exhibit B.

20 ⁹ See Report of Robert Johnson dated January 17, 2012, redacted accordingly for confidentiality and
21 privacy reasons, attached to the Weglarz Declaration as Exhibit C.

22 ¹⁰ See pp. 1-5 of January 19, 2012 Robert Johnson deposition transcript, attached to the Weglarz
23 Declaration as Exhibit D. A full copy of the transcript can be made available to the Court for *in*
camera review at the time of hearing.

24 ¹¹ See January 24, 2012 court transcript, pp. 4:9-10:11, attached to the Weglarz Declaration as
25 exhibit E. See also Court's minute order dated January 24, 2012, attached to the Weglarz
26 Declaration as exhibit F.

27 ¹² See January 24, 2012 court transcript, pp. 1:20-23 and 4:9-17, attached to the Weglarz Declaration
28 as exhibit E. See also Court's minute order dated January 24, 2012, attached to the Weglarz
Declaration as exhibit F.

¹³ See Court's minute order dated February 28, 2012, attached to the Weglarz Declaration as Exhibit
G.

1 restriction on their ability to use the Protected Materials a "deal breaker"
2 for Mr. Keeney.¹⁴

- 3 G. JCI's suspicions of violation of the protective order were confirmed when
4 on April 30, 2012, in a case pending in Delaware, the law firm of Levy
5 Phillips & Konigsberg, LLP, filed and served an expert designation on
6 behalf of plaintiffs in that case that states as follows:

7 Mr. Johnson is a forensic economist. In the event that a punitive
8 damages phase of the trial is ordered, Mr. Johnson will testify as to
9 the defendant(s) health, wealth and economic status.

10 Mr. Johnson has been extensively examined both in depositions
11 and trials in asbestos litigation, including as to John Crane, Inc.
12 [sic] in *Richard Keeney et al v. A W Chesterton Company et al.*
13 No. 2:11-cv-10627-PA-AGR,¹⁵ United States District Court,
14 District of Central California, and will testify as to that defendant
15 consistent with his testimony in that matter as well as his report in
16 that matter dated February 17, 2012, [sic] subject to updated
17 financial information. Further representative prior deposition
18 and/or trial testimony of Mr. Johnson will be provided upon
19 request.¹⁶

- 20 H. On May 3, 2012, upon JCI's request to plaintiffs' counsel in the Delaware
21 action, Holly C. Peterson of Levy Phillips & Konigsberg, LLP, E-mailed
22 to JCI counsel Johnson's final deposition transcript and the January 17,
23 2012, report which both contain information that is subject to the
24 protective order issued by this Court.¹⁷

- 25 I. HG Litigation has not disseminated the Protected Materials to anyone
26 other than JCI and The Farris Law Firm.¹⁸

27 ¹⁴ See email dated March 30, 2012, from Simona Farris to Robert Thackston attached to the
28 Weglarz Declaration as Exhibit L. Please note that the litigation privilege does not prevent the use
of statements made in settlement negotiations to show the motive or intent of the attorney or party
involved. (*See Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.* (1986) 42
Cal.3d 1157, 1168 – attorney's statements in settlement negotiations admissible to show client was
acting for improper purpose.)

¹⁵ Case No. 2:11-cv-10627-PA-AGR in the United States District Court, District of Central
California refers to JCI's petition for removal on diversity grounds filed on December 22, 2011,
during trial of the state action. The case was remanded back to state court on December 27, 2011.

¹⁶ Plaintiff's Amended Final Witness and Exhibit Lists, dated April 30, 2012, filed in the Superior
Court of the State of Delaware in and for New Castle County in the matter of *Ronald Carlton v. 3 M
Company, et al.*, C. A. No. N10C-08-216 ASB, attached to the Weglarz Declaration as Exhibit H.
The Court is requested to take judicial notice of this Court document.

¹⁷ Weglarz Declaration, Paragraph 10; See also letter dated May 9, 2012, from Holly C. Peterson to
Mr. Parshall, JCI counsel in Delaware, attached to the Weglarz Declaration as Exhibit I.

¹⁸ Declaration of Amanda Reyes, attached to the Weglarz Declaration as Exhibit J.

1 J. On May 4, 2012, JCI sent plaintiffs' counsel a letter requesting them to
2 cease from further dissemination of the Protected Materials, and to act to
prevent further dissemination of the Protected Materials.¹⁹

3 K. As of the filing of this Application, plaintiffs' counsel has not denied that
4 they have disseminated the Protected Materials in violation of the
Protective Order.²⁰

5 III. ARGUMENT: PLAINTIFFS' COUNSEL SHOULD BE HELD IN CONTEMPT.

6 A. The Court has jurisdiction to issue a citation for contempt against plaintiffs'
7 counsel.

8 The Court has jurisdiction to enforce a protective order, to issue sanctions for violations of a
9 protective order, and to further punish acts which undermine the integrity of the judicial process.
10 (*Radden v. Superior Court for Los Angeles County* (1949) 34 Cal.2d 83, 86.) Code of Civil
11 Procedure § 1209, *et seq.*, provides the Court with the power to punish acts, which are in
12 "disobedience of any lawful . . . order of the court." (Code Civ. Proc. § 1209(a) (5); *see also Pacific*
13 *Telephone and Telegraph Co. v. Superior Court* (1968) 265 Cal. App.2d 370 (section 1209 contempt
14 proceedings are special proceedings, criminal in character and intended to implement the inherent
15 power of the court to enforce its lawful orders))

