

NOTE: CHANGES MADE BY THE COURT

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

BEACHBODY, LLC, et al.,
Plaintiffs,
v.
AAF FREIGHT (LA) CORP., et al.,
Defendants.

Case No.: 2:15-cv-06452 FMO (PLAx)
[DISCOVERY MATTER]
PROTECTIVE ORDER
Mag. Judge Paul L. Abrams

1. PROTECTIVE ORDER

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

1 12.3, below, this Protective Order does not entitle the parties to file confidential
2 information under seal. Rather, when the parties seek permission from the court to
3 file material under seal, the parties must comply with Civil Local Rule 79-5 and
4 with any pertinent orders of the assigned District Judge and Magistrate Judge.

5 **B. GOOD CAUSE STATEMENT**

6 In light of the nature of the claims and allegations in this case and the
7 parties' representations that discovery in this case is likely to involve the
8 production of confidential records and trade secrets (customer lists, pricing
9 information, and other valuable research, development, commercial, financial,
10 technical and/or other proprietary information) for which special protection from
11 public disclosure and from use for any purpose other than prosecution of this
12 action is warranted, a protective order for such information is justified in this
13 matter. In order to expedite the flow of information, to facilitate the prompt
14 resolution of disputes over confidentiality of discovery materials, to adequately
15 protect information the parties are entitled to keep confidential, to ensure that the
16 parties are permitted reasonable necessary uses of such material in connection with
17 this action, to address their handling of such material at the end of the litigation,
18 and to serve the ends of justice, the parties respectively request that the Court enter
19 this protective order as protection of such information is justified in this matter.
20 The parties shall not designate any information/documents as confidential without
21 a good faith belief that such information/documents have been maintained in a
22 confidential, non-public manner, and that there is good cause or a compelling
23 reason why it should not be part of the public record of this case.

24 **2. DEFINITIONS**

25 **2.1 Action:** the instant action: *BEACHBODY, LLC, et al. v. AAF*
26 *FREIGHT (LA) CORP, et al.*, Case No.: 2:15-cv-06452 FMO (PLAx).

27 **2.2 Challenging Party:** a Party or Non-Party that challenges the
28 designation of information or items under this Order.

1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
2 how it is generated, stored or maintained) or tangible things that qualify for
3 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
4 the Good Cause Statement.

5 2.4 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY”
6 Information or Items: extremely sensitive “CONFIDENTIAL” Information or
7 Items, the disclosure of which to another Party or Non-Party would create a
8 substantial risk of serious harm that could not be avoided by less restrictive means.

9 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
10 their support staff).

11 2.6 Designating Party: a Party or Non-Party that designates information
12 or items that it produces in disclosures or in responses to discovery as
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
14 ONLY.”

15 2.7 Disclosure or Discovery Material: all items or information, regardless
16 of the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced
18 or generated in disclosures or responses to discovery in this matter.

19 2.8 Expert: a person with specialized knowledge or experience in a
20 matter pertinent to the litigation who has been retained by a Party or its counsel to
21 serve as an expert witness or as a consultant in this Action.

22 2.9 House Counsel: attorneys who are employees of a party to this
23 Action. House Counsel does not include Outside Counsel of Record or any other
24 outside counsel.

25 2.10 Non-Party: any natural person, partnership, corporation, association,
26 or other legal entity not named as a Party to this action.

27 2.11 Outside Counsel of Record: attorneys who are not employees of a
28 party to this Action but are retained to represent or advise a party to this Action

1 and have appeared in this Action on behalf of that party or are affiliated with a law
2 firm which has appeared on behalf of that party, and includes support staff.

3 2.12 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.14 Professional Vendors: persons or entities that provide litigation
9 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 2.15 Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL --
14 ATTORNEYS’ EYES ONLY.”

15 2.16 Receiving Party: a Party that receives Disclosure or Discovery
16 Material from a Producing Party.

17 3. SCOPE

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

24 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.

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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, re-hearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of
9 time pursuant to applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Non-Party that designates information or items for protection under
13 this Order must take care to limit any such designation to specific material that
14 qualifies under the appropriate standards. The Designating Party must designate for
15 protection only those parts of material, documents, items, or oral or written
16 communications that qualify so that other portions of the material, documents,
17 items, or communications for which protection is not warranted are not swept
18 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” or “HIGHLY CONFIDENTIAL --
8 ATTORNEYS’ EYES ONLY” to each page that contains protected material. If
9 only a portion or portions of the material on a page qualifies for protection, the
10 Producing Party also must clearly identify the protected portion(s) (e.g., by making
11 appropriate markings in 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.
19 Then, before producing the specified documents, the Producing Party must affix
20 the “CONFIDENTIAL”, or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
21 ONLY” legend to each page that contains Protected Material. If only a portion or
22 portions of the material on a page qualifies for protection, the Producing Party also
23 must clearly identify the protected portion(s) (e.g., by making appropriate
24 markings in the margins).

