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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 many of the documents and much of the information (“**Materials**” as defined herein) being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The Materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, development, or commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The parties have agreed to be bound by the terms of this Protective Order (“**Order**”) in this action to facilitate the document production and disclosure, and protect the respective interests of the parties in their trade secrets and/or confidential information. This Order shall remain in effect unless modified pursuant to the terms contained in this Order.

IT IS THEREFORE ORDERED THAT,

The following Definitions shall apply in this Order:

- A. The term “**Confidential Information**” will mean and include 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,

1 summaries, and compilations derived therefrom that is deemed to be Confidential
2 Information by any party to which it belongs.

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

12 C. The term “**Counsel**” will mean outside counsel of record, and other
13 attorneys, paralegals, secretaries, and other support staff employed in the following law
14 firms: _____.

15
16 The following provisions shall apply in this litigation:

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

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

27 (b) Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any
28 party may designate information as “CONFIDENTIAL – FOR

1 COUNSEL ONLY” only if, in the good faith belief of such party
2 and its Counsel, the information is among that considered to be most
3 sensitive by the party, including but not limited to trade secret or
4 other confidential research, development, financial, customer related
5 data or other commercial information.

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

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

16 (a) the deposition or portions of the deposition must be designated as
17 containing Confidential Information subject to the provisions of this
18 Order; such designation must be made on the record whenever
19 possible, but a party may designate portions of depositions as
20 containing Confidential Information after transcription of the
21 proceedings; a party will have until thirty (30) days after receipt of
22 the deposition transcript to inform the other party or parties to the
23 action of the portions of the transcript to be designated
24 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL
25 ONLY.”

26 (b) the disclosing party will have the right to exclude from attendance at
27 the deposition, during such time as the Confidential Information is to
28 be disclosed, any person other than the deponent, Counsel (including

1 their staff and associates), the court reporter, and the person(s)
2 agreed upon pursuant to paragraph 8, below; and

- 3 (c) The originals of the deposition transcripts and all copies of the
4 deposition must bear the legend “CONFIDENTIAL” or
5 “CONFIDENTIAL – FOR COUNSEL ONLY,” as appropriate, and
6 the original or any copy ultimately presented to a court for filing
7 must not be filed unless it can be accomplished under seal, identified
8 as being subject to this Order, and protected from being opened
9 except by order of this Court.

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

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

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

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

7 (a) Party principals or executives who are required to participate in
8 policy decisions with reference to this action;

9 (b) Technical personnel of the parties with whom Counsel for the parties
10 find it necessary to consult, in the discretion of such Counsel, in
11 preparation for trial of this action; and

12 (c) Stenographic and clerical employees associated with the individuals
13 identified above.

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

24 8. Before any Materials produced in discovery, answers to interrogatories,
25 responses to requests for admissions, deposition transcripts, or other documents which
26 are designated as Confidential Information are filed with the Court for any purpose, the
27 party seeking to file such material must seek permission of the Court to file the material
28 under seal. Nothing in this order shall be construed as automatically permitting a party to

1 file under seal. The party seeking leave of Court shall show “compelling reasons” (where
2 the motion is more than tangentially related to the merits of the case) or “good cause” for
3 filing under seal. *See Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101
4 (9th Cir. 2016). Additionally, such party seeking to file under seal shall, within the
5 applicable deadline, file a redacted, unsealed version of any motion, response or reply if
6 such party is waiting for a ruling from the Court on filing an unredacted, sealed version
7 of the same document.¹ Further, no portion of the trial of the matter shall be conducted
8 under seal.

9 9. Confidential Information and Materials designated “CONFIDENTIAL” or
10 “CONFIDENTIAL – FOR COUNSEL ONLY” shall be used solely for the prosecution or
11 defense of this action. A party who wishes to use Confidential Information and/or
12 Materials designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL
13 ONLY” for a purpose other than the prosecution or defense of this action must request
14 permission, in writing, from Counsel for the producing party. The receiving party’s
15 request must identify the Confidential Information and/or Materials designated
16 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” that the receiving
17 party wishes to use, and identify the purpose for which it wishes to use Confidential
18 Information and/or Materials designated “CONFIDENTIAL” or “CONFIDENTIAL –
19 FOR COUNSEL ONLY.” If the parties cannot resolve the question of whether the
20 receiving party can use Confidential Information and/or Materials designated
21 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” for a purpose
22 other than the prosecution or defense of this action within fourteen (14) days of the
23 producing party’s receipt of such a request, the receiving party may move the Court for a
24 ruling on the receiving party’s request. In the event any party files a motion seeking to

