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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAMON BYRD, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

EQUINOX HOLDINGS, INC.,

Defendant.

CASE NO. 2:14-cv-08226 -MWF-JC

DISCOVERY MATTER

PROTECTIVE ORDER

Complaint Filed: October 23, 2014

1 1. A. PURPOSES AND LIMITATIONS

2 As the parties have represented that discovery in this action is likely to
3 involve production of confidential, proprietary, or private information for which
4 special protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted, this Court enters the following
6 Protective Order. This Order does not confer blanket protections on all disclosures
7 or responses to discovery. The protection it affords from public disclosure and use
8 extends only to the limited information or items that are entitled to confidential
9 treatment under the applicable legal principles. Further, as set forth in Section 12.3,
10 below, this Protective Order does not entitle the parties to file confidential
11 information under seal. Rather, when the parties seek permission from the court to
12 file material under seal, the parties must comply with Civil Local Rule 79-5 and
13 with any pertinent orders of the assigned District Judge and Magistrate Judge,
14 including any procedures adopted under the Pilot Project for the Electronic
15 Submission and Filing of Under Seal Documents.

16 B. GOOD CAUSE STATEMENT

17 In light of the nature of the claims and allegations in this case and the parties'
18 representations that discovery in this case will involve the production of
19 confidential records, and in order to expedite the flow of information, to facilitate
20 the prompt resolution of disputes over confidentiality of discovery materials, to
21 adequately protect information the parties are entitled to keep confidential, to
22 ensure that the parties are permitted reasonable necessary uses of such material in
23 connection with this action, to address their handling of such material at the end of
24 the litigation, and to serve the ends of justice, a protective order for such
25 information is justified in this matter. The parties shall not designate any
26 information/documents as confidential without a good faith belief that such
27 information/documents have been maintained in a confidential, non-public manner,
28

1 and that there is good cause or a compelling reason why it should not be part of the
2 public record of this case.

3 2. DEFINITIONS

4 2.1 Action: The instant action: *Damon Byrd v. Equinox Holdings, Inc.*,
5 Case No. 2:14-cv-08226 MWF-JC.

6 2.2 Challenging Party: a Party or Non-Party that challenges the
7 designation of information or items under this Order.

8 2.3 “CONFIDENTIAL” Information or Items: information (regardless
9 of how it is generated, stored or maintained) or tangible things that qualify for
10 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
11 the Good Cause Statement.

12 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
13 their support staff).

14 2.5 Designating Party: a Party or Non-Party that designates information
15 or items that it produces in disclosures or in responses to discovery as
16 “CONFIDENTIAL.”

17 2.6 Disclosure or Discovery Material: all items or information,
18 regardless of the medium or manner in which it is generated, stored, or maintained
19 (including, among other things, testimony, transcripts, and tangible things), that are
20 produced or generated in disclosures or responses to discovery in this matter.

21 2.7 Expert: a person with specialized knowledge or experience in a
22 matter pertinent to the litigation who has been retained by a Party or its counsel to
23 serve as an expert witness or as a consultant in this Action.

24 2.8 House Counsel: attorneys who are employees of a party to this
25 Action. House Counsel does not include Outside Counsel of Record or any other
26 outside counsel.

27 2.9 Non-Party: any natural person, partnership, corporation, association,
28 or other legal entity not named as a Party to this action.

1 2.10 Outside Counsel of Record: attorneys who are not employees of a
2 party to this Action but are retained to represent or advise a party to this Action and
3 have appeared in this Action on behalf of that party or are affiliated with a law firm
4 which has appeared on behalf of that party, and includes support staff.

5 2.11 Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staffs).

8 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
9 Discovery Material in this Action.

10 2.13 Professional Vendors: persons or entities that provide litigation
11 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
13 and their employees and subcontractors.

14 2.14 Protected Material: any Disclosure or Discovery Material that is
15 designated as “CONFIDENTIAL.”

16 2.15 Receiving Party: a Party that receives Disclosure or Discovery
17 Material from a Producing Party.

18 3. SCOPE

19 The protections conferred by this Order cover not only Protected Material (as
20 defined above), but also (1) any information copied or extracted from Protected
21 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
22 and (3) any deposition testimony, conversations, or presentations by Parties or their
23 Counsel that might reveal Protected Material, other than during a court hearing or at
24 trial. Any use of Protected Material during a court hearing or at trial shall be
25 governed by the orders of the presiding judge. This Order does not govern the use
26 of Protected Material during a court hearing or at trial.

1 4. DURATION

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

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for
12 Protection. Each Party or Non-Party that designates information or items for
13 protection under this Order must take care to limit any such designation to specific
14 material that qualifies under the appropriate standards. The Designating Party must
15 designate for protection only those parts of material, documents, items, or oral or
16 written communications that qualify so that other portions of the material,
17 documents, items, or communications for which protection is not warranted are not
18 swept unjustifiably within the ambit of this Order.

