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EXAMPLE: PROTECTIVE ORDER

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

v.	Plaintiff,	No.
	Defendant.	PROTECTIVE ORDER

The Court recognizes that documents and information (“**Materials**” as defined herein) being sought through discovery in the above-captioned action are considered confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“**order**”) in this action to facilitate document production and disclosure, and to protect the respective interests of the parties in their confidential information. This order shall remain in effect unless modified pursuant to the terms contained in this order.

Accordingly,

IT IS ORDERED that the parties’ stipulation (Doc. __) is **GRANTED** and the following provisions shall be enforced.

The following Definitions apply in this order:

A. The term “**Confidential Information**” means information contained or disclosed in any materials, including documents, portions of documents, answers to interrogatories, responses to requests for admissions, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, including data, summaries, and compilations derived therefrom that is deemed to be Confidential Information by any party.

1 B. The term “**Materials**” includes, but is not limited to: documents;
2 correspondence; memoranda; financial information; emails; specifications; marketing
3 plans; marketing budgets; customer information; materials that identify customers or
4 potential customers; price lists or schedules or other matter identifying pricing; minutes;
5 letters; statements; cancelled checks; contracts; invoices; drafts; books of account;
6 worksheets; forecasts; notes of conversations; desk diaries; appointment books; expense
7 accounts; recordings; photographs; motion pictures; sketches; drawings; notes of
8 discussions with third parties; other notes; business reports; instructions; disclosures; other
9 writings; records of website development; and internet archives.

10 C. The term “**Counsel**” means all counsel of record throughout the litigation,
11 including outside counsel of record, and other attorneys, paralegals, secretaries, and
12 support staff employed in the office of any counsel of record.

13 The following provisions apply in this action:

14 1. Each party to this action that produces or discloses any Materials, answers to
15 interrogatories, responses to requests for admission, trial testimony, deposition testimony,
16 and/or transcripts of trial testimony and depositions that the producing party believes
17 should be subject to this Protective Order may designate the same as “CONFIDENTIAL”
18 or “CONFIDENTIAL – FOR COUNSEL ONLY.”

19 (a) Designation as “CONFIDENTIAL”: Any party may designate
20 information as “CONFIDENTIAL” only if, in the good-faith belief of
21 such party and its Counsel, the unrestricted disclosure of such
22 information could be harmful to the business or operations of such
23 party.

24 (b) Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any
25 party may designate information as “CONFIDENTIAL – FOR
26 COUNSEL ONLY” only if, in the good-faith belief of such party and
27 its Counsel, the information is among that considered to be most
28 sensitive by the party, including but not limited to trade secret or other

1 confidential data related to research, development, finances, or
2 customers.

3 2. In the event the producing party elects to produce Materials for inspection,
4 no marking need be made by the producing party in advance of the initial inspection. For
5 purposes of the initial inspection, all Materials produced will be considered as
6 “CONFIDENTIAL – FOR COUNSEL ONLY,” and must be treated as such pursuant to
7 the terms of this order. Thereafter, upon selection of specified Materials for copying by the
8 inspecting party, the producing party must, within a reasonable time prior to producing
9 those Materials to the inspecting party, mark the copies of those Materials that contain
10 Confidential Information with the appropriate confidentiality marking.

11 3. Whenever a deposition taken on behalf of any party involves the disclosure
12 of Confidential Information of any party:

13 (a) The deposition or portions of the deposition must be designated as
14 containing Confidential Information subject to the provisions of this
15 order. Such designation must be made on the record whenever
16 possible, but a party may designate portions of depositions as
17 containing Confidential Information after transcription of the
18 proceedings. A party will have until 30 days after receipt of the
19 deposition transcript to inform the other party or parties to the action
20 of the portions of the transcript to be designated “CONFIDENTIAL”
21 or “CONFIDENTIAL – FOR COUNSEL ONLY.”

