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2
3 UNITED STATES DISTRICT COURT
4 CENTRAL DISTRICT OF CALIFORNIA
5 WESTERN DIVISION

6 SPENCER LEON REED, individually
7 and on behalf of others similarly
8 situated,

9 Plaintiff,

10 v.

11 AUTONATION, INC.; and DOES 1
12 through 10, inclusive,

13 Defendants.

Case No.: 2:16-cv-08916 BRO(AGRx)

**ORDER GRANTING STIPULATED
PROTECTIVE ORDER**

Date: August 1, 2017

Time: 10:00 a.m.

Place: Courtroom B – 8th Floor,
312 North Spring Street, Los Angeles,
California, 90012

Honorable Alicia G. Rosenberg

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15 Upon stipulation of Plaintiff Spencer Leon Reed (“Plaintiff”) and
16 Defendant AutoNation, Inc. (“Defendant”) (collectively “Parties”) for an order
17 pursuant to Fed. R. Civ. P. 26(c), this Court hereby Orders that trade secret or
18 other confidential information be disclosed only in designated ways.

19 1. Statement of Good Cause. This action may involve nonpublic information
20 and/or proprietary information for which special protection from public disclosure
21 and from use for any purpose other than prosecution of this action is warranted. Such
22 confidential and proprietary materials and information consist of, among other things,
23 financial data, trade secrets, other operational, proprietary, or technological
24 information relating to Defendant’s business that is not publicly available or known,
25 and confidential putative class member information. Accordingly, to expedite the
26 flow of information, to facilitate the prompt resolution of disputes over
27 confidentiality of discovery materials, to adequately protect information the Parties
28 are entitled to keep confidential, to ensure that the Parties are permitted reasonable

1 necessary uses of such material in preparation for the conduct of trial, to address their
2 handling at the end of the litigation, and serve the ends of justice, a protective order is
3 justified in this matter. It is the intent of the Parties that information will not be
4 designated as confidential for tactical reasons and that nothing be so designated
5 without a good faith belief that it has been maintained in a confidential, non-public
6 manner, and there is good cause why it should not be part of the public record of this
7 case

8 2. Definitions. As used in this Protective Order, these terms have the
9 following meanings:

- 10 a. "Action" means the above-captioned matter.
- 11 b. "Confidential" documents are documents designated pursuant to
12 paragraph 4. Confidential information includes, but is not limited to,
13 nonpublic information such as financial data, trade secrets, and other
14 operational, proprietary, or technological information relating to
15 Defendant's business that is not publicly available or known.
- 16 c. "Confidential – Attorneys' Eyes Only" documents are documents
17 designated pursuant to paragraph 7.
- 18 d. "Documents" means all originals and copies of records, books,
19 papers, documents, and tangible things, including but not limited to
20 agreements, appointment books, bank checks, bank records, books,
21 books of account, business records, calendars, charge slips, charts,
22 computer print-outs, contracts, correspondence, credit card statements,
23 diaries, drafts, electronic or computerized data, e- mails, facsimiles,
24 files, invoices, journals, legal pleadings, letters, licenses, memoranda,
25 meta-data, notes, papers, promissory notes, receipts, statements,
26 studies, surveys, telegrams, testimony (or summaries thereof), trading
27 records, transcripts, voice mails, vouchers, and all communicative
28 materials of any kind, and copies of all drafts, notes, or any
preparatory material concerned with any of the foregoing in the
possession, custody, or control of either Party or any of their
respective agents, servants, or employees. The term "documents," as
used herein, shall also be understood to encompass the contents of
such Confidential materials, summaries, or abstracts thereof, notes
taken thereon, or like recapitulations thereof.

1 3. Scope. The protections conferred by this Stipulation and Order cover not
2 only Protected Material (as defined in paragraph 4), but also (1) any information
3 extracted or copied from Protected Material; (2) all copies, excerpts, summaries, or
4 compilations of Protected Material; and (3) any testimony, conversation, or
5 presentations by the Parties or their Counsel that might reveal Protected Material.

