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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

MARCUS GRAY, et al.,
Plaintiffs,
v.
KATY PERRY, et al.,
Defendants.

CASE NO. 2:15-cv-05642-CAS (JCx)
PROTECTIVE ORDER

1. A. PURPOSES AND LIMITATIONS

As the parties have represented that discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted, this Court enters the following Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. Further, as set forth in Section 12.3, below, this Protective Order does not entitle the parties to file confidential information under seal. Rather, when the parties seek permission from the court to

1 file material under seal, the parties must comply with Civil Local Rule 79-5 and
2 with any pertinent orders of the assigned District Judge and Magistrate Judge.

3 **B. GOOD CAUSE STATEMENT**

4 In light of the nature of the claims and allegations in this case and the parties'
5 representations that discovery in this case will involve the production of confidential
6 records, and in order to expedite the flow of information, to facilitate the prompt
7 resolution of disputes over confidentiality of discovery materials, to adequately
8 protect information the parties are entitled to keep confidential, to ensure that the
9 parties are permitted reasonable necessary uses of such material in connection with
10 this action, to address their handling of such material at the end of the litigation, and
11 to serve the ends of justice, a protective order for such information is justified in this
12 matter. The parties shall not designate any information/documents as confidential
13 without a good faith belief that such information/documents have been maintained
14 in a confidential, non-public manner, and that there is good cause or a compelling
15 reason why it should not be part of the public record of this case.

16 **2. DEFINITIONS**

17 2.1 **Action**: The instant action: *Marcus Gray, et al. v. Katy Perry, et al.*,
18 Case No. 2:15-cv-05642-CAS (JCx) (C.D. Cal.).

19 2.2 **Challenging Party**: a Party or Non-Party that challenges the
20 designation of information or items under this Order.

21 2.3 **“CONFIDENTIAL” Information or Items**: information (regardless of
22 how it is generated, stored or maintained) or tangible things that qualify for
23 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
24 the Good Cause Statement.

25 2.4 **“HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY”**
26 **Information or Items**: extremely sensitive “CONFIDENTIAL” Information or
27 Items, the disclosure of which to another Party or Non-Party would create a

1 substantial risk of serious harm that could not be avoided by less restrictive means.

2 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
3 their support staff).

4 2.6 Designating Party: a Party or Non-Party that designates information or
5 items that it produces in disclosures or in responses to discovery as
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
7 ONLY.”

8 2.7 Disclosure or Discovery Material: all items or information, regardless
9 of the medium or manner in which it is generated, stored, or maintained (including,
10 among other things, testimony, transcripts, and tangible things), that are produced or
11 generated in disclosures or responses to discovery in this matter.

12 2.8 Expert: a person with specialized knowledge or experience in a matter
13 pertinent to the litigation who has been retained by a Party or its counsel to serve as
14 an expert witness or as a consultant in this Action.

15 2.9 House Counsel: attorneys who are employees of a party to this Action.
16 House Counsel does not include Outside Counsel of Record or any other outside
17 counsel.

18 2.10 Non-Party: any natural person, partnership, corporation, association, or
19 other legal entity not named as a Party to this action.

20 2.11 Outside Counsel of Record: attorneys who are not employees of a
21 party to this Action but are retained to represent or advise a party to this Action and
22 have appeared in this Action on behalf of that party or are affiliated with a law firm
23 which has appeared on behalf of that party, and includes support staff.

24 2.12 Party: any party to this Action, including all of its officers, directors,
25 employees, consultants, retained experts, and Outside Counsel of Record (and their
26 support staffs).

27 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
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1 Discovery Material in this Action.

2 2.14 Professional Vendors: persons or entities that provide litigation
3 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
4 demonstrations, and organizing, storing, or retrieving data in any form or medium)
5 and their employees and subcontractors.

6 2.15 Protected Material: any Disclosure or Discovery Material that is
7 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL --
8 ATTORNEYS’ EYES ONLY.”

9 2.16 Receiving Party: a Party that receives Disclosure or Discovery
10 Material from a Producing Party.