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

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in
28 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise

1 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
2 under this Order must be clearly so designated before the material is disclosed or
3 produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic
6 documents, but excluding transcripts of depositions), that the Producing Party affix
7 at a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL
8 legend”), to each page that contains protected material. If only a portion or portions
9 of the material on a page qualifies for protection, the Producing Party also must
10 clearly identify the protected portion(s) (e.g., by making appropriate markings in
11 the margins).

12 A Party or Non-Party that makes original documents available for inspection
13 need not designate them for protection until after the inspecting Party has indicated
14 which documents it would like copied and produced. During the inspection and
15 before the designation, all of the material made available for inspection shall be
16 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
17 documents it wants copied and produced, the Producing Party must determine
18 which documents, or portions thereof, qualify for protection under this Order. Then,
19 before producing the specified documents, the Producing Party must affix the
20 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
21 portion or portions of the material on a page qualifies for protection, the Producing
22 Party also must clearly identify the protected portion(s) (e.g., by making
23 appropriate markings in the margins).

24 (b) for testimony given in depositions that the Designating Party
25 identifies on the record, before the close of the deposition as protected testimony.

26 (c) for information produced in some form other than documentary
27 and for any other tangible items, that the Producing Party affix in a prominent place
28 on the exterior of the container or containers in which the information is stored the

1 legend “CONFIDENTIAL.” If only a portion or portions of the information
2 warrants protection, the Producing Party, to the extent practicable, shall identify the
3 protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the Designating Party’s right to secure protection under this Order for such
7 material. Upon timely correction of a designation, the Receiving Party must make
8 reasonable efforts to assure that the material is treated in accordance with the
9 provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time that is consistent with the Court’s
13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Rule 37-1 et seq.

16 6.3 The burden of persuasion in any such challenge proceeding shall be
17 on the Designating Party. Frivolous challenges, and those made for an improper
18 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
19 parties) may expose the Challenging Party to sanctions. Unless the Designating
20 Party has waived or withdrawn the confidentiality designation, all parties shall
21 continue to afford the material in question the level of protection to which it is
22 entitled under the Producing Party’s designation until the Court rules on the
23 challenge.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that
26 is disclosed or produced by another Party or by a Non-Party in connection with this
27 Action only for prosecuting, defending, or attempting to settle this Action. Such
28 Protected Material may be disclosed only to the categories of persons and under the

1 conditions described in this Order. When the Action has been terminated, a
2 Receiving Party must comply with the provisions of Section 13 below.

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

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated
9 “CONFIDENTIAL” only to:

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

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

16 (c) Experts (as defined in this Order) of the Receiving Party to
17 whom disclosure is reasonably necessary for this Action and who have signed the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff;

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

25 (g) the author or recipient of a document containing the information
26 or a custodian or other person who otherwise possessed or knew the information;

27 (h) during their depositions, witnesses, and attorneys for witnesses,
28 in the Action to whom disclosure is reasonably necessary provided: (1) the

1 deposing party requests that the witness sign the “Acknowledgment and Agreement
2 to Be Bound” form attached as Exhibit A hereto; and (2) they will not be permitted
3 to keep any confidential information unless they sign the “Acknowledgment and
4 Agreement to Be Bound” attached as Exhibit A, unless otherwise agreed by the
5 Designating Party or ordered by the court. Pages of transcribed deposition
6 testimony or exhibits to depositions that reveal Protected Material may be
7 separately bound by the court reporter and may not be disclosed to anyone except
8 as permitted under this Protective Order; and

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

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
13 IN OTHER LITIGATION

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

17 (a) promptly notify in writing the Designating Party. Such
18 notification shall include a copy of the subpoena or court order unless prohibited by
19 law;

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

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

26 If the Designating Party timely seeks a protective order, the Party served with
27 the subpoena or court order shall not produce any information designated in this
28 action as “CONFIDENTIAL” before a determination by the court from which the

1 subpoena or order issued, unless the Party has obtained the Designating Party's
2 permission, or unless otherwise required by the law or court order. The Designating
3 Party shall bear the burden and expense of seeking protection in that court of its
4 confidential material and nothing in these provisions should be construed as
5 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
6 directive from another court.

7 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
8 PRODUCED IN THIS LITIGATION

9 (a) The terms of this Order are applicable to information produced
10 by a Non-Party in this Action and designated as "CONFIDENTIAL." Such
11 information produced by Non-Parties in connection with this litigation is protected
12 by the remedies and relief provided by this Order. Nothing in these provisions
13 should be construed as prohibiting a Non-Party from seeking additional protections.

14 (b) In the event that a Party is required, by a valid discovery
15 request, to produce a Non-Party's confidential information in its possession, and the
16 Party is subject to an agreement with the Non-Party not to produce the Non-Party's
17 confidential information, then the Party shall:

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

21 (2) promptly provide the Non-Party with a copy of the
22 Protective Order in this Action, the relevant discovery request(s), and a reasonably
23 specific description of the information requested; and

24 (3) make the information requested available for inspection
25 by the Non-Party, if requested.

