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 11 ACE AMERICAN INSURANCE COMPANY

12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

14 ECOLOGY AUTO PARTS, INC.,

15 Plaintiff,

16 v.

17 ACE AMERICAN INSURANCE
 18 COMPANY; ACE USA; and DOES 1
 19 through 50, inclusive,

20 Defendants.

Case No. 2:16-cv-09406-GW-E

[Assigned for all purposes to Hon.
 George H. Wu, Courtroom: 10]

[California State Court Case No.
 BC640747
 Filed: November 14, 2016]

**[PROPOSED] PROTECTIVE
 ORDER GOVERNING
 CONFIDENTIAL INFORMATION**

Discovery Cutoff: 08/04/2017
 Motion Cutoff: 10/02/2017
 Trial Date: 11/14/2017

21 Having reviewed the Joint Stipulation for Protective Order entered into
 22 between plaintiff, Ecology Auto Parts, Inc., and defendant, ACE American
 23 Insurance Company (collectively, the "Parties") in the above-caption litigation
 24 pending before this Court (the "Litigation"), this Court issues the following
 25 Protective Order Governing Confidential Information:

26 1. This Stipulation for a Protective Order governs the use of all produced
 27 documents, responses to interrogatories and requests for admissions, deposition
 28

1 transcripts, and any other information, documents, objects or things, as well as any
2 and all copies, abstracts, digests, notes, and summaries thereof, that have been or
3 will be produced by any party or third-party (the "Producing Party") in this
4 Litigation pursuant to the Federal Rules of Civil Procedure. These materials are
5 collectively referred to hereinafter as the "Discovery Material."

6 2. Any Discovery Material produced by any party or third-party as part
7 of discovery in this Litigation may be designated by the Producing Party as
8 "CONFIDENTIAL" which the Producing Party believes in good faith constitutes,
9 contains, reflects or discloses confidential, non-public research and analysis,
10 development or commercial or personal information or Discovery Material
11 protected by the attorney-client and/or work-product privileges, or other
12 information for which a good faith claim of need of protection from disclosure can
13 be made under applicable law (the "Confidential Material").

14 3. Any Discovery Material that is produced during this Litigation
15 voluntarily, in response to a discovery request, or pursuant to a Court Order, in
16 oral, written, or other form, including, but not limited to, transcripts, exhibits,
17 answers to interrogatories, as well as any physical object, recording, electronic file,
18 or other thing, that is asserted by the Producing Party to contain or constitute
19 Confidential Material, shall be so designated by the Producing Party as follows:

20 a. Documents and Physical Items: If Confidential
21 Material is contained in a document or other physical
22 item, such documents and physical items shall be clearly
23 and prominently marked on their face with the
24 appropriate legend: "CONFIDENTIAL". When an item
25 (such as a disk) containing more than one electronic file
26 is produced, each electronic file on that disk that is
27 confidential should be branded with the legend

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1 "CONFIDENTIAL" and have "CONFIDENTIAL" in the
2 file name of each file designated as such.

3 b. Transcripts: Deposition or other pretrial testimony
4 may be designated as "Confidential" by (i) a statement on
5 the record, by counsel, at the time of such disclosure, or
6 (ii) written notice sent to all counsel of record for the
7 parties within fifteen (15) business days after receipt of
8 the transcript of the deposition or other pretrial testimony
9 unless the parties agree to an extension of this time
10 period for designation. Notwithstanding any provision of
11 this subsection, Discovery Material used or referenced
12 during a deposition or other pretrial testimony shall
13 maintain any confidentiality designation accorded such
14 material hereunder regardless of the designation of any
15 part of the transcript.

16 c. Information in Other Forms: All Confidential
17 Material not reduced to documentary, tangible, or
18 physical forms or that cannot be conveniently designated
19 shall be designated by the Producing Party by notifying
20 all parties of the appropriate designation in writing.

21 4. In the absence of written permission from the Producing Party or
22 court Order, Discovery Material designated as "CONFIDENTIAL" shall not be
23 disclosed to any person other than the following individuals, who are each deemed
24 a "Qualified Person" under this Paragraph:

25 a. counsel of record for parties to this Litigation and
26 their support staff, including paralegals and clerical
27 assistants;

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- 1 b. opposing parties and their representatives, officers,
- 2 agents, and/or employees who are directly involved in,
- 3 and whose access to such Discovery Material is
- 4 reasonably required for, the management, prosecution,
- 5 defense, or settlement of this Litigation or the supervision
- 6 of counsel of record;
- 7 c. non-party witnesses who are called to be deposed
- 8 during discovery or trial, whether willingly or under
- 9 subpoena issued by a court of competent jurisdiction over
- 10 the witness;
- 11 d. stenographic, court reporting, or clerical personnel;
- 12 e. in-house counsel for the parties to this Litigation;
- 13 f. subject to the provisions of paragraph 7 below,
- 14 experts and consultants and their staff who are employed
- 15 for the purposes of this Litigation; and
- 16 g. the Court, including necessary secretarial, clerical,
- 17 and support personnel assisting the Court;
- 18 h. regulatory authorities upon formal demand, or to
- 19 satisfy legal or regulatory requirements, provided that
- 20 written notice is given to the Party designating such
- 21 material as "Confidential Material" at least five (5) days
- 22 prior to disclosure to the regulatory authorities, or as
- 23 soon as practicable if disclosure is required by regulatory
- 24 authorities in less than five (5) days; and
- 25 i. commercial photocopying firms or ESI vendors
- 26 employed by a Party to this Litigation.