11 3. SCOPE

12 The protections conferred by this Order cover not only Protected Material (as
13 defined above), but also (1) any information copied or extracted from Protected
14 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
15 and (3) any deposition testimony, conversations, or presentations by Parties or their
16 Counsel that might reveal Protected Material, other than during a court hearing or at
17 trial.

18 Any use of Protected Material during a court hearing or at trial shall be
19 governed by the orders of the presiding judge. This Order does not govern the use
20 of Protected Material during a court hearing or at trial.

21 4. DURATION

22 Even after final disposition of this litigation, the confidentiality obligations
23 imposed by this Order shall remain in effect until a Designating Party agrees
24 otherwise in writing or a court order otherwise directs. Final disposition shall be
25 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
26 or without prejudice; and (2) final judgment herein after the completion and
27 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,

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1 including the time limits for filing any motions or applications for extension of time
2 pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

5 Each Party or Non-Party that designates information or items for protection under
6 this Order must take care to limit any such designation to specific material that
7 qualifies under the appropriate standards. The Designating Party must designate for
8 protection only those parts of material, documents, items, or oral or written
9 communications that qualify so that other portions of the material, documents,
10 items, or communications for which protection is not warranted are not swept
11 unjustifiably within the ambit of this Order.

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

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

20 5.2 Manner and Timing of Designations. Except as otherwise provided in
21 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
22 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
23 under this Order must be clearly so designated before the material is disclosed or
24 produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic
27 documents, but excluding transcripts of depositions), that the Producing Party affix

1 at a minimum, the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL --
2 ATTORNEYS’ EYES ONLY” to each page that contains protected material. If
3 only a portion or portions of the material on a page qualifies for protection, the
4 Producing Party also must clearly identify the protected portion(s) (e.g., by making
5 appropriate markings in the margins).

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

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

21 (c) for information produced in some form other than documentary and
22 for any other tangible items, that the Producing Party affix in a prominent place on
23 the exterior of the container or containers in which the information is stored the
24 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’
25 EYES ONLY.” If only a portion or portions of the information warrants protection,
26 the Producing Party, to the extent practicable, shall identify the protected portion(s).

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, any
6 information or item designated “CONFIDENTIAL” may be disclosed only to:

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

10 (b) for corporate Parties, the officers, directors, and employees (including
11 House Counsel) of the Receiving Party to whom disclosure is reasonably necessary
12 for this Action, and for individual Parties, the individual Party, as well as his or her
13 employees and personal managers to whom disclosure is reasonably necessary for
14 this Action;

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

18 (d) the court and its personnel;

19 (e) private court reporters and their staff to whom disclosure is reasonably
20 necessary for this Action and who have signed the “Acknowledgment and
21 Agreement to Be Bound” (Exhibit A);

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

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

27 (h) during their depositions, witnesses, and attorneys for witnesses, in the
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1 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
2 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”
3 (Exhibit A); and (2) they will not be permitted to keep any confidential information
4 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
5 unless otherwise agreed by the Designating Party or ordered by the court. Pages of
6 transcribed deposition testimony or exhibits to depositions that reveal Protected
7 Material may be separately bound by the court reporter and may not be disclosed to
8 anyone except as permitted under this Protective Order; and

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

11 7.3 Disclosure of “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
12 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
13 writing by the Designating Party, any information or item designated “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:

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

18 (b) where the Receiving Party is one of the individual Parties, the regularly
19 employed transactional counsel of the Receiving Party;

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

23 (c) the court and its personnel;

24 (d) private court reporters and their staff to whom disclosure is reasonably
25 necessary for this Action and who have signed the “Acknowledgment and
26 Agreement to Be Bound” (Exhibit A);

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

3 (f) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information; and

5 (g) any mediator or settlement officer, and their supporting personnel,
6 mutually agreed upon by any of the parties engaged in settlement discussions.