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

8 4. A Party may designate as Confidential or Confidential – Attorneys’ Eyes
9 Only any document that it in good faith contends contains or discloses Confidential
10 information (hereinafter “Protected Material”).

11 5. All documents designated as Confidential, along with the information
12 contained in the documents, shall be used solely for the purpose of this Action, and
13 no person receiving such documents shall, directly or indirectly, communicate,
14 disclose, or transfer in any way the documents or their contents to any person other
15 than those specified in paragraph 6.

16 6. Access to any Confidential document by any individual other than the
17 Producing Party shall be limited to:

- 18 a. the Parties;
- 19 b. the Court, including judicial employees, judges, magistrates, special
20 masters, and all other personnel necessary to assist the Court in its
21 function;
- 22 c. counsel of record for the Parties, including their partners and
23 employees to whom it is necessary that Confidential information be
24 shown for purposes of this Action;
- 25 d. court reporters, stenographic reporters, videographers, and all of their
26 personnel necessary to assist them in their functions;
- 27 e. Defendant’s agents, directors, employees, insurers, officers, and
28 representatives;

- 1 f. Defendant's former agents, directors, employees, insurers, officers,
2 and representatives who have executed the Agreement annexed hereto
3 as Exhibit A;
- 4 g. outside independent persons who are retained by a Party or its
5 attorneys to furnish technical or expert services, or to provide
6 assistance as mock jurors or focus group members or the like, and/or to
7 give testimony in this Action and who have executed the Agreement
8 annexed hereto as Exhibit A;
- 9 h. during their depositions, persons to whom disclosure is reasonably
10 necessary, in the reasonable judgment of the examining Party, and
11 who have signed the Agreement annexed hereto as Exhibit A; and
- 12 i. copy or computer services or litigation support for the purpose of
13 copying or indexing documents or providing litigation support,
14 provided that all documents are retrieved by the Receiving Party
15 upon completion of service.

16 7. The Parties contend that some of the documents and information sought in
17 this litigation are confidential documents and information relating to the business of
18 the Parties, which are or contain trade secrets or highly confidential business
19 information protected by applicable law, the disclosure of which (to the Parties or
20 otherwise) could substantially jeopardize the business of the Producing Party and its
21 competitive position in the marketplace. Accordingly, except as provided in
22 paragraph 8, all documents and information produced by either Party in this litigation
23 which are labeled in good faith by the Producing Party's counsel as "Confidential –
24 Attorneys' Eyes Only," within the meaning of Fed. R. Civ. P. 26(c), shall be
25 conspicuously marked and maintained confidentially and used solely for the purposes
26 of this Action and not for any business, competitive, or other purpose, and shall not
27 be disclosed by the Parties' respective counsel to anyone, and shall not be used or
28 referenced for any purpose other than counsel's review and information consistent
with the specific purposes of this Action, subject to the provisions of this Order. The
Parties' counsel may advise the Parties that they have received and reviewed the

1 documents and information designated as “Confidential – Attorneys’ Eyes Only,” but
2 shall not disclose to the Parties the information contained therein.

3 8. Access to and disclosure of information and/or documents designated as
4 “Confidential – Attorneys’ Eyes Only” pursuant to paragraph 7 shall be limited to:

- 5 a. trial counsel and/or in-house counsel for the Receiving Party and their
6 respective staffs;
- 7 b. outside experts or outside consultants of the Receiving Party whose
8 advice and consultation are being or will be used in connection with
9 preparation for the litigation or the litigation of this case, subject to
10 the limitations in paragraph 9;
- 11 c. a witness, deponent, or potential witness or deponent, and his/her
12 counsel, during the course of or in preparation for this litigation;
13 provided that such individual is the author or authorized or intended
14 recipient of the “Confidential – Attorneys’ Eyes Only” materials,
15 subject to the limitations in paragraph 9;
- 16 d. the Court, including judicial employees, judges, magistrates, special
17 masters, and all other personnel necessary to assist the Court in its
18 function;
- 19 e. court reporters, stenographic reporters, videographers, and all of their
20 personnel necessary to assist them in their functions; and
- 21 f. copy or computer services or litigation support for the purpose of
22 copying or indexing documents or providing litigation support,
23 provided that all documents are retrieved by the Receiving Party
24 upon completion of service.