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26 ¹ If a party wishes to use the opposing party’s confidential designations to support
27 or oppose a motion, the opposing party bears the burden to make the “compelling
28 reasons” showing. In the event the party wishing to use the confidential information
anticipates this scenario arising, the party shall initiate a discovery dispute conference
call consistent with the terms of the Court’s Rule 16 Scheduling Order at least fourteen
(14) days before the due date of the filing in which the party wishes to reference the
information.

1 use Confidential Information and/or Materials designated “CONFIDENTIAL” or
2 “CONFIDENTIAL – FOR COUNSEL ONLY” for a purpose other than the prosecution
3 or defense of this action, the Confidential Information and/or Materials designated
4 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” shall be
5 submitted to the Court, under seal, for an in-camera inspection. Any Confidential
6 Information and/or Materials designated “CONFIDENTIAL” or “CONFIDENTIAL –
7 FOR COUNSEL ONLY” at issue must be treated as Confidential Information, as
8 designated by the producing party, until the Court has ruled on the motion or the matter
9 has been otherwise resolved.

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

20 11. At any stage of these proceedings, any party may request that it be
21 permitted to disclose Materials designated as Confidential Information to individuals not
22 permitted by this Order to view such Materials. The party must notify, in writing,
23 Counsel for the producing party of the identity of the relevant Materials and the
24 individuals to whom the party wishes to disclose the Materials. If the request is not
25 resolved consensually between the parties within fourteen (14) days of receipt of such a
26 request, the requesting party may move the Court for a ruling allowing such disclosure.
27 In the event any party files a motion requesting such disclosure, the document shall be
28 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
2 the Court has ruled on the request.

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

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

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

1 receiving the designation, the receiving party must notify the producing party in writing
2 of each such disclosure. Counsel for the parties will agree on a mutually acceptable
3 manner of labeling or marking the inadvertently produced Materials as
4 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY” – SUBJECT TO
5 PROTECTIVE ORDER.

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

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

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

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

27 19. Nothing in this Confidentiality Order shall limit any producing party’s use
28 of its own documents or shall prevent any producing party from disclosing its own

1 Confidential Information to any person. Such disclosures shall not affect any
2 confidential designation made pursuant to the terms of this Order so long as the
3 disclosure is made in a manner which is reasonably calculated to maintain the
4 confidentiality of the information. Nothing in this Order shall prevent or otherwise
5 restrict Counsel from rendering advice to their clients, and in the course thereof, relying
6 on examination of stamped confidential information.

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

21 21. The restrictions and obligations set forth within this Order will not apply to
22 any information that: (a) the parties agree should not be designated Confidential
23 Information; (b) the parties agree, or the Court rules, is already public knowledge; or (c)
24 the parties agree, or the Court rules, has become public knowledge other than as a result
25 of disclosure by the receiving party, its employees, or its agents, in violation of this
26 Order.

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

4 (a) Parties to this action may designate such Materials by sending
5 written notice of such designation, accompanied by copies of the
6 designated Materials bearing the appropriate legend of
7 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL
8 ONLY” to all other parties in possession or custody of such
9 previously undesignated Materials. Any party receiving such notice
10 and copies of designated Materials pursuant to this subparagraph
11 shall return to the producing party all undesignated copies of such
12 Materials in its custody or possession, or shall affix the appropriate
13 legend to all copies of the designated Materials in its custody or
14 possession.

15 (b) Upon notice of designation pursuant to this paragraph, parties shall
16 also: (i) make no disclosure of such designated Materials or
17 information contained therein except as allowed under this Order;
18 and (ii) take reasonable steps to notify any persons known to have
19 possession of such designated Materials or information of the effect
20 of such designation under this Order.

21 (c) All such designations must be made within thirty (30) days of the
22 date of this Order.

23 23. Transmission by e-mail or facsimile is acceptable for all notification
24 purposes within this Order.

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

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

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

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EXHIBIT A

**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 described in paragraphs 3, 8 and 9 of the Order.

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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.

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