





1 to file material under seal.

2       There is a strong presumption that the public has a right of access to judicial  
3 proceedings and records in civil cases. In connection with non-dispositive motions,  
4 good cause must be shown to support a filing under seal. *See Kamakana v. City*  
5 *and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen.*  
6 *Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony*  
7 *Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective  
8 orders require good cause showing), and a specific showing of good cause or  
9 compelling reasons with proper evidentiary support and legal justification, must be  
10 made with respect to Protected Material that a party seeks to file under seal. The  
11 parties' mere designation of Disclosure or Discovery Material as CONFIDENTIAL  
12 does not—without the submission of competent evidence by declaration,  
13 establishing that the material sought to be filed under seal qualifies as confidential,  
14 privileged, or otherwise protectable—constitute good cause.

15       Further, if a party requests sealing related to a dispositive motion or trial,  
16 then compelling reasons, not only good cause, for the sealing must be shown, and  
17 the relief sought shall be narrowly tailored to serve the specific interest to be  
18 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.  
19 2010). For each item or type of information, document, or thing sought to be filed  
20 or introduced under seal in connection with a dispositive motion or trial, the party  
21 seeking protection must articulate compelling reasons, supported by specific facts  
22 and legal justification, for the requested sealing order. Again, competent evidence  
23 supporting the application to file documents under seal must be provided by  
24 declaration.

25       Any document that is not confidential, privileged, or otherwise protectable in  
26 its entirety will not be filed under seal if the confidential portions can be redacted.  
27 If documents can be redacted, then a redacted version for public viewing, omitting

1 only the confidential, privileged, or otherwise protectable portions of the document,  
2 shall be filed. Any application that seeks to file documents under seal in their  
3 entirety should include an explanation of why redaction is not feasible.

4 2. DEFINITIONS

5 2.1 Action: the above-captioned matter, *K. Schroeder and O. Guerra v.*  
6 *Envoy Air Inc.*, Case No. 2:16-CV-04911-MWF-KS.

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

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

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

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

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

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

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

1           2.9 Non-Party: any natural person, partnership, corporation, association or  
2 other legal entity not named as a Party to this action.

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

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

10          2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
11 Discovery Material in this Action.

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

16          2.14 Protected Material: any Disclosure or Discovery Material that is  
17 designated as “CONFIDENTIAL.”

18          2.15 Receiving Party: a Party that receives Disclosure or Discovery  
19 Material from a Producing Party.

20        3. SCOPE

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

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

1 4. DURATION

2 Once a case proceeds to trial, information that was designated as  
3 CONFIDENTIAL or maintained pursuant to this protective order used or  
4 introduced as an exhibit at trial becomes public and will be presumptively available  
5 to all members of the public, including the press, unless compelling reasons  
6 supported by specific factual findings to proceed otherwise are made to the trial  
7 judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing  
8 “good cause” showing for sealing documents produced in discovery from  
9 “compelling reasons” standard when merits-related documents are part of court  
10 record). Accordingly, the terms of this protective order do not extend beyond the  
11 commencement of the trial.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

26 If it comes to a Designating Party’s attention that information or items that it  
27 designated for protection do not qualify for protection, that Designating Party must

1 promptly notify all other Parties that it is withdrawing the inapplicable designation.

2       5.2 Manner and Timing of Designations. Except as otherwise provided in  
3 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
4 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
5 under this Order must be clearly so designated before the material is disclosed or  
6 produced.

7       Designation in conformity with this Order requires:

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

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

27       (b) for testimony given in depositions that the Designating Party identifies

1 the Disclosure or Discovery Material on the record, before the close of the  
2 deposition all protected testimony.

3 (c) for information produced in some form other than documentary and  
4 for any other tangible items, that the Producing Party affix in a prominent place on  
5 the exterior of the container or containers in which the information is stored the  
6 legend “CONFIDENTIAL.” If only a portion or portions of the information  
7 warrants protection, the Producing Party, to the extent practicable, shall identify the  
8 protected portion(s).

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

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
17 designation of confidentiality at any time that is consistent with the Court’s  
18 Scheduling Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
20 resolution process under Local Rule 37-1 et seq.

21 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a  
22 joint stipulation pursuant to Local Rule 37-2.

23 6.4 The burden of persuasion in any such challenge proceeding shall be on  
24 the Designating Party. Frivolous challenges, and those made for an improper  
25 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
26 parties) may expose the Challenging Party to sanctions. Unless the Designating  
27 Party has waived or withdrawn the confidentiality designation, all parties shall

1 continue to afford the material in question the level of protection to which it is  
2 entitled under the Producing Party’s designation until the Court rules on the  
3 challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
6 disclosed or produced by another Party or by a Non-Party in connection with this  
7 Action only for prosecuting, defending or attempting to settle this Action. Such  
8 Protected Material may be disclosed only to the categories of persons and under the  
9 conditions described in this Order. When the Action has been terminated, a  
10 Receiving Party must comply with the provisions of section 13 below (FINAL  
11 DISPOSITION).