22 (b) Prior to the disclosure of Confidential Information, the disclosing
23 party will have the right to exclude from attendance at the deposition
24 any person other than the deponent, Counsel (including their staff and
25 associates), the court reporter, and person(s) agreed upon by the
26 parties.

27 (c) The originals of the deposition transcripts and all copies of the
28 deposition must bear the legend “CONFIDENTIAL” or

1 “CONFIDENTIAL – FOR COUNSEL ONLY,” as appropriate, and
2 the original or any copy ultimately presented to a court for filing must
3 not be filed unless it can be accomplished under seal, identified as
4 being subject to this order, and protected from being opened except
5 by order of this Court.

6 4. All Confidential Information designated as “CONFIDENTIAL” or
7 “CONFIDENTIAL – FOR COUNSEL ONLY” must not be disclosed by the receiving
8 party to anyone other than those persons designated within this order, must be handled in
9 the manner set forth below, and must not be used for any purpose other than in connection
10 with this action, unless and until such designation is removed either by agreement of the
11 parties or by order of the Court.

12 5. Information designated “CONFIDENTIAL – FOR COUNSEL ONLY” may
13 be viewed only by:

- 14 (a) Counsel (as defined in paragraph C, above) of the receiving party;
- 15 (b) Independent experts and stenographic and clerical employees
16 associated with such experts. Prior to receiving any Confidential
17 Information of the producing party, the expert must execute a copy of
18 the “Agreement to Be Bound by Stipulated Protective Order,”
19 attached hereto as Exhibit A. Counsel for the receiving party must
20 retain executed copies of such exhibits;
- 21 (c) The Court and any Court staff and administrative personnel;
- 22 (d) Any court reporter employed in this action and acting in that capacity;
23 and
- 24 (e) Any person indicated on the face of the document to be its author or
25 co-author, or any person identified on the face of the document as one
26 to whom a copy of such document was sent before its production in
27 this action.

1 6. Information designated “CONFIDENTIAL” may be viewed only by the
2 individuals listed in paragraph 5, above, and by the additional individuals listed below:

- 3 (a) Party principals or executives who are required to participate in policy
4 decisions with reference to this action;
- 5 (b) Technical personnel of the parties with whom Counsel for the parties
6 find it necessary to consult in preparation for trial of this action; and
- 7 (c) Stenographic and clerical employees associated with the individuals
8 identified above.

9 7. All information that has been designated as “CONFIDENTIAL – FOR
10 COUNSEL ONLY” by the producing or disclosing party, and any and all reproductions of
11 that information, must be retained in the custody of the Counsel for the receiving party,
12 except that independent experts authorized to view such information under the terms of
13 this order may retain custody of copies as necessary for their participation in this action,
14 but only during the course of this action. The principals, employees or other agents of the
15 parties who received information prior to and apart from this action that was subsequently
16 disclosed in this action as being either “CONFIDENTIAL” or “CONFIDENTIAL – FOR
17 COUNSEL ONLY” may also retain copies of that information as is necessary for use in
18 their respective businesses.

19 8. If a party wishes to file a document that has been designated as “CONFIDENTIAL”
20 or “CONFIDENTIAL – FOR COUNSEL ONLY,” or if a party wishes to refer in a motion
21 or other filing to information so designated by another party, the parties must comply with
22 the following procedures which differ from those set forth in Local Rule 5.6. The party
23 wishing to file or refer to information designated as “CONFIDENTIAL” or
24 “CONFIDENTIAL – FOR COUNSEL ONLY,” must confer with the designating party
25 about the need to file the document under seal and whether the parties can agree on a
26 stipulation seeking to have the document filed under seal. If the parties are unable to agree,
27 the party that does not believe the document should be filed under seal must file a “Notice
28 of Intent to File Publicly” and lodge the documents under seal. (Section II(J)(1) of the

