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12
13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 BOND MANUFACTURING CO., INC., a
California corporation,
16
17 Plaintiff,
18 v.
19 ASHLEY FURNITURE INDUSTRIES, INC., a
Wisconsin corporation.
20 Defendant.
21

CASE NO.: **2:17-cv-01522-JCM-CWH**
**STIPULATED [PROPOSED]
CONFIDENTIALITY AND
PROTECTIVE ORDER**

22
23 Disclosure and discovery activity in this action are likely to involve production of
24 confidential, proprietary, or private information for which special protection from public
25 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
26 Accordingly, Plaintiff BOND MANUFACTURING CO., INC., a California corporation
27 (“Plaintiff”) and Defendant ASHLEY FURNITURE INDUSTRIES, INC., a Wisconsin
28 corporation (“Defendant”) by and through their respective counsel of record, hereby stipulate to

1 and petition the court to enter the following Stipulated Protective Order. The parties
2 acknowledge that this Order does not confer blanket protections on all disclosures or responses
3 to discovery and that the protection it affords from public disclosure and use extends only to the
4 limited information or items that are entitled to confidential treatment under the applicable legal
5 principles. The parties further acknowledge, as set forth in Section 9 below, that this Stipulated
6 Protective Order does not entitle them to file confidential information under seal; Local Rule
7 10-5 sets forth the procedures that must be followed when a party seeks permission from the
8 court to file material under seal.

9 **DEFINITIONS**

10 1. The term “Confidential Information” shall mean and include information
11 contained or disclosed in any materials, including documents, portions of documents, answers
12 to interrogatories, responses to requests for admissions, trial testimony, deposition testimony,
13 and transcripts of trial testimony and depositions, including data, summaries, and compilations
14 derived therefrom, copies, abstracts, and any other format reproducing or capturing such
15 information, as well as information disclosed orally in connection with settlement or other
16 communications between the parties that qualify for protection under Federal Rule of Civil
17 Procedure 26(c). Pursuant to provisions below, Confidential Information may be designated as
18 either “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES ONLY.”

19 2. The term “Designating Party” shall mean a Party or Non-Party that designates
20 information or items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

22 3. The terms “Disclosure” or “Discovery Material” shall mean all items or
23 information, regardless of the medium or manner in which it is generated, stored, or maintained
24 (including, among other things, testimony, transcripts, and tangible things), that are produced or
25 generated in disclosures or responses to discovery in this matter.

26 4. The term “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall
27 mean extremely sensitive “Confidential Information,” the disclosure of which to another Party
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1 or Non-Party would create a substantial risk of serious harm that could not be avoided by less
2 restrictive means, and subject to Paragraph 14(b) below.

3 5. The term “Non-Party” shall mean any natural person, partnership, corporation,
4 association, or other legal entity not named as a Party to this action.

5 6. The term “Party” shall mean any party to this action, including all of its
6 officers, directors, employees, consultants, retained experts, and counsel of record (and their
7 support staffs).

8 7. The term “Producing Party” shall mean a Party or Non-Party that produces
9 Disclosure or Discovery Material in this action.

10 8. The term “Protected Material” shall mean any Disclosure or Discovery
11 Material that is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY.

13 9. The term “Receiving Party” shall mean a Party that receives Disclosure or
14 Discovery Material from a Producing Party.

15 10. The term “documents” shall include, but shall not be limited to: documents;
16 correspondence; emails; memoranda; electronically stored information; source code; bulletins;
17 blueprints; specifications; customer lists or other material that identify customers or potential
18 customers; price lists or schedules or other matter identifying pricing; minutes; telegrams;
19 letters; statements; cancelled checks; contracts; invoices; drafts; books of account; worksheets;
20 notes of conversations; desk diaries; appointment books; expense accounts; recordings;
21 photographs; motion pictures; compilations from which information can be obtained and translated
22 into reasonably usable form through detection devices; sketches; drawings; notes (including
23 laboratory notebooks and records); reports; instructions; disclosures; other writings; and models
24 and prototypes and other physical objects.

25 11. The term “attorneys” shall mean outside counsel retained or employed by the
26 Parties, paralegals, secretaries, and other support staff of those attorneys, and litigation support
27 vendors utilized by said law firms (only so long as said vendors agree to be bound by the terms
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1 of this Protective Order by having an appropriate representative of the vendor execute a copy of
2 the form attached hereto as Exhibit A on behalf of the vendor).

