

1 Jordon R. Harlan, State Bar No. 273978
 2 Harlan Law, PC
 3 363 5th Avenue, Suite 301
 4 San Diego, CA 92101
 5 Telephone: (619) 870-0802
 6 Facsimile: (619) 870-0815
 7 jordon@harlanpc.com
 8 Attorneys for Plaintiff
 9 STANLEY T. SHEN

10 Tracy Thompson (CA State Bar No. 88173)
 11 Victoria L. Tallman (CA State Bar No. 273252)
 12 DAVIS WRIGHT TREMAINE LLP
 13 505 Montgomery Street, Suite 800
 14 San Francisco, California 94111
 15 Tel: (415) 276-6500
 16 Fax: (415) 276-6599
 17 Email: tracythompson@dwt.com
 18 victoriatallman@dwt.com
 19 Beatrice Nuñez-Bellamy (CA State Bar No. 310776)
 20 Davis Wright Tremaine LLP
 21 865 S Figueroa Street, Suite 2400
 22 Los Angeles, CA 90017
 23 Email: beatricenunezbellamy@dwt.com
 24 Attorneys for Defendants
 25 RECREATIONAL EQUIPMENT, INC.
 26 and SARA KEHRET

27 UNITED STATES DISTRICT COURT
 28 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION (LOS ANGELES COUNTY)

23 STANLEY T. SHEN,
 24 Plaintiff,
 25 v.
 26 RECREATIONAL CORPORATION INC.,
 27 a Washington corporation; SARAH
 28 KEHRET, an individual; and DOES 1-25,
 inclusive,
 Defendants.

Case No. 2:16-cv-07308-TJH (JCx)

STIPULATED PROTECTIVE ORDER

[CHANGES MADE BY COURT TO PARAGRAPHS 3, 8, & 9c]

Complaint Filed: September 28, 2016

1 **1. INTRODUCTION**

2 **1.1 Purposes And Limitations**

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
7 enter the following Stipulated Protective Order. The parties acknowledge that this
8 Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends
10 only to the limited information or items that are entitled to confidential treatment
11 under the applicable legal principles. The parties further acknowledge, as set forth
12 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
13 file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when a party
15 seeks permission from the court to file material under seal.

16 **1.2 Good Cause Statement**

17 Good cause exists to enter a protective order in this case. The Parties expect
18 to exchange several categories of information that should be kept confidential,
19 including personally identifying information, medical records, and internal corporate
20 documents, policies, and information which include proprietary and other
21 confidential information that may be classified as trade secrets. In particular,
22 discoverable information is likely to include:

- 23 a. Medical and treatment records of Plaintiff, which should be kept
24 confidential, if designated, between the Parties to protect Plaintiff's
25 privacy;
- 26 b. Personally identifying information of Plaintiff, of the individual
27 Defendant, and of employees of Defendant Recreational Equipment,
28 Inc., and of third-parties, which should be kept confidential, if

1 designated, between the Parties to protect individual privacy and
2 security;

- 3 c. Corporate documents, including corporate policies, guidance, records,
4 and communications, which should be kept confidential, if designated,
5 because they potentially contain trade secrets or other types of
6 confidential communications;
- 7 d. Deposition testimony by witnesses about confidential matters, which
8 should be kept confidential if designated.

9 **2. DEFINITIONS**

10 **2.1 Action:**

11 The case originally captioned *Shen v. Recreational Equipment, Inc., et al.*, C.D. Cal.
12 No. 2:16-cv-7308 (this case).

13 **2.2 Challenging Party:**

14 A Party or Non-Party that challenges the designation of information or items
15 under this Order.

16 **2.3 “CONFIDENTIAL” Information or Items:**

17 Information (regardless of how it is generated, stored or maintained) or
18 tangible things that qualify for protection under Federal Rule of Civil Procedure
19 26(c), and as specified above in the Good Cause Statement.

20 **2.4 Counsel:**

21 Outside Counsel of Record and House Counsel (as well as their support staff).

22 **2.5 Designating Party:**

23 A Party or Non-Party that designates information or items that it produces in
24 disclosures or in responses to discovery as “CONFIDENTIAL.”

25 **2.6 Disclosure or Discovery Material:**

26 All items or information, regardless of the medium or manner in which it is
27 generated, stored, or maintained (including, among other things, testimony,
28

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

3 **2.7 Expert:**

4 A person with specialized knowledge or experience in a matter pertinent to
5 the litigation who has been retained by a Party or its counsel to serve as an expert
6 witness or as a consultant in this Action.

7 **2.8 House Counsel:**

8 Attorneys who are employees of a party to this Action. House Counsel does
9 not include Outside Counsel of Record or any other outside counsel.

10 **2.9 Non-Party:**

11 Any natural person, partnership, corporation, association, or other legal entity
12 not named as a Party to this action.

13 **2.10 Outside Counsel of Record:**

14 Attorneys who are not employees of a party to this Action but are retained to
15 represent or advise a party to this Action and have appeared in this Action on behalf
16 of that party or are affiliated with a law firm which has appeared on behalf of that
17 party, and includes support staff.

18 **2.11 Party:**

19 Any party to this Action, including all of its officers, directors, employees,
20 consultants, retained experts, and Outside Counsel of Record (and their support
21 staffs).