25 9. Individuals other than those set forth in Paragraph 8(a), (d), (e), and (f) to
26 whom such “Confidential – Attorneys’ Eyes Only” documents or information are
27 shown, furnished, or otherwise disclosed, shall be first shown a copy of this Order
28 and shall sign the document in the form of Exhibit A hereto.

10 10. Third parties producing documents in the course of this Action may also
11 designate documents as Confidential or “Confidential – Attorneys’ Eyes Only”
12 subject to the same protections and constraints as the Parties to the Action. A copy of
13

1 the Protective Order shall be served along with any subpoena served in connection
2 with this Action. All documents produced by such third parties shall be treated as
3 Confidential for a period of 7 days from the date of their production, and during that
4 period any Party may designate such documents as Confidential or “Confidential
5 Attorneys’ Eyes Only” pursuant to the terms of the protective order.

6 11. As to each person required to execute an Agreement in the form attached as
7 Exhibit A, and who is known or suspected to be an employee or agent of, or
8 consultant to, any competitor in the industry of a Party, opposing counsel shall be
9 notified at least 10 days prior to disclosure of Confidential or “Confidential –
10 Attorneys’ Eyes Only” documents or information to any such person. Such notice
11 shall provide a reasonable description of the outside independent person to whom
12 disclosure is sought sufficient to permit objection to be made. If a Party objects in
13 writing to such disclosure within 15 days after receipt of notice, no disclosure shall be
14 made until the Party seeking disclosure obtains the approval of the Court or the
15 objecting Party. Such disclosure shall not waive the right of any Party to object to
16 discovery from the identified individual pursuant to Rule 26(b)(4)(B).

17 12. Except as otherwise provided in this Order, or as otherwise stipulated or
18 ordered, disclosure or discovery material that qualifies for protection under this Order
19 must be clearly so designated, subject to paragraph 14. Designation in conformity
20 with this Order requires:

- 21 a. For information in documentary form (e.g., paper or electronic
22 documents, but excluding transcripts of depositions or other pretrial or
23 trial proceedings), that the Producing Party affix the legend
24 “Confidential” or “Confidential – Attorneys’ Eyes Only” to each page
25 that contains Protected Material. If only a portion or portions of the
26 material on a page qualifies for protection, the Producing Party also
27 must clearly identify the protected portion(s) (e.g., by making
28 appropriate markings in the margins).
- b. For testimony given in depositions, that the Designating Party identify
on the record, before the close of the deposition, hearing, or other
proceeding, all protected testimony or by written notice to the other

1 Party within 30 days of receipt of the transcript identifying all protected
2 testimony. The deposition of any witness (or any portion of such
3 deposition) that encompasses Confidential or “Confidential –
4 Attorneys’ Eyes Only” information shall be taken only in the presence
of persons who are qualified to have access to such information.

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

10 13. Confidential or “Confidential – Attorneys’ Eyes Only” documents and
11 information used at depositions, hearings or other public or quasi–public proceedings,
12 other than the trial of this cause, shall not be attached to transcripts or other
13 documents memorializing such proceedings, except by agreement of the Parties.
14 Confidential and “Confidential – Attorneys’ Eyes Only” documents and information
15 shall not be appended to memoranda, briefs, or other documents or pleadings which
16 will be reviewed by persons other than the persons designated herein or otherwise
17 permitted access thereto under the terms of this Order. Alternatively, Confidential
18 and “Confidential – Attorneys’ Eyes Only” documents and information may be
19 attached to such transcripts, memoranda, pleadings, briefs and the like provided that
20 they shall be collectively maintained in an envelope or other protective covering
21 which bears on its front and back the following label:

22 CONTAINS CONFIDENTIAL [– ATTORNEYS’ EYES ONLY]
23 INFORMATION SUBJECT TO A PROTECTIVE ORDER. TO BE OPENED
24 ONLY BY OR AS DIRECTED BY THE COURT OR BY WRITTEN
AGREEMENT OF THE PARTIES.