3 12. The term “independent expert” shall mean a person with specialized knowledge or
4 experience in a matter pertinent to the case who has been retained by a Party’s attorneys to serve as
5 an expert witness or as a litigation consultant in this case, and who is not a current employee of a
6 Party or of a competitor of a Party and who, at the time of retention, is not anticipated to become an
7 employee of, or a non-litigation consultant of a party or competitor of a Party.

8 13. The term “non-independent expert” shall mean a person with specialized
9 knowledge or experience in a matter pertinent to the case who has been retained by a party’s
10 attorneys to serve as an expert witness or as a litigation consultant in this case, and who does not
11 meet the definition of an independent expert as set forth in paragraph 12.

12 **GENERAL RULES**

13 14. Each Party to this litigation that produces or discloses any materials, answers to
14 interrogatories, responses to requests for admission, trial testimony, deposition testimony, and
15 transcripts of trial testimony and depositions, or other materials and/or information that the
16 Producing Party believes should be subject to this Order may designate the same as
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES 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 attorneys, the unrestricted disclosure of such material could be potentially prejudicial to the
21 business or operations of such Party. Other than as provided for herein, a Party may designate
22 material as “CONFIDENTIAL” by designating it as such prior to producing it to opposing counsel.

23 b. Designation as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
24 ONLY”: Any Party may designate information as “HIGHLY CONFIDENTIAL – ATTORNEYS’
25 EYES ONLY” only if, in the good faith belief of such party and its attorneys, the material
26 constitutes proprietary or other confidential customer lists, pricing information, financial
27 information, bidding information, business plans, marketing plans, sales forecasts, information
28 protected by a right of privacy, or trade secrets. Other than as provided for herein, a Party may

1 designate material as “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” by designating
2 it as such prior to producing it to opposing counsel.

3 15. In the event the Producing Party elects to initially produce or disclose materials
4 for inspection by a Receiving Party (as opposed to the physical production of such materials), no
5 marking need be made by the Producing Party in advance of the initial inspection. For purposes
6 of the initial inspection, all materials produced shall be considered as “HIGHLY CONFIDENTIAL
7 – ATTORNEYS’ EYES ONLY,” and shall be treated as such pursuant to the terms of this Order.
8 Thereafter, upon selection of specified materials for copying by or other physical production to
9 the Receiving Party, the Producing Party shall, within a reasonable time prior to producing those
10 materials to the Receiving Party, mark the copies of those materials that contain Confidential
11 Information with the appropriate confidentiality marking. Materials may also be produced in
12 the first instance with confidentiality markings.

13 16. For documents (apart from transcripts of depositions or other pretrial or trial
14 proceedings), the Producing Party shall affix the appropriate confidentiality legend to each page
15 that contains Confidential Information.

16 17. For Disclosures other than documents, and for any other tangible items, the
17 Producing Party shall affix, in a prominent place on the exterior of the container or containers in
18 which the material or item is stored, the appropriate confidentiality legend. In the event a
19 Receiving Party generates any “hard copy” transcription or printout from any designated non-
20 paper media (including, but not limited to, documents produced in native electronic format),
21 such Receiving Party must stamp each page with the appropriate confidentiality legend, and the
22 hard copy, transcription, or printout shall be treated as it is designated.

23 18. For materials disclosed orally in the context of settlement or other
24 communications between the parties, it shall be sufficient for the Producing Party to identify the
25 information as Confidential Information pursuant to the terms of this Order during the course of
26 the oral communication or promptly thereafter, provided that, written confirmation of the
27 particular designation is made by the Producing Party promptly following the oral
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1 communication, and the restrictions that inhere in the particular designation identified shall
2 apply.

3 19. Whenever a deposition taken on behalf of any Party involves a disclosure of
4 Confidential Information of any Party:

5 a. said deposition or portions thereof shall be designated as containing
6 Confidential Information subject to the provisions of this Order; such designation shall be made
7 on the record whenever possible, but a Party may designate portions of depositions as
8 containing Confidential Information after transcription of the proceedings; if a Party reserves
9 the right on the record, that Party shall have until fourteen (14) calendar days after receipt of the
10 deposition transcript to inform the other Party or Parties to the action of the portions of the
11 transcript designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
12 EYES ONLY”;

13 b. the Producing Party shall have the right to exclude from attendance at
14 said deposition, during such time as the Confidential Information is to be disclosed, any person
15 other than the deponent, attorneys (including their staff and associates), the court reporter, and the
16 person(s) agreed upon pursuant to paragraphs 20-23 below; and

17 c. the originals of said deposition transcripts and all copies thereof
18 shall bear the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
19 EYES ONLY,” as appropriate, and shall be separately bound according to the portions of the
20 transcript bearing each such designation, and should the original or any copy thereof ultimately
21 be presented to the Court for filing, the filing party shall attempt to file same under seal,
22 identified as being subject to this Order, and protected from being opened except by order of this
23 Court.