26 (c) If a Non-Party represented by counsel fails to commence the
27 process called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving
28 the notice and accompanying information or fails contemporaneously to notify the

1 Receiving Party that it has done so, the Receiving Party may produce the Non-
2 Party's confidential information responsive to the discovery request. If an
3 unrepresented Non-Party fails to seek a protective order from this court within 14
4 days of receiving the notice and accompanying information, the Receiving Party
5 may produce the Non-Party's confidential information responsive to the discovery
6 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
7 not produce any information in its possession or control that is subject to the
8 confidentiality agreement with the Non-Party before a determination by the court
9 unless otherwise required by the law or court order. Absent a court order to the
10 contrary, the Non-Party shall bear the burden and expense of seeking protection in
11 this court of its Protected Material.

12 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

13 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
14 Protected Material to any person or in any circumstance not authorized under this
15 Protective Order, the Receiving Party must immediately (a) notify in writing the
16 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
17 all unauthorized copies of the Protected Material, (c) inform the person or persons
18 to whom unauthorized disclosures were made of all the terms of this Order, and
19 (d) request such person or persons to execute the "Acknowledgment and Agreement
20 to Be Bound" that is attached hereto as Exhibit A.

21 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
22 PROTECTED MATERIAL

23 When a Producing Party gives notice to Receiving Parties that certain
24 inadvertently produced material is subject to a claim of privilege or other
25 protection, the obligations of the Receiving Parties are those set forth in Federal
26 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
27 whatever procedure may be established in an e-discovery order that provides for
28 production without prior privilege review. Pursuant to Federal Rule of Evidence

1 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
2 of a communication or information covered by the attorney-client privilege or work
3 product protection, the parties may incorporate their agreement into this Protective
4 Order.

5 12. MISCELLANEOUS

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of
7 any person to seek its modification by the Court in the future.

8 12.2 Right to Assert Other Objections. No Party waives any right it
9 otherwise would have to object to disclosing or producing any information or item
10 on any ground not addressed in this Protective Order. Similarly, no Party waives
11 any right to object on any ground to use in evidence of any of the material covered
12 by this Protective Order.

13 12.3 Filing Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
15 orders of the assigned District Judge and Magistrate Judge, including any
16 procedures adopted under the Pilot Project for the Electronic Submission and Filing
17 of Under Seal Documents. Protected Material may only be filed under seal pursuant
18 to a court order authorizing the sealing of the specific Protected Material at issue. If
19 a Party's request to file Protected Material under seal is denied by the court, then the
20 Receiving Party may file the information in the public record unless otherwise
21 instructed by the court.

22 13. FINAL DISPOSITION

23 After the final disposition of this Action, as defined in Section 4, within 60
24 days of a written request by the Designating Party, each Receiving Party must
25 return all Protected Material to the Producing Party or destroy such material. As
26 used in this subdivision, "all Protected Material" includes all copies, abstracts,
27 compilations, summaries, and any other format reproducing or capturing any of the
28 Protected Material. Whether the Protected Material is returned or destroyed, the

1 Receiving Party must submit a written certification to the Producing Party (and, if
2 not the same person or entity, to the Designating Party) by the 60 day deadline that
3 (1) identifies (by category, where appropriate) all the Protected Material that was
4 returned or destroyed and (2) affirms that the Receiving Party has not retained any
5 copies, abstracts, compilations, summaries or any other format reproducing or
6 capturing any of the Protected Material. Notwithstanding this provision, Counsel
7 are entitled to retain an archival copy of all pleadings, motion papers, trial,
8 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
9 and trial exhibits, expert reports, attorney work product, and consultant and expert
10 work product, even if such materials contain Protected Material. Any such archival
11 copies that contain or constitute Protected Material remain subject to this Protective
12 Order as set forth in Section 4.

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

16 **IT IS SO ORDERED.**

17
18
19 Dated: April 29, 2015

/s/

Honorable Jacqueline Chooljian
United States Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of

4 _____
5 [print or type full address], declare under penalty of perjury that I have read in its
6 entirety and understand the Protective Order that was issued by the United States
7 District Court for the Central District of California on _____ [date] in the
8 case of *Damon Byrd v. Equinox Holdings, Inc.*, Case No. 14-cv-08226 -MWF-JC. I
9 agree to comply with and to be bound by all the terms of this Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to sanctions
11 and punishment in the nature of contempt. I solemnly promise that I will not
12 disclose in any manner any information or item that is subject to this Protective
13 Order to any person or entity except in strict compliance with the provisions of this
14 Order. I further agree to submit to the jurisdiction of the United States District
15 Court for the Central District of California for the purpose of enforcing the terms of
16 this Protective Order, even if such enforcement proceedings occur after termination
17 of this action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____
25 [printed name]

26 Signature: _____
27 [signature]