1 [Electronic Case Filing Administrative Policies and Procedures Manual](#) explains how this
2 filing must be completed.) The opposing party must then file a motion to seal. Every motion
3 to seal, including stipulations, must identify the legal standard applicable to the document
4 at issue and explain why the material sought to be sealed meets that standard. “Compelling
5 reasons” must be shown where the motion or document is more than tangentially related
6 to the merits of the case and “good cause” must be shown for other motions or documents.
7 *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). The
8 party that does not believe the material should be filed under seal may file a response. No
9 reply is allowed. If no motion to seal is filed, the lodged motion or documents will be filed
10 on the public docket. Additionally, a party referencing information that may be sealed shall,
11 within the applicable deadline, file a redacted, unsealed version of any motion, response or
12 reply if the party is waiting for a ruling from the Court on filing an unredacted, sealed
13 version of the same document. No portion of the trial of the matter shall be conducted under
14 seal. Nothing in this order shall be construed as automatically permitting a party to file
15 under seal. Furthermore, the mere fact the parties have designated certain materials or
16 information as confidential pursuant to an agreement or stipulation does not establish the
17 legal standard for placing those materials or information under seal has been met.

18 9. Confidential Information and Materials designated “CONFIDENTIAL” or
19 “CONFIDENTIAL – FOR COUNSEL ONLY” shall be used solely for the prosecution or
20 defense of this action. A party that wishes to use Confidential Information and/or Materials
21 designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” for a
22 purpose other than the prosecution or defense of this action must request permission, in
23 writing, from Counsel for the producing party. The receiving party’s request must identify
24 the Confidential Information and/or Materials designated “CONFIDENTIAL” or
25 “CONFIDENTIAL – FOR COUNSEL ONLY” that the receiving party wishes to use and
26 must identify the purpose for using it. If the parties cannot resolve the question of whether
27 the receiving party can use Confidential Information and/or Materials designated
28 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” for a purpose other

1 than the prosecution or defense of this action within fourteen days of the producing party's
2 receipt of such a request, the receiving party may move the Court for a ruling on the
3 receiving party's request. In the event any party files a motion seeking to use Confidential
4 Information and/or Materials designated "CONFIDENTIAL" or "CONFIDENTIAL –
5 FOR COUNSEL ONLY" for a purpose other than the prosecution or defense of this action,
6 the Confidential Information and/or Materials designated "CONFIDENTIAL" or
7 "CONFIDENTIAL – FOR COUNSEL ONLY" shall be submitted to the Court, under seal,
8 for an in-camera inspection. Any Confidential Information and/or Materials designated
9 "CONFIDENTIAL" or "CONFIDENTIAL – FOR COUNSEL ONLY" at issue must be
10 treated as Confidential Information, as designated by the producing party, until the Court
11 has ruled on the motion or the matter has been otherwise resolved.

12 10. At any stage of these proceedings, any party may object to a designation of
13 confidentiality. The party objecting to confidentiality must submit written objections and
14 the grounds for the objections to Counsel for the producing party. If the dispute is not
15 resolved within fourteen days of receipt of objections, the objecting party may move the
16 Court for a ruling on the objection. In the event any party files a motion challenging the
17 designation or redaction of information, the document shall be submitted to the Court,
18 under seal, for an in-camera inspection. The Materials at issue must be treated as
19 Confidential Information, as designated by the producing party, until the Court has ruled
20 on the objection or the matter has been otherwise resolved.

21 11. At any stage of these proceedings, any party may request that it be permitted
22 to disclose Materials designated as Confidential Information to individuals not permitted
23 by this order to view such Materials. The party must submit to Counsel for the producing
24 party a written notice identifying the relevant Materials and the individuals to whom the
25 party wishes to disclose the Materials. If the request is not resolved within fourteen days
26 of receipt of such a request, the requesting party may move the Court for a ruling allowing
27 such disclosure. If any party files a motion requesting such disclosure, the Materials shall
28 be submitted to the Court, under seal, for an in-camera inspection. The Materials at issue

1 must be treated as Confidential Information, as designated by the producing party, until the
2 Court has ruled on the request.