24 20. All Protected Material shall not be disclosed by the Receiving Party to anyone
25 other than those persons designated herein as appropriate to the particular designation, and shall
26 be handled in the manner set forth below.

1 21. Upon receipt of material or records designated “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY”, and except as otherwise compelled by law, the Receiving Party
3 may only disclose the material or records to the following:

4 a. The Court (under seal prior to time of trial);

5 b. The outside attorneys of record for the Parties, their respective associates,
6 partners, clerks, paralegals, legal assistants, secretaries, and other support staff who are actively
7 engaged in assisting such attorneys in the prosecution or defense of this action;

8 d. Independent experts retained or consulted by any Party or its counsel as
9 required to assist in the conduct of this action, provided that, prior to disclosure, any such expert
10 is provided with a copy of this Protective Order and acknowledges in writing that he or she
11 agrees to be bound by these terms by executing an acknowledgment in the form attached hereto
12 as Exhibit “A”;

13 e. Deponents but (1) only to the extent necessary to assist in the conduct or
14 preparation of this litigation; and (2) only after the Deponent has certified in writing (by
15 executing an acknowledgment in the form attached hereto as Exhibit “A”) that he or she has
16 read this Protective Order and agrees to be bound by its terms and conditions or has been
17 personally served with the Protective Order on the record of his or her Deposition in the
18 presence of counsel for all parties who have appeared in the action;

19 f. Clerical or ministerial service providers, including outside copying
20 services and court reporters, retained by a Party’s counsel to assist such counsel in connection
21 with this action;

22 g. Individuals who either are designated in the document or material itself
23 as an author or recipient thereof, or are otherwise shown to have authored or received the
24 designated document or material, provided that the disclosure to such individuals shall be
25 limited to the specific Confidential Material originally disclosed to such individuals in the
26 particular document. Such individuals shall not retain any Confidential Material;

27 h. Jury consultants and mock jurors (subject to execution of the form
28 attached hereto as Exhibit “A”); and

1 i. Litigation support vendors (subject to execution of the form attached
2 hereto as Exhibit “A”).

3 22. Except as otherwise provided herein, material designated “CONFIDENTIAL” shall
4 be viewed only by the Parties and their employees, by attorneys of the Receiving Party, by
5 independent experts or non-independent experts retained by the Receiving Party, by the Court
6 and its personnel, by mediators and their staffs, by court reporters, videographers and their staffs,
7 and by the additional individuals listed below and the stenographic and clerical employees
8 associated with such individuals, provided each such additional individual has read this Order
9 in advance of disclosure and has agreed in writing to be bound by its terms by executing a copy
10 of the form attached hereto as Exhibit A:

11 a. Deponents but only to the extent necessary to assist in the conduct or
12 preparation of this litigation;

13 b. Executives of a Party who are required to participate in policy decisions
14 with reference to this action;

15 c. In-house counsel (including legal staff) of a Party who are required to
16 participate in policy decisions with reference to this action;

17 d. Technical personnel of the parties with whom attorneys for the Parties
18 find it necessary to consult, in the discretion of such attorneys, in preparation for trial of this
19 action.

20 e. Jury consultants, mock jurors, focus group members, or research group
21 participants selected by jury consultants, by jury consultants or by trial counsel in preparation
22 for trial;

23 f. Independent litigation support vendors, including legal interpreters,
24 document reproduction services, computer imaging services and demonstrative exhibit services;

25 g. Individuals who either are designated in the document or material itself
26 as an author or recipient thereof, or are otherwise shown to have authored or received the
27 designated document or material, provided that the disclosure to such individuals shall be
28 limited to the specific Protected Material originally disclosed to such individuals in the

1 particular document. Such individuals shall not retain any Protected Material without the
2 consent of the Producing Party.

3 23. With respect to Protected Material, any person indicated on the face of the
4 document to be its originator, author, or a recipient of a copy thereof, may be shown the same.