22 **2.12 Producing Party:**

23 A Party or Non-Party that produces Disclosure or Discovery Material in this
24 Action.

25 **2.13 Professional Vendors:**

26 Persons or entities that provide litigation support services (e.g., photocopying,
27 videotaping, translating, preparing exhibits or demonstrations, and organizing,
28

1 storing, or retrieving data in any form or medium) and their employees and
2 subcontractors.

3 **2.14 Protected Material:**

4 Any Disclosure or Discovery Material that is designated as
5 “CONFIDENTIAL.”

6 **2.15 Receiving Party:**

7 A Party that receives Disclosure or Discovery Material from a Producing
8 Party.

9 **3. SCOPE**

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

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

19 **4. DURATION**

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

28

1 **5. DESIGNATING PROTECTED MATERIAL**

2 **5.1 Exercise of Restraint and Care in Designating Material for**
3 **Protection.**

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

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

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

19 **5.2 Manner and Timing of Designations.**

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

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic
26 documents, but excluding transcripts of depositions or other pretrial or trial
27 proceedings), that the Producing Party affix at a minimum, the legend
28 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that

1 contains protected material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected
3 portion(s) (e.g., by making appropriate markings in the margins).

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

16 (b) for testimony given in depositions that the Designating Party identify
17 the Disclosure or Discovery Material on the record, before the close of the
18 deposition all protected testimony.

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

25 5.3 Inadvertent Failures to Designate.

26 If timely corrected, an inadvertent failure to designate qualified information
27 or items does not, standing alone, waive the Designating Party’s right to secure
28 protection under this Order for such material. Upon timely correction of a

1 designation, the Receiving Party must make reasonable efforts to assure that the
2 material is treated in accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 **6.1 Timing of Challenges.**

5 Any Party or Non-Party may challenge a designation of confidentiality at any
6 time that is consistent with the Court's Scheduling Order.

7 **6.2 Meet and Confer.**

8 The Challenging Party shall initiate the dispute resolution process (and, if
9 necessary, file a discovery motion) under Local Rule 37.1, *et seq.*

10 **6.3** The burden of persuasion in any such challenge proceeding shall be on
11 the Designating Party. Frivolous challenges, and those made for an improper
12 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
13 parties) may expose the Challenging Party to sanctions. Unless the Designating
14 Party has waived or withdrawn the confidentiality designation, all parties shall
15 continue to afford the material in question the level of protection to which it is
16 entitled under the Producing Party's designation until the Court rules on the
17 challenge.

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

19 **7.1 Basic Principles.**

20 A Receiving Party may use Protected Material that is disclosed or produced
21 by another Party or by a Non-Party in connection with this Action only for
22 prosecuting, defending, or attempting to settle this Action. Such Protected Material
23 may be disclosed only to the categories of persons and under the conditions
24 described in this Order. When the Action has been terminated, a Receiving Party
25 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

1 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.**

2 Unless otherwise ordered by the court or permitted in writing by the
3 Designating Party, a Receiving Party may disclose any information or item
4 designated “CONFIDENTIAL” only to:

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

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

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

13 (d) the Court and its personnel;

14 (e) court reporters and their staff;

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

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

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

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

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

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

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

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

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

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

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.” Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

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

6 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

15 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
16 **PROTECTED MATERIAL**

17 When a Producing Party gives notice to Receiving Parties that certain
18 inadvertently produced material is subject to a claim of privilege or other protection,
19 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
20 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
21 procedure may be established in an e-discovery order that provides for production
22 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
23 (e), insofar as the parties reach an agreement on the effect of disclosure of a
24 communication or information covered by the attorney-client privilege or work
25 product protection, the parties may incorporate their agreement in the stipulated
26 protective order submitted to the court.
27
28

1 **12. MISCELLANEOUS**

2 **12.1 Right to Further Relief.**

3 Nothing in this Order abridges the right of any person to seek its modification
4 by the Court in the future.

5 **12.2 Right to Assert Other Objections.**

6 By stipulating to the entry of this Protective Order no Party waives any right
7 it otherwise would have to object to disclosing or producing any information or item
8 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party
9 waives any right to object on any ground to use in evidence of any of the material
10 covered by this Protective Order.

11 **12.3 Filing Protected Material.**

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

18 **13. FINAL DISPOSITION**

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

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

9 14. Any willful violation of this Order may be punished by civil or criminal
10 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary
11 authorities, or other appropriate action at the discretion of the Court.

12 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

13
14 DATED 3/23/17

/s/
Attorneys for Plaintiff
STANLEY T. SHEN

15
16
17 DATED 3/23/17

/s/
Attorneys for Defendants
RECREATIONAL EQUIPMENT, INC.
and SARA KEHRET

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22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED AS MODIFIED.

23
24 DATED: 3/27/17

/s/
Hon. Jacqueline Chooljian
United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on March 27, 2017 in the case of *Shen v. Recreational Equipment, Inc., et al., C.D.*
8 **Cal. No. 2:16-cv-7308-TJH (JCx)**. I agree to comply with and to be bound by all
9 the terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any
12 information or item that is subject to this Stipulated Protective Order to any person
13 or entity except in strict compliance with the provisions of this Order.

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

22 Date: _____

23
24 City and State where sworn and signed: _____

25
26 Printed Name: _____

27
28 Signature: _____