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11 Attorneys for Defendant
 12 NISSAN NORTH AMERICA, INC.

13
 14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA

16 STEVEN BRAND, individual, and on
 17 behalf of a class of similarly situated
 individuals,

18 Plaintiffs,

19 vs.

20 NISSAN NORTH AMERICA, INC., a
 21 California corporate,

22 Defendant.

Case No. 2:16-CV-07378-VAP-SK

Judge: Hon. Virginia A. Phillips
 Courtroom: 8A

**ORDER GRANTING STIPULATED
 AMENDED PROTECTIVE ORDER**

23
 24 The Court, having considered the Parties' Stipulated Amended Protective
 25 Order, all the papers filed in connection and for good cause appearing, hereby
 26 GRANTS the Stipulation, and ORDERS the following:
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1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does
7 not confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable
10 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
11 that this Stipulated Protective Order does not entitle them to file confidential
12 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
13 followed and the standards that will be applied when a party seeks permission from
14 the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 The parties to the Litigation assert that public dissemination and disclosure of
17 Confidential Information could severely injure or damage the party disclosing or
18 producing the Confidential Information and could place that party at a competitive
19 disadvantage. This action is likely to involve trade secrets, customer and pricing lists
20 and other valuable research, development, commercial, financial, technical and/or
21 proprietary information for which special protection from public disclosure and from
22 use for any purpose other than prosecution of this action is warranted. Such
23 confidential and proprietary materials and information consist of, among other things,
24 confidential business or financial information, information regarding confidential
25 business practices, or other confidential research, development, or commercial
26 information (including information implicating privacy rights of third parties),
27 information otherwise generally unavailable to the public, or which may be privileged
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1 or otherwise protected from disclosure under state or federal statutes, court rules, case
2 decisions, or common law. Accordingly, to expedite the flow of information, to
3 facilitate the prompt resolution of disputes over confidentiality of discovery materials,
4 to adequately protect information the parties are entitled to keep confidential, to ensure
5 that the parties are permitted reasonable necessary uses of such material in preparation
6 for and in the conduct of trial, to address their handling at the end of the litigation, and
7 serve the ends of justice, a protective order for such information is justified in this
8 matter. It is the intent of the parties that information will not be designated as
9 confidential for tactical reasons and that nothing be so designated without a good faith
10 belief that it has been maintained in a confidential, non-public manner, and there is
11 good cause why it should not be part of the public record of this case.

12 2. DEFINITIONS

13 2.1 Action: this pending federal lawsuit entitled *Steven Brand v.*
14 *Nissan North America, Inc.*, Case No. 2:16-CV-07378-VAP-SK.

15 2.2 Challenging Party: a Party or Non-Party that challenges the designation
16 of information or items under this Order.

17 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
18 is generated, stored or maintained) or tangible things that qualify for protection under
19 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
20 Statement.

21 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
22 support staff).

23 2.5 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL.”

26 2.6 Disclosure or Discovery Material: all items or information, regardless of
27 the medium or manner in which it is generated, stored, or maintained (including,
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1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
5 expert witness or as a consultant in this Action.

6 2.8 House Counsel: attorneys who are employees of a party to this Action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.9 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a party
12 to this Action but are retained to represent or advise a party to this Action and have
13 appeared in this Action on behalf of that party or are affiliated with a law firm which
14 has appeared on behalf of that party, and includes support staff.

15 2.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL.” Except as otherwise indicated below, all
26 documents, including photographs, drawings, films, videotapes or other writings,
27 including lists or compilations thereof, answers to interrogatories, responses to other
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1 discovery requests and deposition testimony designated by the producing party as
2 “CONFIDENTIAL,” “SUBJECT TO PROTECTIVE ORDER,” or any combination
3 thereof, and which are disclosed or produced to the attorneys for the other parties to
4 this Action are CONFIDENTIAL and are entitled to CONFIDENTIAL treatment as
5 described below.

6 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
7 from a Producing Party.

8 3. SCOPE

9 The protections conferred by this Stipulation and Order cover not only
10 Protected Material (as defined above), but also (1) any information copied or extracted
11 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
12 Protected Material; and (3) any testimony, conversations, or presentations by Parties
13 or their Counsel that might reveal Protected Material.

14 Any use of Protected Material at trial shall be governed by the orders of the trial
15 judge. This Order does not govern the use of Protected Material at trial.

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations
18 imposed by this Order shall remain in effect until a Designating Party agrees
19 otherwise in writing or a court order otherwise directs. Final disposition shall be
20 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
21 or without prejudice; and (2) final judgment herein after the completion and
22 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
23 including the time limits for filing any motions or applications for extension of time
24 pursuant to applicable law.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.

27 Each Party or Non-Party that designates information or items for protection under this
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1 Order must take care to limit any such designation to specific material that qualifies
2 under the appropriate standards. The Designating Party must designate for protection
3 only those parts of material, documents, items, or oral or written communications for
4 which protection is not warranted are not swept unjustifiably within the ambit of this
5 Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper
8 purpose (e.g., to unnecessarily encumber the case development process or to impose
9 unnecessary expenses and burdens on other parties) may expose the Designating Party
10 to sanctions.