25 14. Under no circumstances shall a Party’s inadvertent failure to designate
26 Protected Material as such (whether written discovery responses, documents, or
27 testimony) be deemed a waiver of said protection. Any Party who inadvertently fails
28 to identify documents as Confidential or “Confidential – Attorneys’ Eyes Only” shall

1 promptly, upon discovery of its oversight, provide written notice of the error and
2 substitute appropriately designated documents. Any Party receiving such
3 inadvertently unmarked or improperly designated documents shall retrieve such
4 documents from persons not entitled to receive those documents and, upon receipt of
5 the substitute documents, shall return or destroy the improperly designated
6 documents within 10 days of receiving such a written request.

7 15. Any Party who, through inadvertence, produces documents or information
8 that are privileged or otherwise immune from discovery shall, promptly upon
9 discovery of such inadvertent disclosure, so advise the Receiving Party in
10 writing and request that the documents be returned. The Receiving Party shall return
11 such inadvertently produced documents, including all copies, within 10 days of
12 receiving such a written request. The Party returning such inadvertently produced
13 documents may thereafter seek re-production of any such documents pursuant to
14 applicable law. However, inadvertent production of any documents or other
15 discovery materials that would be protected from disclosure under the attorney-client
16 privilege, the work product doctrine, or any other relevant privilege or doctrine shall
17 not constitute a waiver of the applicable privilege or doctrine. Nothing in this
18 paragraph alters or supersedes the requirements of Federal Rule of Evidence 502.

19 16. Without written permission from the Designating Party or a court order
20 secured after appropriate notice to all interested persons, a Party may not file in the
21 public record in this Action any Protected Material. Protected Material may only be
22 filed under seal pursuant to a court order authorizing the sealing of the specific
23 Protected Material at issue, unless the court denies the motion to seal, in which case
24 such material may be filed in the public record. If a Receiving Party seeks to file
25 under seal any Protected Material, the Receiving Party shall state in its motion to file
26 under seal that the Designating Party, pursuant to the Parties' agreement, shall have
27 four (4) days to file a response, to give the Designating Party an opportunity further
28 to explain the basis for the Confidentiality designation.

1 17. All parties or non-parties requesting permission to file documents under seal,
2 including Protected Material, must comply with Local Rule 79-5 and the
3 requirements of Judge Beverly Reid O'Connell and Magistrate Judge Alicia G.
4 Rosenberg.

5 18. In the event disclosure of information or documents covered by this Order is
6 sought by a non-party through subpoena power in other litigation, the counsel and/or
7 the Party receiving the subpoena shall first notify the Producing Party and provide the
8 Producing Party an opportunity to take appropriate measures to protect disclosure in
9 that litigation. No disclosure of information or documents covered by this Order shall
10 be made to a non-party through subpoena power in other litigation absent agreement
11 of the Producing Party or court order.

12 19. Acceptance by a Receiving Party of information, documents, or things
13 identified or marked as Confidential or "Confidential – Attorneys' Eyes Only"
14 hereunder by the Producing Party shall not constitute a concession that such
15 information, documents or things in fact are or include Protected Material of such
16 disclosing Party. Nothing in this Order shall be deemed a waiver of any Party's right
17 to object to production of any documents or other tangible things or answers to
18 interrogatories for lack of timeliness, relevance or materiality, or as a privileged
19 communication, or as trial preparation materials, or as not reasonably calculated to
20 lead to the discovery of admissible evidence. The existence of this Order must not be
21 used by either Party as a basis for discovery that is otherwise improper under the
22 Federal Rules of Civil Procedure.

23 20. Any Party or non-party may challenge a designation of confidentiality at any
24 time prior to the commencement of trial. Unless a prompt challenge to a Designating
25 Party's confidentiality designation is necessary to avoid foreseeable, substantial
26 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
27 litigation, a Party does not waive its right to challenge a confidentiality designation
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1 by electing not to mount a challenge promptly after the original designation is
2 disclosed.

