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NOTE CHANGES MADE BY THE COURT

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22 UNITED STATES DISTRICT COURT
 23 CENTRAL DISTRICT OF CALIFORNIA

24 NICHELLE GOODEN,
 25 Plaintiff,
 26 vs.
 27 TOTAL SAFETY U.S., INC.,
 28 LEROY JOHNSON, and DOES 1 to
 100, inclusive,
 Defendants.

CASE NO. 2:16-CV-05620-VAP-AGR

ASSIGNED TO HON. VIRGINIA A. PHILLIPS

STIPULATED PROTECTIVE ORDER

Date:
 Time:
 Dept.:
 Judge:

NOTE CHANGES MADE BY THE COURT

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1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are 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. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that 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. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

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

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items as "CONFIDENTIAL."

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained

1 (including, among other things, testimony, transcripts, and tangible things), that are
2 produced or generated in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a
4 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
5 as an expert witness or as a consultant in this action.

6 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this action.

8 2.12 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) and
11 their employees and subcontractors.

12 2.13 Protected Material: any Disclosure or Discovery Material that is
13 designated as "CONFIDENTIAL" and that is produced by a party to this litigation or a
14 Non-Party that received the Disclosure or Discovery Material through a non-public or
15 unlawful manner.

16 2.14 Receiving Party: a Party that receives Disclosure or Discovery
17 Material from a Producing Party.

18 **3. SCOPE**

19 The protections conferred by this Stipulation and Order cover not only
20 Protected Material (as defined above), but also (1) any information copied or extracted
21 from Protected Material; (2) all copies, excerpts, or compilations of Protected Material;
22 and (3) any testimony, or presentations by Parties or their Counsel that might reveal
23 Protected Material. However, the protections conferred by this Stipulation and Order
24 do not cover the following information: (a) any information that is in the public domain
25 at the time of disclosure to a Receiving Party or becomes part of the public domain after
26 its disclosure to a Receiving Party as a result of publication not involving a violation of
27 this Order, including becoming part of the public record through trial or otherwise; and

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1 (b) any information known to the Receiving Party prior to the disclosure or obtained by
2 the Receiving Party after the disclosure from a source who obtained the information
3 lawfully. Any use of Protected Material at trial shall be governed by a separate
4 agreement or order.

5 **4. DURATION**

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

13 **5. DESIGNATING PROTECTED MATERIAL**

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

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

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

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

9 Designation in conformity with this Order requires:

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

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

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1 (b) for testimony given in deposition, ~~or in other pretrial or trial~~
2 ~~proceedings~~, that the Designating Party identify on the record, before the close of the
3 deposition, ~~hearing, or other proceeding~~, all protected testimony.

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

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

16 5.4 Designation by Receiving Party. If Receiving Party determines that
17 material produced by Producing Party includes Protected Material that was not obtained
18 by the Producing Party after the disclosure from a source who obtained the information
19 lawfully, then Receiving Party may designate those documents as confidential by giving
20 notice to Producing Party within thirty (30) days of production or thirty (30) days of
21 signing of this order, whichever is later.

22 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
24 designation of confidentiality at any time that is consistent with the Court's Scheduling
25 Order.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
27 resolution process under Local Rule 37.1 et seq.

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1 6.3 The burden of persuasion in any such challenge proceeding shall be
2 on the Designating Party. Frivolous challenges, and those made for an improper purpose
3 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
4 expose the Challenging Party to sanctions. Unless the Designating Party has waived the
5 confidentiality designation by failing to file a motion to retain confidentiality as
6 described above, all parties shall continue to afford the material in question the level of
7 protection to which it is entitled under the Producing Party's designation until the court
8 rules on the challenge.

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

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

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

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
22 only to:

23 (a) the Receiving Party's Outside Counsel of Record in this action, as well
24 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
25 disclose the information for this litigation;

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

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

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants,
6 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for
7 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
8 (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
11 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by
12 the court. Pages of transcribed deposition testimony or exhibits to depositions that
13 reveal Protected Material must be separately bound marked by the court reporter and
14 may not be disclosed to anyone except as permitted under this Stipulated Protective
15 Order.

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information.

18 (h) any mediator or settlement officer, and their supporting personnel,
19 mutually agreed upon by any of the parties engaged in settlement discussions.

20 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
21 **PRODUCED IN OTHER LITIGATION**

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

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

27 (b) promptly notify in writing the party who caused the subpoena or order
28 to issue in the other litigation that some or all of the material covered by the subpoena

1 or order is subject to this Protective Order. Such notification shall include a copy of this
2 Stipulated Protective Order; and

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

5 If the Designating Party timely seeks a protective order within 14 days, the
6 Party served with the subpoena or court order shall not produce any information
7 designated in this action as "CONFIDENTIAL" before a determination by the court
8 from which the subpoena or order issued, unless the Party has obtained the Designating
9 Party's permission. The Designating Party shall bear the burden and expense of seeking
10 protection in that court of its confidential material – and nothing in these provisions
11 should be construed as authorizing or encouraging a Receiving Party in this action to
12 disobey a lawful directive from another court.

13 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO**
14 **BE PRODUCED IN THIS LITIGATION**

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

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

24 (1) notify in writing the Requesting Party within 7 business days of their
25 request. Such notification shall include a copy of explicit agreement between the
26 Producing Party and Non-Party and include written verification of the Non-Party's
27 assent to the agreement; and notify the Non-Party that some or all of the information
28 requested is subject to a confidentiality agreement;

1 (2) promptly provide the Non-Party with a copy of the Stipulated
2 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
3 specific description of the information requested; and,

4 (3) make the information requested available for inspection by the Non-
5 Party.

6 (c) If the Non-Party fails to object or seek a protective order from this
7 court within 14 days of receiving the notice and accompanying information, the
8 Receiving Party must produce the Non-Party's confidential information responsive to
9 the discovery request. If the Non-Party timely seeks a protective order, the Receiving
10 Party shall not produce any information in its possession or control that is subject to the
11 confidentiality agreement with the Non-Party before a determination by the court.
12 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
13 of seeking protection in this court of its Protected Material.

14 (d) The identities, locations, and contact information of any Non-Party
15 likely to have witnessed events likely to prove or disprove the allegations made in the
16 Parties' complaints and answers shall not be Designated as Protected Material.

17 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED**
18 **MATERIAL**

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

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11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

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

12. MISCELLANEOUS

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

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

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


13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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


IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: ^{March} ~~January~~ 13, 2017


JOSEPH A. SCHWACHTER
LITTLER MENDELSON, P.C.
Attorneys for Defendant
TOTAL SAFETY U.S., INC.

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DATED: January 30, 2017



LEE FRANCK
STEVENS & MCMILLAN
Attorneys for Plaintiff
NICHELLE GOODEN

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 3/20/2017



United States District/Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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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 Northern District of California on [date] in the case of _____ [insert formal name of the case and the number and initials assigned to it by the court]. 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 the purpose of 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: _____

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