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3 **EXAMPLE: PROTECTIVE ORDER**
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5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

	Plaintiff,	No.
v.		PROTECTIVE ORDER
	Defendant.	

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

19 Accordingly,

20 **IT IS ORDERED** that the parties’ Stipulated Motion for Entry of Protective Order
21 (Doc. __) is **granted** and the following provisions shall be enforced.

22 The following Definitions apply in this Order:

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

28 B. The term “**Materials**” includes, but is not limited to: documents;

1 correspondence; memoranda; financial information; emails; specifications; marketing
2 plans; marketing budgets; customer information; materials that identify customers or
3 potential customers; price lists or schedules or other matter identifying pricing; minutes;
4 letters; statements; cancelled checks; contracts; invoices; drafts; books of account;
5 worksheets; forecasts; notes of conversations; desk diaries; appointment books; expense
6 accounts; recordings; photographs; motion pictures; sketches; drawings; notes of
7 discussions with third parties; other notes; business reports; instructions; disclosures; other
8 writings; records of website development; and internet archives.

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

12 The following provisions apply in this litigation:

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

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

22 B. Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any
23 party may designate information as “CONFIDENTIAL – FOR COUNSEL ONLY” only
24 if, in the good faith belief of such party and its Counsel, the information is among that
25 considered to be most sensitive by the party, including but not limited to trade secret or
26 other confidential data related to research, development, finances, or customers.

27 C. In the event the producing party elects to produce Materials for
28 inspection, no marking need be made by the producing party in advance of the initial

1 inspection. For purposes of the initial inspection, all Materials produced will be considered
2 as “CONFIDENTIAL – FOR COUNSEL ONLY,” and must be treated as such pursuant to
3 the terms of this Order. Thereafter, upon selection of specified Materials for copying by
4 the inspecting party, the producing party must, within a reasonable time prior to producing
5 those Materials to the inspecting party, mark the copies of those Materials that contain
6 Confidential Information with the appropriate confidentiality marking.

7 2. Whenever a deposition taken on behalf of any party involves the disclosure
8 of Confidential Information of any party:

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

16 B. Prior to the disclosure of Confidential Information, the disclosing
17 party will have the right to exclude from attendance at the deposition any person other than
18 the deponent, Counsel (including their staff and associates), the court reporter, and the
19 person(s) agreed upon pursuant to paragraph 8, below.

20 C. The originals of the deposition transcripts and all copies of the
21 deposition must bear the legend “CONFIDENTIAL” or “CONFIDENTIAL – FOR
22 COUNSEL ONLY,” as appropriate, and the original or any copy ultimately presented to a
23 court for filing must not be filed unless it can be accomplished under seal, identified as
24 being subject to this Order, and protected from being opened except by order of this Court.

25 3. All Confidential Information designated as “CONFIDENTIAL” or
26 “CONFIDENTIAL – FOR COUNSEL ONLY” must not be disclosed by the receiving
27 party to anyone other than those persons designated within this Order, must be handled in
28 the manner set forth below, and must not be used for any purpose other than in connection

1 with this litigation, unless and until such designation is removed either by agreement of the
2 parties or by order of the Court.

3 4. Information designated “CONFIDENTIAL – FOR COUNSEL ONLY” may
4 be viewed only by:

5 A. Counsel (as defined in paragraph C, above) of the receiving party;

6 B. Independent experts and stenographic and clerical employees
7 associated with such experts. Prior to receiving any Confidential Information of the
8 producing party, the expert must execute a copy of the “Agreement to Be Bound by
9 Stipulated Protective Order,” attached hereto as Exhibit A. Counsel for the receiving party
10 must retain executed copies of such exhibits;

11 C. The Court and any Court staff and administrative personnel;

12 D. Any court reporter employed in this litigation and acting in that
13 capacity; and

14 E. Any person indicated on the face of the document to be its author or
15 co-author, or any person identified on the face of the document as one to whom a copy of
16 such document was sent before its production in this action.

17 5. Information designated “CONFIDENTIAL” may be viewed only by the
18 individuals listed in paragraph 4, above, and by the additional individuals listed below:

19 A. Party principals or executives who are required to participate in policy
20 decisions with reference to this action;

21 B. Technical personnel of the parties with whom Counsel for the parties
22 find it necessary to consult in preparation for trial of this action; and

23 C. Stenographic and clerical employees associated with the individuals
24 identified above.

25 6. All information that has been designated as “CONFIDENTIAL – FOR
26 COUNSEL ONLY” by the producing or disclosing party, and any and all reproductions of
27 that information, must be retained in the custody of the Counsel for the receiving party,
28 except that independent experts authorized to view such information under the terms of

1 this Order may retain custody of copies as necessary for their participation in this litigation,
2 but only during the course of this litigation. The principals, employees or other agents of
3 the parties who received information prior to and apart from this litigation that was
4 subsequently disclosed in this litigation as being either “CONFIDENTIAL” or
5 “CONFIDENTIAL – FOR COUNSEL ONLY” may also retain copies of that information
6 as is necessary for use in their respective businesses.