27 5. The inadvertent or unintentional disclosure by the Producing Party of
28 Confidential Material, regardless of whether the material was so designated at the

1 time of disclosure, shall not be deemed a waiver in whole or in part of the
2 Producing Party's claim of confidentiality, either as to the specific information
3 disclosed or as to any other information relating to the same or related subject
4 matter, provided that the Producing Party shall promptly upon discovery of the
5 inadvertent or unintentional disclosure notify the receiving party in writing that the
6 information is Confidential. Such notification shall constitute a designation of the
7 information and thereby subject it to the provisions of this Stipulation for a
8 Protective Order. Disclosure by the receiving party of inadvertently or
9 unintentionally disclosed Confidential Material prior to receipt of such notice shall
10 not be deemed a violation of this Stipulation for a Protective Order. However,
11 those persons to whom disclosure was made are to be advised by the receiving
12 party that the information is Confidential and must be treated in accordance with
13 this Stipulation for a Protective Order, and the receiving party must make a good
14 faith effort to retrieve and return all copies of such inadvertently disclosed
15 information which have been disseminated to unauthorized persons, including any
16 notes, summaries, compilations or other documents concerning same.

17 6. No person described under Paragraphs 5(f) may access Discovery
18 Material designated "CONFIDENTIAL" until such person agrees to be bound by
19 the terms of the Stipulation for a Protective Order by executing the undertaking in
20 Exhibit A. Before any other person described in Paragraph 5 is shown any
21 Discovery Material designated "CONFIDENTIAL", that person must be shown a
22 copy of the Court's Protective Order and instructed that he or she is bound by its
23 provisions.

24 7. The parties may also informally agree in writing that Confidential
25 Material may be disclosed to a person not otherwise qualified under this
26 Stipulation for a Protective Order to receive such information. In the event that a
27 party intends to disclose Confidential Material to a person not qualified to receive
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1 such information hereunder (for example, for use at a deposition), and the parties
2 cannot informally agree, a party may request the Court rule on such disclosure.

3 8. All Confidential Material produced in this Litigation may be used
4 only for purposes of this Litigation, including the Litigation itself, and settlement
5 and/or negotiations intended to resolve this Litigation. However, this Stipulation
6 for Protective Order only applies to the pretrial proceedings in this Litigation, and
7 will not govern the confidentiality of documents at trial.

8 9. Response to a Subpoena / Court Order: In the event that a receiving
9 party receives a subpoena or is ordered by another court or governmental entity to
10 produce the Confidential Material of another party, the receiving party shall notify
11 the Producing Party of that subpoena or order and shall promptly provide said
12 subpoena or order, if it is in writing, to the Producing Party so that the Producing
13 Party may object to the subpoena or order. If the Producing Party chooses to
14 object to the subpoena or order, it shall provide a copy of the objection to the
15 receiving party. If the receiving party receives nothing from the Producing Party
16 prior to the time for its compliance with the subpoena or order, the receiving party
17 may comply with its obligations under the subpoena or order.

18 10. In the event a party wishes to use any Confidential Material, or any
19 papers containing or making reference to the contents of such material or
20 information, in any pleading or document filed with the court in this Litigation, the
21 confidential portion of such pleading or document and Confidential Material shall
22 be filed under seal until such time as the court orders otherwise or denies
23 permission to file under seal. The restrictions, if any, that will govern the use of
24 Confidential Material at trial or hearings, will be determined at a later date by the
25 court, in consultation with the parties.

26 11. Notwithstanding any other provision of this Stipulation for a
27 Protective Order, a party producing Confidential Material may choose to withdraw
28 its designation by doing so in writing.

1 12. Nothing in this Stipulation for a Protective Order constitutes a finding
2 or admission that any of the information disclosed or contained in the designated
3 items is or is not confidential, and nothing herein shall prevent any party from
4 contending, during the progress of this Litigation, that any or all of such
5 information is not confidential. Any party may request from the Producing Party a
6 change in the designation of any item or information and/or permission to disclose
7 such item or information to persons in addition to those specified herein in
8 Paragraph 5. Such request shall be in writing, state the grounds therefore, and shall
9 be served on all counsel including counsel for the Producing Party. No party to
10 this Litigation shall be obligated to challenge the propriety of any designation, and
11 a failure to do so shall not act as a waiver of its right to make a subsequent attack
12 on the propriety of such designation, nor shall such failure to challenge constitute
13 an admission that any information is, in fact, confidential. Any designation of
14 information as Confidential Material shall govern hereunder unless and until such
15 designation is modified by the designating party, the Court, or agreement of the
16 parties.