- 3
- 4 a. The Challenging Party shall initiate the dispute resolution process by
5 sending counsel for the Designating Party an email requesting a
6 telephone conference where counsel for the Parties shall confer in a
7 good faith effort to eliminate the necessity for hearing a motion
8 challenging the confidentiality designation or to eliminate as many of
9 the disputes as possible. Counsel for Designating Party shall confer
10 with counsel for Challenging Party within ten (10) days after the
11 Challenging Party has sent an email requesting such conference. In
12 addition, counsel for Challenging Party shall send a letter to counsel
13 for Designating Party which identifies each issue in dispute and states
14 briefly with respect to each such issue the Challenging Party's position.
- 15 b. If the Parties cannot resolve a challenge without court intervention,
16 they should formulate a written stipulation, a notice of motion and
17 supplemental memorandum in accordance with Central District of
18 California Local Rule 37. For purposes of Local Rule 37-2.2, the
19 moving party is the Challenging Party.
- 20 c. The burden of persuasion in any such challenge proceeding shall be on
21 the Designating Party.

22 21. Following termination of this Action, including any appeals, and within 60
23 days of a written request by the designating party, any and all documents and
24 information designated by the opposing Party as Confidential or "Confidential –
25 Attorneys' Eyes Only," and any copies or reproductions thereof, and all extracts
26 and/or data taken from such documents, shall be returned to counsel who produced
27 them or certified by the receiving counsel as destroyed.

28 22. Any Party may apply to the Court for a modification of the Protective Order,
and nothing in the Protective Order shall be construed to prevent a Party from seeking
such further provisions enhancing or limiting confidentiality as may be appropriate.

23 23. No action taken in accordance with the Protective Order shall be construed as
24 a waiver of any claim or defense in the Action or of any position as to discoverability
25 or admissibility of evidence.

1 24. This Order shall survive the termination of this litigation.

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3 **IT IS SO ORDERED.**

4 Dated: June 21, 2017

Alicia R. Rosenberg

Hon. Alicia R. Rosenberg

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1 **EXHIBIT A**

2
3 UNITED STATES DISTRICT COURT
4 CENTRAL DISTRICT OF CALIFORNIA
5 WESTERN DIVISION

6 SPENCER LEON REED, individually
7 and on behalf of others similarly
8 situated,

9 Plaintiff,

v.

10 AUTONATION, INC.; and DOES 1
11 through 10, inclusive,

12 Defendants.
13

Case No.: 2:16-cv-08916 BRO(AGR_x)

**AGREEMENT TO BE BOUND BY
STIPULATED PROTECTIVE
ORDER**

14
15 I, _____, declare and say that:

- 16 1. I reside at _____ in the city of _____,
17 county of _____, state of _____.
- 18 2. I am currently employed by _____, located at
19 _____, and my current job title is _____.
- 20 3. I have read and understand the terms of the Protective Order entered in the
21 above-captioned case, and have received a copy of the Protective Order.
- 22 4. I agree to comply with and be bound by the provisions of the Protective Order.
- 23 5. I promise that I will use any and all Confidential and “Confidential –
24 Attorneys’ Eyes Only” information, as defined in the Protective Order, only in
25 a manner authorized by the Protective Order, and only to assist counsel in the
26 litigation of this matter.
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1 6. I promise that I will not disclose or discuss such Confidential and “Confidential
2 – Attorneys’ Eyes Only” documents or information with anyone other than
3 those specifically authorized by the Protective Order.

4 7. As soon as practical, but no later than 30 days after final termination of this
5 Action, I shall return to the attorney from whom I have received them, any
6 documents in my possession designated Confidential or “Confidential –
7 Attorneys’ Eyes Only” and all documents reflecting any Confidential
8 information.

9 8. I acknowledge that, by signing this agreement, I am subjecting myself to the
10 jurisdiction of the United States District Court for the Central District of
11 California with respect to enforcement of or otherwise providing relief relating
12 to the Protective Order, even if such enforcement proceedings occur after
13 termination of this Action.

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed on _____
16 Date

Signature