5 24. All Protected Material and any and all reproductions thereof, shall be retained in
6 the custody of the attorneys for the Receiving Party, except that experts authorized to view such
7 information under the terms of this Order may retain custody of copies such as are necessary for
8 their participation in this litigation.

9 25. Before any Protected Material or any pleadings reflecting Confidential
10 Information are filed with the Court, for any purpose, the Party seeking to file such materials
11 shall seek permission of the Court to file said materials under seal, unless the Designating Party
12 so waives the confidentiality designation. Any request to file such material under seal must
13 comply with Local Rule 10-5. Confidential Information may only be filed under seal pursuant
14 to a court order authorizing the sealing of the specific Confidential Information at issue.

15 26. At any stage of these proceedings, any Party may object to a designation of
16 materials or information as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-
17 ATTORNEYS’ EYES ONLY.” The Party objecting to the confidentiality designation shall
18 notify, in writing, attorneys for the Producing Party of the objected-to materials and state the
19 grounds for the objection. If the dispute is not resolved consensually between the Parties within
20 seven (7) calendar days of receipt of such a notice of objections, the objecting Party may move
21 the Court for a ruling on the objection. The materials at issue shall be treated as Confidential
22 Information, as designated by the Designating Party, until the Court has ruled on the objection or
23 the matter has been otherwise resolved.

24 27. All Confidential Information shall be held in confidence by those inspecting or
25 receiving it, and shall be used only for purposes of this action. The attorneys for each Party, and
26 each person receiving Confidential Information, shall take reasonable precautions to prevent the
27 unauthorized or inadvertent disclosure of such information. If Confidential Information is
28 disclosed to any person other than a person authorized by this Order, the Party responsible for the

1 unauthorized disclosure must immediately bring all pertinent facts relating to the unauthorized
2 disclosure to the attention of the other Parties and, without prejudice to any rights and remedies
3 of the other parties, make every effort to prevent further disclosure by the Party and by the
4 person(s) receiving the unauthorized disclosure.

5 28. If a Party, through inadvertence, produces any Confidential Information without
6 labeling or marking or otherwise designating it as such in accordance with this Order, the
7 Producing Party may give written notice to the Receiving Party that the document or thing
8 produced is deemed Confidential Information, and that the document or thing produced should be
9 treated as such in accordance with that designation under this Order. The Receiving Party must
10 treat the materials as confidential once the Producing Party so notifies the Receiving Party. The
11 Producing Party must promptly provide the Receiving Party with replacement materials that bear
12 the appropriate confidentiality markings, and the Receiving Party shall, in return, provide prompt
13 confirmation of the destruction of the replaced materials. If the Receiving Party has disclosed the
14 materials before receiving the designation, the Receiving Party must notify the Producing Party in
15 writing of each such disclosure to the extent reasonably possible and reasonably cooperate with
16 the Producing Party in attempting to retrieve them and halt their further dissemination.

17 29. Nothing herein shall prejudice the right of any Party to object to the production of
18 any Discovery Material on the grounds that the material is protected as privileged or as work
19 product.

20 30. Nothing in this Order shall bar the attorneys 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 shall not
23 be disclosed in violation of this Order.

24 31. This Order shall 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 shall not be used by any Party
27 as a basis for discovery that is otherwise not proper under the Federal Rules of Civil Procedure.
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1 32. Nothing herein shall be construed to prevent disclosure of Confidential
2 Information if such disclosure is required by subpoena, court order or any other legal obligation.
3 Should a Party be required by law, including 37 CFR 1.56, or by order of the Court to disclose
4 Confidential Information, notice should be provided to the Producing Party prior to any such
5 disclosure. The Producing Party shall have seven (7) calendar days from the date of the notice
6 to object to any disclosure of the Confidential Information. If the Producing Party makes a
7 timely objection, the Receiving Party shall not produce the Confidential Information absent a
8 court order. However, the burden shall be on the objecting Producing Party to seek protection
9 relating to the commanded disclosure in a timely manner. If the Producing Party fails to take
10 such action, it shall be deemed to have waived its objection to the commanded disclosure.

11 33. The restrictions and obligations herein do not apply to nor prevent a Party from
12 offering into evidence and referring to any documents or information at trial that may have been
13 designated as Confidential Information.