7 7. Before any Materials produced in discovery, answers to interrogatories,
8 responses to requests for admissions, deposition transcripts, or other documents which are
9 designated as Confidential Information are filed with the Court for any purpose, the party
10 seeking to file such material must seek permission of the Court to file the material under
11 seal. **The parties must follow the procedural requirements of LRCiv 5.6.** Nothing in
12 this Order shall be construed as automatically permitting a party to file under seal. Every
13 motion to seal, including stipulations pursuant to LRCiv 5.6(d), must identify the legal
14 standard applicable to the document at issue and explain why the material sought to be
15 sealed meets that standard. The party seeking leave of Court shall show “compelling
16 reasons” (where the motion is more than tangentially related to the merits of the case) or
17 “good cause” for filing under seal. *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d
18 1092, 1101 (9th Cir. 2016). Furthermore, the mere fact the parties have designated certain
19 materials or information as confidential pursuant to an agreement or stipulation does not
20 establish that any legal standard for placing those materials or information under seal has
21 been met. *Id.* Where a party seeks to seal only certain portions of a given document, the
22 unredacted version of the document, which should be lodged under seal pursuant to
23 LRCiv 5.6(c), must include **highlighting** to indicate which portions of the document the
24 party seeks to redact. Additionally, a party seeking to file under seal shall, within the
25 applicable deadline, file a redacted, unsealed version of any motion, response or reply if
26 the party is waiting for a ruling from the Court on filing an unredacted, sealed version of
27 the same document. Further, no portion of the trial of the matter shall be conducted
28 under seal.

1 8. Confidential Information and Materials designated “CONFIDENTIAL” or
2 “CONFIDENTIAL – FOR COUNSEL ONLY” shall be used solely for the prosecution or
3 defense of this action. A party that wishes to use Confidential Information and/or Materials
4 designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” for a
5 purpose other than the prosecution or defense of this action must request permission, in
6 writing, from Counsel for the producing party. The receiving party’s request must identify
7 the Confidential Information and/or Materials designated “CONFIDENTIAL” or
8 “CONFIDENTIAL – FOR COUNSEL ONLY” that the receiving party wishes to use and
9 must identify the purpose for using it. If the parties cannot resolve the question of whether
10 the receiving party can use Confidential Information and/or Materials designated
11 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” for a purpose other
12 than the prosecution or defense of this action within fourteen (14) days of the producing
13 party’s receipt of such a request, the receiving party may move the Court for a ruling on
14 the receiving party’s request. In the event any party files a motion seeking to use
15 Confidential Information and/or Materials designated “CONFIDENTIAL” or
16 “CONFIDENTIAL – FOR COUNSEL ONLY” for a purpose other than the prosecution or
17 defense of this action, the Confidential Information and/or Materials designated
18 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” shall be submitted
19 to the Court, under seal, for an in-camera inspection. Any Confidential Information and/or
20 Materials designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL
21 ONLY” at issue must be treated as Confidential Information, as designated by the
22 producing party, until the Court has ruled on the motion or the matter has been otherwise
23 resolved.

24 9. At any stage of these proceedings, any party may object to a designation of
25 confidentiality. The party objecting to confidentiality must submit written objections and
26 the grounds for the objections to Counsel for the producing party. If the dispute is not
27 resolved consensually between the parties within fourteen (14) days of receipt of
28 objections, the objecting party may move the Court for a ruling on the objection. In the

1 event any party files a motion challenging the designation or redaction of information, the
2 document shall be submitted to the Court, under seal, for an in-camera inspection. The
3 Materials at issue must be treated as Confidential Information, as designated by the
4 producing party, until the Court has ruled on the objection or the matter has been otherwise
5 resolved.

6 10. At any stage of these proceedings, any party may request that it be permitted
7 to disclose Materials designated as Confidential Information to individuals not permitted
8 by this Order to view such Materials. The party must submit to Counsel for the producing
9 party a written notice identifying the relevant Materials and the individuals to whom the
10 party wishes to disclose the Materials. If the request is not resolved consensually between
11 the parties within fourteen (14) days of receipt of such a request, the requesting party may
12 move the Court for a ruling allowing such disclosure. In the event any party files a motion
13 requesting such disclosure, the Materials shall be submitted to the Court, under seal, for an
14 in-camera inspection. The Materials at issue must be treated as Confidential Information,
15 as designated by the producing party, until the Court has ruled on the request.

16 11. All Confidential Information must be held in confidence by those inspecting
17 or receiving it. To the extent the Confidential Information has not been disclosed prior to
18 and apart from this litigation, it must be used only for purposes of this action. If the
19 Confidential Information was exchanged between the parties prior to and apart from this
20 litigation for purposes of conducting their respective businesses, the parties may continue
21 to use that otherwise Confidential Information for that purpose. The parties may not
22 distribute the Confidential Information beyond those persons or entities that had received
23 the Confidential Information prior to this litigation. In addition, counsel for each party, and
24 each person receiving Confidential Information, must take reasonable precautions to
25 prevent the unauthorized or inadvertent disclosure of such information. If Confidential
26 Information is disclosed to any person other than a person authorized by this Order, the
27 party responsible for the unauthorized disclosure must immediately bring all pertinent facts
28 relating to the unauthorized disclosure to the attention of the other parties and, without

1 prejudice to any rights and remedies of the other parties, make every effort to prevent
2 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

3 12. No party will be responsible to another party for disclosure of Confidential
4 Information under this Order if the information in question is not labeled or otherwise
5 identified as such in accordance with this Order.