16 The right of every superior court of record to punish for contempt of its authority or process
17 is inherent in the very nature of its organization, and essential to its existence and protection, and to
18 the due and orderly administration of justice. (*In re Creely* (1908) 8 Cal. App. 713, 718.)
19 Specifically, indirect contempts are heard in the department to which the case is assigned or that
20 court may transfer the contempt proceeding to the appropriate writs and receivers department, if it is
21 a Central District case. (Code of Civil Procedure § 1209.)

22 The trial court retains the power to investigate the violation of a protective order and punish
23 for contempt even where the principal action has terminated. (*Farr v. Superior Court* (1971) 22
24 Cal.App.3d 60, 67-68; *Whitlow v. Superior Court* (1948) 87 Cal.App.2d 175, 182; *Morelli v.*
25 *Superior Court*, 1 Cal.3d 328, 332.) Thus, even though there is a judgment in this matter, this Court

27 _____
28 ¹⁹ Letter dated May 4, 2012, from Edward Ulloa to Simona Farrise, attached to the Weglarz
Declaration as Exhibit K.

²⁰ Weglarz Declaration, Paragraph 14.

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1 has continuing jurisdiction over this matter.

2 Moreover, although JCI has filed a notice abandoning its appeal of the judgment, an appeal
3 stays the matter in trial court only as to the matter that is being appealed or matters affected by or
4 embraced therein, and the trial court may proceed on any other matter embraced in the action and not
5 affected by what is pending on appeal. (Code of Civ. Pro. § 916(a); *Varian Medical Systems, Inc. v.*
6 *Delfino* (2005) 35 Cal. App. 4th 180, 189; see also *Gilman v. Superior Court in and for Nevada*
7 *County* (1927) 86 Cal.App. 259, 266.)

8
9 **B. The Court should issue a contempt citation against plaintiffs' counsel.**

10 Plaintiffs' counsel's violation of the protective order issued in this case constitutes an act of
11 contempt. Willful failure to comply with an order of the court constitutes contempt. (*Malek v.*
12 *Koshak* (2011) 200 Cal. App. 4th 1540, 1548-49.) In *Wallis v. PHL Associates, Inc.* (2008) 168
13 Cal.App.4th 882, the Court of Appeal affirmed sanctions in the amount of \$43,678 imposed against
14 attorney Joanna Mendoza for violating a protective order by disclosing trade secret information to
15 third parties. In *Wallis*, an attorney for the opposing parties filed a declaration with 800 pages of
16 attached trade secret documents. Although the declaration plainly stated that it was filed under seal
17 and was sent to the court in a sealed envelope, the documents were inadvertently disclosed for public
18 viewing. Learning of the public availability of the trade secret documents, Mendoza arranged for
19 her clients and third parties to copy them.
20

21 As to plaintiffs' counsel in this case, the evidence of them acting in bad faith is even stronger
22 than in *Wallis*. Here, they are not acting under some guise of zealously representing their clients, but
23 are widely disseminating JCI's confidential financial information to other attorneys to gain a tactical
24 advantage in other cases without any consideration of their clients. Specifically, plaintiffs' counsel
25 refused a settlement offer for Mr. Keeney calling any restriction on their ability to use the protected
26 information a "deal breaker" for Mr. Keeney. It is inconceivable that a plaintiff with a fatal disease
27 and months to live would turn down a settlement of over a million dollars so his lawyers could use
28 certain financial information in future cases. Instead, it appeared that plaintiffs' attorneys had

1 already breached the protective order, and were willing to sacrifice a client settlement until they
2 could negotiate away the restrictions of the order. When JCI would not agree to lift the protective
3 order, plaintiffs' attorneys turned down the settlement offer to their client. It is questionable whether
4 plaintiffs' attorneys ever conveyed the settlement offer to their client. Ultimately, JCI tendered the
5 judgment to counsel and sent them a check which was cashed.

6 Plaintiffs' counsel's willingness to turn down a million dollar-plus settlement for a dying
7 man so they could use confidential information in other cases raised the question of whether they
8 had ever complied with the order at all. It is now clear that they mocked and ignored this Court's
9 rulings from the beginning. This is consistent with plaintiffs' counsel's obstinate refusal to obey this
10 Court throughout trial of this matter. On more than one occasion, this Court had to threaten
11 plaintiffs' counsel with sanctions and contempt to get her to follow even the most basic directions of
12 the court.