3 12. All Confidential Information must be held in confidence by those inspecting
4 or receiving it. To the extent the Confidential Information has not been disclosed prior to
5 and apart from this action, it must be used only for purposes of this action. If the
6 Confidential Information was exchanged between the parties prior to and apart from this
7 action for purposes of conducting their respective businesses, the parties may continue to
8 use that otherwise Confidential Information for that purpose. The parties may not distribute
9 the Confidential Information beyond those persons or entities that had received the
10 Confidential Information prior to this action. In addition, counsel for each party, and each
11 person receiving Confidential Information, must take reasonable precautions to prevent the
12 unauthorized or inadvertent disclosure of such information. If Confidential Information is
13 disclosed to any person other than a person authorized by this order, the party responsible
14 for the unauthorized disclosure must immediately bring all pertinent facts relating to the
15 unauthorized disclosure to the attention of the other parties and, without prejudice to any
16 rights and remedies of the other parties, make every effort to prevent further disclosure by
17 the party and by the person(s) receiving the unauthorized disclosure.

18 13. No party will be responsible to another party for disclosure of Confidential
19 Information under this order if the information in question is not labeled or otherwise
20 identified as such in accordance with this order.

21 14. If a party, through inadvertence, produces any Confidential Information
22 without labeling or marking or otherwise designating it as such in accordance with this
23 order, the producing party may give written notice to the receiving party that the Materials
24 produced are deemed Confidential Information, and that the Materials produced should be
25 treated as such in accordance with that designation under this order. The receiving party
26 must treat the Materials as confidential once the producing party so notifies the receiving
27 party. If the receiving party has disclosed the Materials before receiving the designation,
28 the receiving party must notify the producing party in writing of each such disclosure.

1 Counsel for the parties will agree on a mutually acceptable manner of labeling or marking
2 the inadvertently produced Materials as “CONFIDENTIAL” or “CONFIDENTIAL – FOR
3 COUNSEL ONLY” – SUBJECT TO PROTECTIVE ORDER.

4 15. Nothing within this order will prejudice the right of any party to object to the
5 production of any discovery material on the grounds that the material is protected as
6 privileged or as attorney work product.

7 16. Nothing in this order will bar Counsel from rendering advice to their clients
8 with respect to this action and, in the course thereof, relying upon any information
9 designated as Confidential Information, provided that the contents of the information must
10 not be disclosed.

11 17. This order will be without prejudice to the right of any party to oppose
12 production of any information for lack of relevance or any other ground other than the mere
13 presence of Confidential Information. The existence of this order must not be used by either
14 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
15 Procedure.

16 18. Information designated Confidential pursuant to this order also may be
17 disclosed if: (a) the party or non-party making the designation consents to such disclosure;
18 (b) the Court, after notice to all affected persons, allows such disclosure; or (c) the party to
19 whom Confidential Information has been produced thereafter becomes obligated to
20 disclose the information in response to a lawful subpoena, provided that the subpoenaed
21 party gives prompt notice to Counsel for the party which made the designation, and permits
22 Counsel for that party sufficient time to intervene and seek judicial protection from the
23 enforcement of this subpoena and/or entry of an appropriate protective order in the action
24 in which the subpoena was issued.

25 19. Nothing in this Confidentiality order shall limit any producing party’s use of
26 its own documents or shall prevent any producing party from disclosing its own
27 Confidential Information to any person. Such disclosures shall not affect any confidential
28 designation made pursuant to the terms of this order so long as the disclosure is made in a

1 manner which is reasonably calculated to maintain the confidentiality of the information.
2 Nothing in this order shall prevent or otherwise restrict Counsel from rendering advice to
3 their clients, and in the course thereof, relying on examination of stamped confidential
4 information.