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

27 (c) for information produced in some form other than documentary and
28 for any other tangible items, that the Producing Party affix in a prominent place on

1 the exterior of the container or containers in which the information is stored the
2 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’
3 EYES ONLY.” If only a portion or portions of the information warrants
4 protection, the Producing Party, to the extent practicable, shall identify the
5 protected portion(s).

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

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
17 resolution process under Local Rule 37-1 et seq.

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

26 7. ACCESS TO AND USE OF PROTECTED MATERIAL

27 7.1 Basic Principles. A Receiving Party may use Protected Material that
28 is disclosed or produced by another Party or by a Non-Party in connection with this

1 Action only for prosecuting, defending, or attempting to settle this Action. Such
2 Protected Material may be disclosed only to the categories of persons and under
3 the conditions described in this Order. When the Action has been terminated, a
4 Receiving Party must comply with the provisions of Section 13 below.

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

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

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

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

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

20 (d) the court and its personnel;

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

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

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

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

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

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

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

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

22 (c) the court and its personnel;

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

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

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

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

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

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

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

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

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

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

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED 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” or “HIGHLY
5 CONFIDENTIAL -- ATTORNEYS’ EYES ONLY.” Such information produced
6 by Non-Parties in connection with this litigation is protected by the remedies and
7 relief provided by this Order. Nothing in these provisions should be construed as
8 prohibiting a Non-Party from seeking additional protections.

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

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

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

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

21 (c) If a Non-Party represented by counsel fails to commence the process
22 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the
23 notice and accompanying information or fails contemporaneously to notify the
24 Receiving Party that it has done so, the Receiving Party may produce the Non-
25 Party’s confidential information responsive to the discovery request. If an
26 unrepresented Non-Party fails to seek a protective order from this court within 14
27 days of receiving the notice and accompanying information, the Receiving Party
28 may produce the Non-Party’s confidential information responsive to the discovery

1 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
2 not produce any information in its possession or control that is subject to the
3 confidentiality agreement with the Non-Party before a determination by the court
4 unless otherwise required by the law or court order. Absent a court order to the
5 contrary, the Non-Party shall bear the burden and expense of seeking protection in
6 this court of its Protected Material.

7 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
17 OTHERWISE PROTECTED MATERIAL

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

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1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of
3 any person to seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. No Party waives any right it
5 otherwise would have to object to disclosing or producing any information or item
6 on any ground not addressed in this Protective Order. Similarly, no Party waives
7 any right to object on any ground to use in evidence of any of the material covered
8 by this Protective Order.

9 12.3 Filing Protected Material. A Party that seeks to file under seal any
10 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
11 orders of the assigned District Judge and Magistrate Judge. Protected Material
12 may only be filed under seal pursuant to a court order authorizing the sealing of the
13 specific Protected Material at issue; **good cause for the under seal filing must be**
14 **shown.** If a Party’s request to file Protected Material under seal is denied by the
15 court, then the Receiving Party may file the information in the public record unless
16 otherwise instructed by the court.

17 13. FINAL DISPOSITION

18 After the final disposition of this Action, as defined in Section 4, within 60
19 days of a written request by the Designating Party, each Receiving Party must
20 return all Protected Material to the Producing Party or destroy such material. As
21 used in this subdivision, “all Protected Material” includes all copies, abstracts,
22 compilations, summaries, and any other format reproducing or capturing any of the
23 Protected Material. Whether the Protected Material is returned or destroyed, the
24 Receiving Party must submit a written certification to the Producing Party (and, if
25 not the same person or entity, to the Designating Party) by the 60 day deadline that
26 (1) identifies (by category, where appropriate) all the Protected Material that was
27 returned or destroyed and (2) affirms that the Receiving Party has not retained any
28 copies, abstracts, compilations, summaries or any other format reproducing or

1 capturing any of the Protected Material. Notwithstanding this provision, Counsel
2 are entitled to retain an archival copy of all pleadings, motion papers, trial,
3 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
4 and trial exhibits, expert reports, attorney work product, and consultant and expert
5 work product, even if such materials contain Protected Material. Any such
6 archival copies that contain or constitute Protected Material remain subject to this
7 Protective Order as set forth in Section 4.

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

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12 IT IS SO ORDERED this 14th day of March, 2016.

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15 HON. PAUL L. ABRAMS
16 Magistrate Judge of the United States
17 Central District of California
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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 Protective Order that was issued by the United States District Court for the Central District of California on March _____, 2016 in the case of *BEACHBODY, LLC, et al. v. AAF FREIGHT (LA) CORP, et al.*, Case No.: 2:15-cv-06452 FMO (PLAx). I agree to comply with and to be bound by all the terms of this 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 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 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 Protective Order.

Date: _____
City and State where sworn and signed: _____

Printed name: _____
Signature: _____