14 34. Within thirty (30) calendar days of final termination of this action, including any
15 and all appeals, attorneys for the Receiving Party shall either return the Protected Material to
16 the Producing Party, including any copies, excerpts, and summaries thereof, or shall destroy
17 same at the option of the Receiving Party, and shall purge all such material from all machine-
18 readable media on which it resides. Notwithstanding the foregoing, attorneys for each party
19 may retain all pleadings, briefs, memoranda, motions, and other documents filed with the Court
20 that refer to or incorporate information designated as “CONFIDENTIAL” and “HIGHLY
21 CONFIDENTIAL- ATTORNEYS’ EYES ONLY,” and will continue to be bound by this Order
22 with respect to all such retained material. Further, attorney work product materials that contain
23 Confidential Information need not be destroyed, but, if they are not destroyed, the person in
24 possession of the attorney work product will continue to be bound by this Order with respect to
25 all such retained Confidential Information. The provisions of this Stipulated Protective Order
26 shall survive the termination of this action, unless otherwise agreed by the Parties or ordered by
27 the Court. The Court retains jurisdiction even after termination of this action to enforce this
28 Order and to make such deletions from or amendments, modifications, and additions to the

1 Order as the Court may deem appropriate. The Parties hereto reserve all rights to apply to the
2 Court at any time, before or after termination of this action, for an order modifying this Order
3 seeking further protection against disclosure or use of claimed confidential information.

4 35. Regardless of designation, the restrictions and obligations set forth herein shall
5 not apply to any information that:

- 6 a. the Parties agree should not be designated Confidential Information;
- 7 b. the Parties agree, or the Court rules, is already public knowledge;
- 8 c. the Parties agree, or the Court rules, has become public knowledge other
9 than as a result of disclosure by the Receiving Party, its employees, or its agents in violation of
10 this Order; or
- 11 d. has come or shall come into the Receiving Party's legitimate knowledge
12 independently of and/or prior to the production by the Producing Party as demonstrated by pre-
13 production documentation.

14 36. The restrictions and obligations herein shall not be deemed to prohibit discussions of
15 any Confidential Information with anyone if that person already has or obtains legitimate
16 possession thereof.

17 37. If material is produced in discovery that is subject to a claim of privilege or of
18 protection as trial preparation or work product material ("privilege"), the Party making the
19 claim may notify any Receiving Party of the claim for privilege and the basis for it. In
20 accordance with Federal Rule of Evidence 502(d)-(e), such a production or disclosure does not
21 operate as a waiver of any privilege associated with any such production or disclosure. After
22 being notified by a Party claiming privilege that material produced by that Party is subject to a
23 claim of privilege, a Receiving Party (a) must promptly return or destroy the specified material
24 and any copies it has, (b) must not sequester, use, or disclose the material until the claim is
25 resolved, and (c) must take reasonable steps to retrieve the material if the Party disclosed it
26 before being notified. These obligations include a restriction against presenting the material to
27 the Court for a determination of the claim. The Party making the claim must serve a privilege
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1 log that complies with Federal Rule of Civil Procedure 26(b)(5) within fourteen (14) calendar
2 days of notifying any Receiving Party of the claim. The party making the claim must also
3 preserve the material until the claim is resolved. The matter shall be resolved on the basis of
4 the information set forth in the privilege log and in accordance with the standards, laws, and
5 rules pertaining to the privilege(s) claimed. This paragraph 37 expressly incorporates the
6 protections of Federal Rule of Evidence 502(d)-(e). Specifically, pursuant to Federal Rule of
7 Evidence 502(d), the inadvertent production of privileged or work product protected
8 electronically stored information is not a waiver of any applicable privilege or protection in the
9 pending case or in any other federal or state proceeding.

10 38. The terms of this Order are applicable to information produced by a Non-Party
11 in response to a subpoena in this action and designated as “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under this Order. Such information
13 produced by Non-Parties in connection with this litigation is protected by the remedies and
14 relief provided by this Order. Nothing in these provisions should be construed as prohibiting a
15 Non-Party from seeking additional protections. Additionally, any Party may designate
16 Confidential Information produced by a Non-Party as “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, subject to the limitations set forth herein.

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

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

DATED this 9th day of May, 2018.
McDONALD CARANO LLP

DATED this 9th day of May, 2018.
WEIDE & MILLER, LTD.

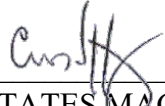
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Attorneys for Defendant Ashley Furniture Industries, Inc.

Attorneys for Plaintiff Bond Manufacturing Co., Inc.

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE
DATED: May 17, 2018