6 13. If a party, through inadvertence, produces any Confidential Information
7 without labeling or marking or otherwise designating it as such in accordance with this
8 Order, the producing party may give written notice to the receiving party that the Materials
9 produced are deemed Confidential Information, and that the Materials produced should be
10 treated as such in accordance with that designation under this Order. The receiving party
11 must treat the Materials as confidential once the producing party so notifies the receiving
12 party. If the receiving party has disclosed the Materials before receiving the designation,
13 the receiving party must notify the producing party in writing of each such disclosure.
14 Counsel for the parties will agree on a mutually acceptable manner of labeling or marking
15 the inadvertently produced Materials as “CONFIDENTIAL” or “CONFIDENTIAL – FOR
16 COUNSEL ONLY” – SUBJECT TO PROTECTIVE ORDER.

17 14. Nothing within this Order will prejudice the right of any party to object to
18 the production of any discovery material on the grounds that the material is protected as
19 privileged or as attorney work product.

20 15. Nothing in this Order will bar Counsel from rendering advice to their clients
21 with respect to this litigation and, in the course thereof, relying upon any information
22 designated as Confidential Information, provided that the contents of the information must
23 not be disclosed.

24 16. This Order will be without prejudice to the right of any party to oppose
25 production of any information for lack of relevance or any other ground other than the mere
26 presence of Confidential Information. The existence of this Order must not be used by
27 either party as a basis for discovery that is otherwise improper under the Federal Rules of
28 Civil Procedure.

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

10 18. A party shall serve a copy of this Protective Order with a subpoena for
11 documents or deposition testimony that is directed to any non-party to this action.

12 19. Nothing in this Confidentiality Order shall limit any producing party's use
13 of its own documents or shall prevent any producing party from disclosing its own
14 Confidential Information to any person. Such disclosures shall not affect any confidential
15 designation made pursuant to the terms of this Order so long as the disclosure is made in a
16 manner which is reasonably calculated to maintain the confidentiality of the information.
17 Nothing in this Order shall prevent or otherwise restrict Counsel from rendering advice to
18 their clients, and in the course thereof, relying on examination of stamped confidential
19 information.

20 20. Within thirty (30) days of the final termination of this action, including any
21 and all appeals, Counsel for each party must purge all Confidential Information from all
22 machine-readable media on which it resides and must either (a) return all Confidential
23 Information to the party that produced the information, including any copies, excerpts, and
24 summaries of that information, or (b) destroy it. With respect to paper copies, return or
25 destruction of Confidential Information is at the option of the producing party.
26 Notwithstanding the foregoing, Counsel for each party may retain all pleadings, briefs,
27 memoranda, motions, and other documents filed with the Court that refer to or incorporate
28 Confidential Information, and will continue to be bound by this Order with respect to all

1 such retained information, after the conclusion of this litigation. Further, attorney work
2 product Materials that contain Confidential Information need not be destroyed, but, if they
3 are not destroyed, the person in possession of the attorney work product will continue to
4 be bound by this Order with respect to all such retained information after the conclusion of
5 this litigation.

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

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

14 A. Parties to this action may designate such Materials by sending written
15 notice of such designation, accompanied by copies of the designated Materials bearing the
16 appropriate legend of “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL
17 ONLY” to all other parties in possession or custody of such previously undesignated
18 Materials. Any party receiving such notice and copies of designated Materials pursuant to
19 this subparagraph shall return to the producing party all undesignated copies of such
20 Materials in its custody or possession, or shall affix the appropriate legend to all copies of
21 the designated Materials in its custody or possession.

22 B. Upon notice of designation pursuant to this paragraph, parties shall
23 also: (i) make no disclosure of such designated Materials or information contained therein
24 except as allowed under this Order; and (ii) take reasonable steps to notify any persons
25 known to have possession of such designated Materials or information of the effect of such
26 designation under this Order.

27 C. All such designations must be made within thirty (30) days of the date
28 of this Order.

1 23. Transmission by e-mail, facsimile, or other reliable electronic means is
2 acceptable for all notification purposes within this Order.

3 24. This Order may be modified by agreement of the parties, subject to approval
4 by the Court.

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

7 26. After termination of this action, the provisions of this Order shall continue to
8 be binding, except with respect to those documents and information that became a matter
9 of public record. This Court retains and shall have continuing jurisdiction over the parties
10 and recipients of Confidential Information and Materials designated as confidential for
11 enforcement of the provisions of this Order following termination of this litigation.

EXHIBIT A

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

Plaintiff, v. Defendant.	No. AGREEMENT TO BE BOUND BY STIPULATED PROTECTIVE ORDER
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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 described in paragraphs 3, 4 and 5 of 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.

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

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

8 I declare under penalty of perjury that the foregoing is true and correct.
9
10

11 Date: _____

Signature