11 If it comes to a Designating Party's attention that information or items that it
12 designated for protection do not qualify for protection, that Designating Party must
13 promptly notify all other Parties that it is withdrawing the inapplicable designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in
15 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
17 under this Order must be clearly so designated before the material is disclosed or
18 produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic
21 documents, but excluding transcripts of depositions or other pretrial or trial
22 proceedings), that the Producing Party affix at a minimum, the legend
23 "CONFIDENTIAL" OR "SUBJECT TO PROTECTIVE ORDER" (hereinafter
24 "CONFIDENTIAL legend"), to each page that contains protected material.

25 A Party or Non-Party that makes original documents available for inspection
26 need not designate them for protection until after the inspecting Party has indicated
27 which documents it would like copied and produced. During the inspection and before
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1 the designation, all of the material made available for inspection shall be deemed
2 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
3 copied and produced, the Producing Party must determine which documents, or
4 portions thereof, qualify for protection under this Order. Then, before producing the
5 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
6 to each page that contains Protected Material.

7 (b) for testimony given in depositions that the Designating Party identify
8 the Disclosure or Discovery Material on the record, before the close of the deposition
9 all protected testimony. In the case of testimony not so designated during the course
10 of a deposition, counsel may, within thirty (30) days of receiving the deposition
11 transcript, notify the parties that the deposition testimony contains
12 “CONFIDENTIAL” material, in which case the testimony shall be subject to the full
13 protection of this Order.

14 (c) for information produced in some form other than documentary and for
15 any other tangible items, that the Producing Party affix in a prominent place on the
16 exterior of the container or containers in which the information is stored the legend
17 “CONFIDENTIAL.”

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive the
20 Designating Party’s right to secure protection under this Order for such material.
21 Upon timely correction of a designation, the Receiving Party must make reasonable
22 efforts to assure that the material is treated in accordance with the provisions of this
23 Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the Court’s
27 Scheduling Order.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Frivolous challenges, and those made for an improper purpose
5 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
6 expose the Challenging Party to sanctions. Unless the Designating Party has waived
7 or withdrawn the confidentiality designation, all parties shall continue to afford the
8 material in question the level of protection to which it is entitled under the Producing
9 Party’s designation until the Court rules on the challenge.

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is
12 disclosed or produced by another Party or by a Non-Party in connection with this
13 Action only for prosecuting, defending, or attempting to settle this Action. Such
14 Protected Material may be disclosed only to the categories of persons and under the
15 conditions described in this Order. When the Action has been terminated, a Receiving
16 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at a
18 location and in a secure manner that ensures that access is limited to the persons
19 authorized under this Order.

20 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
21 otherwise ordered by the court or permitted in writing by the Designating Party, a
22 Receiving Party may disclose any information or item designated
23 “CONFIDENTIAL” only to:

24 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
25 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
26 disclose the information for this Action;

27 (b) the officers, directors, and employees (including House Counsel) of the
28 Receiving Party to whom disclosure is reasonably necessary for this Action;

1 (c) Experts (as defined in this Order) of the Receiving Party who are not
2 employed by or engaged as employees or contractors of a competitor of the Producing
3 Party, to whom disclosure is reasonably necessary for this Action and who have
4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (d) the court and its personnel;

6 (e) court reporters and their staff;

7 (f) professional jury or trial consultants, mock jurors, and Professional
8 Vendors to whom disclosure is reasonably necessary for this Action and who have
9 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (g) the author or recipient of a document containing the information;

11 (h) during their depositions, witnesses, and attorneys for witnesses, in the
12 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
13 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
14 not be permitted to keep any confidential information unless they sign the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
16 by the Designating Party or ordered by the court. Pages of transcribed deposition
17 testimony or exhibits to depositions that reveal Protected Material may be separately
18 bound by the court reporter and may not be disclosed to anyone except as permitted
19 under this Stipulated Protective Order; and

20 (i) any mediator or settlement officer, and their supporting personnel,
21 mutually agreed upon by any of the parties engaged in settlement discussions.

22 Prior to the disclosure of any of the materials or information covered by this
23 Stipulated Protective Order to any person identified in 7.2 a-i, counsel disclosing the
24 materials or information shall present the person with a copy of this Order. After
25 reading the Order, such persons shall initial each page of a copy of the Order and shall
26 sign the attached form of “Acknowledgment and Agreement to Be Bound” (Exhibit
27 A). Copies of each such signed Order and Acknowledgement shall be maintained by
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1 counsel disclosing the materials or information. In the event that any of these
2 individuals are identified or designated as experts who may testify in the Litigation, a
3 copy of each such signed Order and Acknowledgement shall be provided to opposing
4 counsel at the time of the designation.