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

15 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
16 otherwise ordered by the court or permitted in writing by the Designating Party, a  
17 Receiving Party may disclose any information or item designated  
18 “CONFIDENTIAL” only to:

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

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

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

27 (d) the court and its personnel;

1 (e) court reporters and their staff;

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

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

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

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

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
19 IN OTHER LITIGATION

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

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

25 (b) promptly notify in writing the party who caused the subpoena or order  
26 to issue in the other litigation that some or all of the material covered by the  
27 subpoena or order is subject to this Protective Order. Such notification shall

1 include a copy of this Stipulated Protective Order; and

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

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

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

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

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

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

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

1 specific description of the information requested; and

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

4 (c) If the Non-Party fails to seek a protective order from this court within  
5 14 days of receiving the notice and accompanying information, the Receiving Party  
6 may produce the Non-Party's confidential information responsive to the discovery  
7 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
8 not produce any information in its possession or control that is subject to the  
9 confidentiality agreement with the Non-Party before a determination by the court.  
10 Absent a court order to the contrary, the Non-Party shall bear the burden and  
11 expense of seeking protection in 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 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
16 writing the Designating Party of the unauthorized disclosures, (b) use its best  
17 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the  
18 person or persons to whom unauthorized disclosures were made of all the terms of  
19 this Order, and (d) request such person or persons to execute the "Acknowledgment  
20 and Agreement 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

1 production without prior privilege review. Pursuant to Federal Rule of Evidence  
2 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
3 of a communication or information covered by the attorney-client privilege or work  
4 product protection, the parties may incorporate their agreement in the stipulated  
5 protective order submitted to the court.

6 12. MISCELLANEOUS

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

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

15 12.3 Filing Protected Material. A Party that seeks to file under seal any  
16 Protected Material must comply with Local Civil Rule 79-5. Protected Material  
17 may only be filed under seal pursuant to a court order authorizing the sealing of the  
18 specific Protected Material at issue. If a Party's request to file Protected Material  
19 under seal is denied by the court, then the Receiving Party may file the information  
20 in the public record unless otherwise instructed by the court.

21 12.4 This Stipulation and Protective Order is entered into without prejudice  
22 to the right of any Party to knowingly waive the applicability of this Stipulation and  
23 Protective Order to any Confidential Materials designated by that Party. If the  
24 Designating Party uses Confidential Materials in a non-Confidential manner, then  
25 the Designating Party shall advise all parties that the designation no longer applies.  
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1 13. FINAL DISPOSITION

2 After the final disposition of this Action, as defined in paragraph 4, within 60  
3 days of a written request by the Designating Party, each Receiving Party must  
4 return all Protected Material to the Producing Party or destroy such material. As  
5 used in this subdivision, “all Protected Material” includes all copies, abstracts,  
6 compilations, summaries, and any other format reproducing or capturing any of the  
7 Protected Material. Whether the Protected Material is returned or destroyed, the  
8 Receiving Party must submit a written certification to the Producing Party (and, if  
9 not the same person or entity, to the Designating Party) by the 60 day deadline that  
10 (1) identifies (by category, where appropriate) all the Protected Material that was  
11 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
12 copies, abstracts, compilations, summaries or any other format reproducing or  
13 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
14 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
15 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
16 and trial exhibits, expert reports, attorney work product, and consultant and expert  
17 work product, even if such materials contain Protected Material. Any such archival  
18 copies that contain or constitute Protected Material remain subject to this Protective  
19 Order as set forth in Section 4 (DURATION).

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14. VIOLATION

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

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: March 22, 2017

  
KAREN L. STEVENSON  
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Stipulated Protective Order that  
was issued by the United States District Court for the Central District of California  
on \_\_\_\_\_ in the case of *K. Schroeder v. Envoy Air, Inc.*, 2:16-cv-04911-  
MWF-KS. I agree to comply with and to be bound by all the terms of this  
Stipulated Protective Order and I understand and acknowledge that failure to so  
comply could expose me to sanctions and punishment in the nature of contempt. I  
solemnly promise that I will not disclose in any manner any information or item  
that is subject to this Stipulated Protective Order to any person or entity except in  
strict compliance with the provisions of this Order. I further agree to submit to the  
jurisdiction of the United States District Court for the Central District of California  
for enforcing the terms of this Stipulated Protective Order, even if such  
enforcement proceedings occur after termination of this action. I hereby appoint  
\_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with  
this action or any proceedings related to enforcement of this Stipulated Protective  
Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_