5 20. Within 30 days of the final termination of this action, including any and all
6 appeals, Counsel for each party must purge all Confidential Information from all machine-
7 readable media on which it resides and must either (a) return all Confidential Information
8 to the party that produced the information, including any copies, excerpts, and summaries
9 of that information, or (b) destroy it. With respect to paper copies, return or destruction of
10 Confidential Information is at the option of the producing party. Notwithstanding the
11 foregoing, Counsel for each party may retain all pleadings, briefs, memoranda, motions,
12 and other documents filed with the Court that refer to or incorporate Confidential
13 Information, and will continue to be bound by this order with respect to all such retained
14 information, after the conclusion of this action. Further, attorney work product Materials
15 that contain Confidential Information need not be destroyed, but, if they are not destroyed,
16 the person in possession of the attorney work product will continue to be bound by this
17 order with respect to all such retained information after the conclusion of this action.

18 21. The restrictions and obligations set forth within this order do not apply to any
19 information that: (a) the parties agree should not be designated Confidential Information;
20 (b) the parties agree, or the Court rules, is already public knowledge; or (c) the parties
21 agree, or the Court rules, has become public knowledge other than as a result of a violation
22 of this order.

23 22. Any party may designate as “CONFIDENTIAL” or “CONFIDENTIAL –
24 FOR COUNSEL ONLY” any Materials that were produced during the course of this action
25 without such designation before the effective date of this order, as follows:

- 26 (a) Parties to this action may designate such Materials by sending written
27 notice of such designation, accompanied by copies of the designated
28 Materials bearing the appropriate legend of “CONFIDENTIAL” or

1 “CONFIDENTIAL – FOR COUNSEL ONLY” to all other parties in
2 possession or custody of such previously undesignated Materials. Any
3 party receiving such notice and copies of designated Materials
4 pursuant to this subparagraph shall return to the producing party all
5 undesignated copies of such Materials in its custody or possession, or
6 shall affix the appropriate legend to all copies of the designated
7 Materials in its custody or possession.

8 (b) Upon notice of designation pursuant to this paragraph, parties shall
9 also: (i) make no disclosure of such designated Materials or
10 information contained therein except as allowed under this order; and
11 (ii) take reasonable steps to notify any persons known to have
12 possession of such designated Materials or information of the effect
13 of such designation under this order.

14 (c) All such designations must be made within 30 days of the date of this
15 order.

16 23. Transmission by e-mail, facsimile, or other reliable electronic means is
17 acceptable for all notification purposes within this order.

18 24. This order may be modified by agreement of the parties, subject to approval
19 by the Court.

20 25. The Court may modify the terms and conditions of this order for good cause,
21 or in the interest of justice, or on its own order at any time in these proceedings.

22 26. After termination of this action, the provisions of this order shall continue to
23 be binding, except with respect to those documents and information that became a matter
24 of public record. This Court retains and shall have continuing jurisdiction over the parties
25 and recipients of Confidential Information and Materials designated as confidential for
26 enforcement of the provisions of this order following termination of this action.

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EXHIBIT A

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

		No.
Plaintiff,		AGREEMENT TO BE BOUND BY STIPULATED PROTECTIVE ORDER
v.		
	Defendant.	

I, _____, declare and say that:

1. I am employed as _____
by _____.
2. I have read the Stipulated Protective order (the “order”) entered in _____ and have received a copy of the order.
3. I promise that I will use any and all “Confidential” or “Confidential – For Counsel Only” information, as defined in the order, given to me only in a manner authorized by the order, and only to assist Counsel in the litigation of this matter.
4. I promise that I will not disclose or discuss such “Confidential” or “Confidential – For Counsel Only” information with anyone other than the persons authorized to receive such information by the order.
5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the District of Arizona with respect to the enforcement of the order.

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6. I understand that any disclosure or use of “Confidential” or “Confidential – For Counsel Only” information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

7. I will return all “Confidential” or “Confidential – For Counsel Only” Materials (as defined in the order) to the attorney who provided it to me, upon request of that attorney, and I shall not retain any copies of said Materials or any information contained within “Confidential” or “Confidential – For Counsel Only” Materials.

I declare under penalty of perjury that the foregoing is true and correct.

Date: _____

Signature