13 Code of Civil Procedure § 1211 provides that when contempt is not committed in the
14 immediate view and presence of the court, an affidavit shall be presented to the court of the facts
15 constituting the contempt. (*See also Rosenstock v. Municipal Court* (1976) 61 Cal.App.3d 1, 6.) For
16 this purpose, declarations can be used in place of affidavits. (Code Civ. Proc. § 2015.5.) The
17 affidavit is in effect a complaint, frames the issues before the court, and is a jurisdictional
18 prerequisite to the court's power to punish. (*Malek*, 200 Cal. App. 4th at 1548-49.) All elements of
19 the charged contempt must be averred in the affidavit of the accuser and must be developed in the
20 proofs. (*Bone v. Superior Court for Los Angeles County* (1966) 245 Cal.App.2d 972, 973-74.)

21 The Declaration of Claire C. Weglarz sets forth all elements of the contempt charge now
22 alleged against plaintiffs' counsel. Specifically, facts A-K cited in the Statement of Facts section,
23 *supra*, are set forth in the Weglarz Declaration. These facts establish that plaintiffs' counsel violated
24 this Court's protective order by disseminating the Protected Materials in a fashion such that Levy
25 Phillips & Konigsberg, LLP, came to possess them.
26

1 **C. Plaintiffs' counsel should be cited for five separate acts of contempt.**

2 Plaintiffs' counsel should be cited for five separate acts of contempt. The court may impose
3 a fine of up to \$1,000, imprison the person for up to five days, or both, for each act of contempt.
4 (Code of Civ. Pro. § 1218.) Where separate contemptuous acts are committed, contemnor may be
5 punished for each separate offense. (*Hawk v. Superior Court* (1974) 42 Cal.App.3d 108.) JCI
6 knows of at least 5 persons who have come into possession of the Protected Materials. Those
7 persons are listed on the Designation of Experts pleading filed in the Delaware case.²¹ Further,
8 plaintiffs' counsel in that case told every litigant they could obtain a copy of the Protected Materials
9 upon request.²²

10
11 **D. The Court has power to order relief to remedy violations of a protective order.**

12 The trial court has the authority and duty to investigate possible violations of its protective
13 and seal orders by those subject to their provisions in order to protect the integrity of the judicial
14 process, to assure the proper administration of justice. (Code of Civ. Proc. § 187; *Rosato v. Superior*
15 *Court* (1975) 51 Cal.App.3d 190, 210.) In this case, to determine the scope of the violation and to
16 help determine what relief is in order, JCI requests that the Court issue an order requiring plaintiffs'
17 counsel to:

- 18
- 19 • Identify all persons to whom she (or agents of her) made the Protected
20 Materials accessible;
 - 21 • Provide the web address and web administrator of any website on which the
22 Protected Materials may have been or were posted;
 - 23 • Provide a list of all persons who have access to any website on which the
24 Protected Materials may have been or were posted;

25 ²¹ Stephen T. Morrow, Joseph J. Rhoades, Jerome H. Block, Sharon J. Zinns, and Holly C. Peterson.
26 See Plaintiff's Amended Final Witness and Exhibit Lists, dated April 30, 2012, filed in the Superior
Court of the State of Delaware in and for New Castle County in the matter of *Ronald Carlton v. 3 M
Company, et al.*, C. A. No. N10C-08-216 ASB, attached to the Weglarz Declaration as Exhibit H.

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 - Provide a declaration to us from everyone who had access to the Protected Materials that they have not further disseminated the materials and that they have destroyed all copies/versions/forms of the Protected Materials; and
 - Produce for deposition the person most knowledgeable about the dissemination of the Protected Materials in violation of the protected order.

10 Only through these measures will JCI be able to determine the extent of the breach of the protective
11 order and attempt to take measures to ameliorate that breach.

12

13 **IV. CONCLUSION**

14 For the reasons set forth herein, JCI respectfully requests that the Court grant its Application
15 in its entirety. The dissemination of its confidential financial information may have a serious
16 detrimental impact on its on-going business operations, investors, and employees. JCI cannot
17 emphasize enough the potential negative impact of the violation of this protective order. Only a
18 contempt citation will deter plaintiffs' counsel from further violating this Court's protective order.
19 Further, the following relief is necessary to alleviate the impact of plaintiffs' counsel's violation of
20 the protective order:


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- Identify all persons to whom plaintiffs' attorneys (or agents of them) made the Protected Materials accessible;
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 - Provide a list of all persons who have access to any website on which the Protected Materials may have been or were posted;
 - Post notice on any website on which the Protected Materials may have been or were posted stating that the Protected Materials were posted in violation of a protective order, and that all copies of the Protected Materials, hard and electronic, must be immediately destroyed;

- Send a notice to everyone who had access to the Protected Materials stating that the Protected Materials were disseminated in violation of a protective order, and that all copies of the Protected Materials, hard and electronic, must be immediately destroyed;
- Provide a declaration to JCI from everyone who had access to the Protected Materials that they have not further disseminated the materials and that they have destroyed all copies/versions/forms of the Protected Materials; and
- Produce for deposition the person most knowledgeable about the dissemination of the Protected Materials in violation of the protected order.

Dated: May 10, 2012

HAWKINS PARNELL THACKSTON & YOUNG LLP

By: _____


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