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

9 If a Party is served with a subpoena or a court order issued in other litigation
10 that compels disclosure of any information or items designated in this Action as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
12 ONLY,” that Party must:

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

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

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

21 If the Designating Party timely seeks a protective order, the Party served with
22 the subpoena or court order shall not produce any information designated in this
23 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’
24 EYES ONLY” before a determination by the court from which the subpoena or
25 order issued, unless the Party has obtained the Designating Party’s permission, or
26 unless otherwise required by the law or court order. The Designating Party shall
27 bear the burden and expense of seeking protection in that court of its confidential

1 material and nothing in these provisions should be construed as authorizing or
2 encouraging a Receiving Party in this Action to disobey a lawful directive from
3 another court.

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

6 (a) The terms of this Order are applicable to information produced by a
7 Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL -- ATTORNEYS’ EYES ONLY.” Such information produced by
9 Non-Parties in connection with this litigation is protected by the remedies and relief
10 provided by this Order. Nothing in these provisions should be construed as
11 prohibiting a Non-Party from seeking additional protections.

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

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

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

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

24 (c) If a Non-Party represented by counsel fails to commence the process
25 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the
26 notice and accompanying information or fails contemporaneously to notify the
27 Producing Party that it has done so, the Producing Party may produce the Non-

1 Party's confidential information responsive to the discovery request. If an
2 unrepresented Non-Party fails to seek a protective order from this court within 14
3 days of receiving the notice and accompanying information, the Producing Party
4 may produce the Non-Party's confidential information responsive to the discovery
5 request. If the Non-Party timely seeks a protective order, the Producing Party shall
6 not produce any information in its possession or control that is subject to the
7 confidentiality agreement with the Non-Party before a determination by the court
8 unless otherwise required by the law or court order. Absent a court order or
9 contractual provision to the contrary, the Non-Party shall bear the burden and
10 expense of seeking protection in this court of its Protected Material. Nothing herein,
11 however, is intended to suggest that the Producing Party would lack standing to seek
12 protection in this court of the Protected Material of a Non-Party.

13 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

24 When a Producing Party gives notice to Receiving Parties that certain
25 inadvertently produced material is subject to a claim of privilege or other protection,
26 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
27 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
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1 procedure may be established in an e-discovery order that provides for production
2 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
3 (e), insofar as the parties reach an agreement on the effect of disclosure of a
4 communication or information covered by the attorney-client privilege or work
5 product protection, the parties may incorporate their agreement into this Protective
6 Order.

7 12. MISCELLANEOUS

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

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

15 12.3 Filing Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
17 orders of the assigned District Judge and Magistrate Judge. Protected Material may
18 only be filed under seal pursuant to a court order authorizing the sealing of the
19 specific Protected Material at issue. If a Party's request to file Protected Material
20 under seal is denied by the court, then the Receiving Party may file the information
21 in the public record unless otherwise 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 return
25 all Protected Material to the Producing Party or destroy such material. As used in
26 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
27 summaries, and any other format reproducing or capturing any of the Protected
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1 Material. Whether the Protected Material is returned or destroyed, the Receiving
2 Party must submit a written certification to the Producing Party (and, if not the same
3 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
4 (by category, where appropriate) all the Protected Material that was returned or
5 destroyed and (2) affirms that the Receiving Party has not retained any copies,
6 abstracts, compilations, summaries or any other format reproducing or capturing any
7 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
8 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
9 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
10 reports, attorney work product, and consultant and expert work product, even if such
11 materials contain Protected Material. Any such archival copies that contain or
12 constitute Protected Material remain subject to this Protective Order as set forth in
13 Section 4.

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

17 IT IS SO ORDERED.

18 DATED: July 21, 2016

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/s/
Honorable Jacqueline Chooljian
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Protective Order that was issued
7 by the United States District Court for the Central District of California on July 21,
8 2016 in the case of *Marcus Gray, et al. v. Katy Perry, et al.*, Case No. 2:15-cv-
9 05642-CAS (JCx) (C.D. Cal.). I agree to comply with and to be bound by all the
10 terms of this Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item that
13 is subject to this Protective Order to any person or entity except in strict compliance
14 with the provisions of this Order.

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

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

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27 Signature: _____