17 13. Production by Non-Parties: If any Confidential Material is produced
18 by a non-party to this Litigation, such non-party shall be considered a Producing
19 Party within the meaning of those terms as used in the context of this Stipulation
20 for a Protective Order and shall have the right to designate information as
21 "CONFIDENTIAL."

22 14. The designation of any material in accordance with this Stipulation for
23 a Protective Order as Confidential Material is intended solely to facilitate the
24 preparation and trial of this Litigation, and treatment of such material by the parties
25 in conformity with such designation will not be construed in any way as an
26 admission or agreement by any party that the designated material constitutes or
27 contains any trade secret or Confidential Material.

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1 15. Upon final termination of this Litigation, each party and other person
2 subject to the terms of this Stipulation for a Protective Order, including individuals
3 required to execute the undertaking attached hereto as Exhibit A, shall, within sixty
4 (60) days of said termination, assemble (including from all officers, employees,
5 and in-house counsel of the party, all support staff, and all experts and consultants)
6 and return to the Producing Party all Discovery Material designated as
7 "CONFIDENTIAL," including all copies and other items of such Discovery
8 Material, or in the alternative and at the option of the Receiving Party, either
9 destroy all such confidential Discovery Material, or retain permanently all such
10 confidential Discovery Material so long as the Receiving Party continues to
11 maintain confidentiality.

12 16. If confidential Discovery Material is disclosed to any person other
13 than in the manner authorized by this Protective Order, the party responsible for
14 the disclosure must immediately bring all pertinent facts relating to such disclosure
15 to the attention of the designating party, and without prejudice to the rights and
16 remedies of the designating party, make every effort to retrieve the improperly
17 disclosed confidential Discovery Material and to prevent further unauthorized
18 disclosure on its own part or on the part of the recipient of such confidential
19 Discovery Material.

20 17. Nothing in this Stipulation for a Protective Order shall be deemed a
21 waiver of any right that any party might otherwise have under the Federal Rules of
22 Civil Procedure, the Federal Rules of Evidence or the doctrines of attorney-client
23 privilege or attorney work-product (whether governed by state or federal law).
24 This Stipulation for a Protective Order shall be without prejudice to any party to
25 oppose production of any information or items on any ground permitted by the
26 applicable law.

27 18. Any party to this Protective Order may, for good cause shown, move
28 the Court for relief from all or any part of this Protective Order or for a

1 modification of its provisions. The Protective Order, however, shall remain in
2 effect until such time as it is modified or rescinded by the Court.

3 19. This Protective Order is not intended to govern the use of confidential
4 Discovery Materials at the trial of this Litigation.

5 20. Nothing in this Stipulation for a Protective Order shall affect a party's
6 use or disclosure of its own Confidential Material in any way.

7 21. This Protective Order and the agreements embodied herein shall
8 survive the termination of this action and continue in full force and effect. To the
9 extent permitted by law, the Court shall retain jurisdiction to enforce, modify, or
10 reconsider this Protective Order, even after this action is terminated.

11 22. This Protective Order shall be without prejudice to the right of any
12 party hereto to knowingly waive the applicability of this Order to any confidential
13 Discovery Materials designated by that party.

14 23. Any modification of the Protective Order, including the incorporation
15 of any additional parties appearing in the litigation must be made in writing.

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17 IT IS SO ORDERED.

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19 Date: 5/10/17



Magistrate Judge Charles F. Eick

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EXHIBIT A

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UNDERTAKING OF _____

STATE OF _____)

) SS:

COUNTY OF _____)

I, _____, being first duly sworn on oath, depose and say:

1. I have read and understand the contents of the Protective Order dated _____, filed in the above captioned litigation, and attached hereto.

2. I am properly classified as a "Qualified Person" identified in Paragraph 5 of the Protective Order, and I agree to comply with the conditions provided in the Protective Order prior to any disclosure to me of documents, things and/or any other information designated as containing, in whole or in part, "Confidential Material."

3. I expressly agree that all documents, things and information which are disclosed to me pursuant to the Protective Order shall be maintained in strict confidence, and I shall not disclose or use the original or any copy of, or the subject matter of any of the documents, things or the information they contain, except in accordance with the terms of the Protective Order.

4. I shall not use or refer to any of the documents, things and/or any information that falls within the terms of the Protective Order other than in connection with this litigation and as prescribed in the Protective Order.

5. Further, I shall, upon notification that this litigation has terminated, return any and all originals and/or copies of the documents and things to counsel for the party who provided such documents, and I shall destroy any notes or memoranda I have which in any way concern the substance embraced by such documents, things and/or information.

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6. I do and shall subject myself to the continuing jurisdiction of the above-captioned Court over my person, wherever I shall be found, for purposes of enforcement of the Protective Order.

Date: _____

[Signature]

[Printed Name]