5
6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
7 OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this Action as
10 “CONFIDENTIAL,” that Party must:

11 (a) promptly notify in writing the Designating Party. Such notification shall
12 include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order
14 to issue in the other litigation that some or all of the material covered by the subpoena
15 or order is subject to this Protective Order. Such notification shall include a copy of
16 this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be pursued
18 by the Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with
20 the subpoena or court order shall not produce any information designated in this
21 action as “CONFIDENTIAL” before a determination by the court from which the
22 subpoena or order issued, unless the Party has obtained the Designating Party’s
23 permission. The Designating Party shall bear the burden and expense of seeking
24 protection in that court of its confidential material and nothing in these provisions
25 should be construed as authorizing or encouraging a Receiving Party in this Action to
26 disobey a lawful directive from another court.

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
2 IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party’s confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party’s
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-
13 Party that some or all of the information requested is subject to a confidentiality
14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and

17 (3) a reasonably specific description of the information requested;
18 and make the information requested available for inspection by the Non-Party, if
19 requested.

20 (c) If the Non-Party fails to seek a protective order from this court within
21 14 days of receiving the notice and accompanying information, the Receiving Party
22 may produce the Non-Party’s confidential information responsive to the discovery
23 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
24 produce any information in its possession or control that is subject to the
25 confidentiality agreement with the Non-Party before a determination by the court.
26 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
27 of seeking protection in this court of its Protected Material.
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1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
5 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
6 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
7 persons to whom unauthorized disclosures were made of all the terms of this Order,
8 and (d) request such person or persons to execute the “Acknowledgment and
9 Agreement to Be Bound” that is attached hereto as Exhibit A.

10 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 When a Producing Party gives notice to Receiving Parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection,
14 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
15 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
16 may be established in an e-discovery order that provides for production without prior
17 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
18 parties reach an agreement on the effect of disclosure of a communication or
19 information covered by the attorney-client privilege or work product protection, the
20 parties may incorporate their agreement in the stipulated protective order submitted to
21 the court.

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
24 person to seek its modification by the Court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this
26 Protective Order no Party waives any right it otherwise would have to object to
27 disclosing or producing any information or item on any ground not addressed in this
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1 Stipulated Protective Order. Similarly, no Party waives any right to object on any
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
5 only be filed under seal pursuant to a court order authorizing the sealing of the
6 specific Protected Material at issue. If a Party's request to file Protected Material
7 under seal is denied by the court, then the Receiving Party may file the information in
8 the public record unless otherwise instructed by the court.

9 12.4 Pursuant to Federal Rule of Evidence 502(d) the production of a
10 privileged or work-product-protected document, whether inadvertent or otherwise, is
11 not a waiver of privilege or protection from discovery in this case or in any other
12 federal or state proceeding. Said protection exists with respect to such document or
13 other documents or communications, written or oral, including, without limitation,
14 other communications referred to in the documents produced. Nothing contained
15 herein is intended to or shall serve to limit a party's right to conduct a review of
16 documents for relevance, responsiveness and/or segregation of privileged and/or
17 protected information before production. Furthermore, a party's production shall not
18 be deemed a waiver of any party's right to object for any reason to the admission of
19 any document or thing into evidence, nor shall the production be deemed an admission
20 of its admissibility or relevance. Nothing in this Paragraph shall prejudice the right of
21 any party to seek discovery or communications, documents and things as to which a
22 claim of attorney-client privilege or attorney work-product has been made.

23 12.5 Any Party receiving Confidential Material shall not under any
24 circumstances sell, offer for sale, advertise, or publicize Confidential Material or any
25 information contained therein.

26 13. FINAL DISPOSITION

1 After the final disposition of this Action, as defined in paragraph 4, within 30
2 days of a written request by the Designating Party, each Receiving Party must return
3 all Protected Material to the Producing Party or destroy such material. As used in this
4 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
5 summaries, and any other format reproducing or capturing any of the Protected
6 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
7 must submit a written certification to the Producing Party (and, if not the same person
8 or entity, to the Designating Party) by the 30 day deadline that (1) identifies (by
9 category, where appropriate) all the Protected Material that was returned or destroyed
10 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
11 compilations, summaries or any other format reproducing or capturing any of the
12 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
13 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
14 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
15 attorney work product, and consultant and expert work product, even if such materials
16 contain Protected Material. Any such archival copies that contain or constitute
17 Protected Material remain subject to this Protective Order as set forth in Section 4
18 (DURATION).

19 Any violation of this Order may be punished by any and all appropriate
20 measures including, without limitation, contempt proceedings and/or monetary
21 sanctions.

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23 **IT IS SO ORDERED.**

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25 DATED: January 16, 2018.

_____ /s/ Steve Kim

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27 United States District Magistrate Judge
Steve Kim

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____[print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order
that was issued by the United States District Court for the Central District of
California on _____ [date] in the case of *Steven Brand v. Nissan North
America, Inc.*, Case No. 2:16-CV-07378-VAP-SK. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment
in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint
_____[print or type full name] of
_____[print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

1 Signature: _____

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