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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

WEI WENG, an individual,
Plaintiff,

v.

MARINEMAX, INC., a Florida
corporation; AZIMUT-BENETTI
S.p.A., a foreign corporation;
CUMMINS, INC., an Indiana
corporation; and DOES 1 through 10,
inclusive,
Defendants.

Case No. 2:17-cv-02827-FMO (AGR_x)
Hon. Fernando M. Olguin

STIPULATED PROTECTIVE ORDER

AZIMUT-BENETTI S.p.A.,
Cross-Complainant,
v.
CUMMINS, INC.,
Cross-Defendant.

Complaint Filed: March 7, 2017
Removed to USDC: April 13, 2017

1 **A. PURPOSES AND LIMITATIONS**

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

15 **B. GOOD CAUSE STATEMENT**

16 This action is likely to involve trade secrets, proprietary design drawings,
17 detailed manufacturing records and quality control measures, commercial, financial,
18 technical and/or proprietary information for which special protection from public
19 disclosure and from use for any purpose other than prosecution of this action is
20 warranted. Such confidential and proprietary materials and information consist of,
21 among other things, confidential research, development, or commercial information
22 (including information implicating privacy rights of third parties), information
23 otherwise generally unavailable to the public, or which may be privileged or
24 otherwise protected from disclosure under state or federal statutes, court rules, case
25 decisions, or common law. Accordingly, to expedite the flow of information, to
26 facilitate the prompt resolution of disputes over confidentiality of discovery
27 materials, to adequately protect information the parties are entitled to keep
28 confidential, to ensure that the parties are permitted reasonable necessary uses of

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

8 **2. DEFINITIONS**

9 2.1 Action: *Wei Weng v. MarineMax, Inc., et al.*, Case No. 2:17-cv-02827-
10 FMO (AGRx).

11 2.2 Challenging Party: a Party or Non-Party that challenges the
12 designation of information or items under this Order.

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
14 how it is generated, stored or maintained) or tangible things that qualify for
15 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
16 the Good Cause Statement.

17 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
18 their support staff).

19 2.5 Designating Party: a Party or Non-Party that designates information or
20 items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL.”

22 2.6 Disclosure or Discovery Material: all items or information, regardless
23 of the medium or manner in which it is generated, stored, or maintained (including,
24 among other things, testimony, transcripts, and tangible things), that are produced
25 or generated in disclosures or responses to discovery in this matter.

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1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a
10 party to this Action but are retained to represent or advise a party to this Action and
11 have appeared in this Action on behalf of that party or are affiliated with a law firm
12 that has appeared on behalf of that party, including support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
21 and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as "CONFIDENTIAL."

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

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1 **3. SCOPE**

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

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

9 **4. DURATION**

10 Once a case proceeds to trial, all of the court-filed information to be
11 introduced that was previously designated as confidential or maintained pursuant to
12 this protective order becomes public and will be presumptively available to all
13 members of the public, including the press, unless compelling reasons supported by
14 specific factual findings to proceed otherwise are made to the trial judge in advance
15 of the trial. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-
16 81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents
17 produced in discovery from “compelling reasons” standard when merits-related
18 documents are part of court record). Accordingly, the terms of this protective order
19 do not extend beyond the commencement of the trial.

20 **5. DESIGNATING PROTECTED MATERIAL**

21 5.1 Exercise of Restraint and Care in Designating Material for Protection.

22 Each Party or Non-Party that designates information or items for protection under
23 this Order must take care to limit any such designation to specific material that
24 qualifies under the appropriate standards. The Designating Party must designate for
25 protection only those parts of material, documents, items, or oral or written
26 communications that qualify so that other portions of the material, documents,
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1 items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this Order.

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

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

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
14 under this Order must be clearly so designated before the material is disclosed or
15 produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or trial
19 proceedings), that the Producing Party affix, at a minimum, the legend
20 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
21 contains protected material. If only a portion or portions of the material on a page
22 qualifies for protection, the Producing Party also must clearly identify the protected
23 portion(s) (e.g., by making appropriate markings in the margins).

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

9 (b) for testimony given in depositions that the Designating Party identify
10 the Disclosure or Discovery Material on the record, before the close of the
11 deposition.

12 (c) for information produced in some form other than documentary and
13 for any other tangible items, that the Producing Party affix in a prominent place on
14 the exterior of the container or containers in which the information is stored the
15 legend "CONFIDENTIAL." If only a portion or portions of the information
16 warrants protection, the Producing Party, to the extent practicable, shall identify the
17 protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive
20 the Designating Party's right to secure protection under this Order for such
21 material. Upon timely correction of a designation, the Receiving Party must make
22 reasonable efforts to assure that the material is treated in accordance with the
23 provisions of this Order.

24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37-1, et seq. Any discovery motion must
3 strictly comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

4 6.3 Burden. The burden of persuasion in any such challenge proceeding
5 shall be on the Designating Party. Frivolous challenges, and those made for an
6 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
7 other parties) may expose the Challenging Party to sanctions. Unless the
8 Designating Party has waived or withdrawn the confidentiality designation, all
9 parties shall continue to afford the material in question the level of protection to
10 which it is entitled under the Producing Party’s designation until the Court rules on
11 the challenge.

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

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

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

23 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
24 otherwise ordered by the Court or permitted in writing by the Designating Party, a
25 Receiving Party may disclose any information or item designated
26 “CONFIDENTIAL” only to:
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1 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
2 well as employees of said Outside Counsel of Record to whom it is reasonably
3 necessary to disclose the information for this Action;

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

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

9 (d) the Court and its personnel;

10 (e) court reporters and their staff;

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

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

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

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

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1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

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

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

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

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

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

22 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
23 **PRODUCED IN THIS LITIGATION**

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

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

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

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

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

14 (c) If the Non-Party fails to seek a protective order from this Court within
15 14 days of receiving the notice and accompanying information, the Receiving Party
16 may produce the Non-Party's confidential information responsive to the discovery
17 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
18 not produce any information in its possession or control that is subject to the
19 confidentiality agreement with the Non-Party before a determination by the Court.
20 Absent a court order to the contrary, the Non-Party shall bear the burden and
21 expense of seeking protection in this Court of its Protected Material.

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

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

4 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
5 **PROTECTED MATERIAL**

6 When a Producing Party gives notice to Receiving Parties that certain
7 inadvertently produced material is subject to a claim of privilege or other
8 protection, the obligations of the Receiving Parties are those set forth in Federal
9 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
10 whatever procedure may be established in an e-discovery order that provides for
11 production without prior privilege review. Pursuant to Federal Rule of Evidence
12 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
13 of a communication or information covered by the attorney-client privilege or work
14 product protection, the parties may incorporate their agreement in the stipulated
15 protective order submitted to the court.

16 **12. MISCELLANEOUS**

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
18 person to seek its modification by the Court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this
20 Protective Order, no Party waives any right it otherwise would have to object to
21 disclosing or producing any information or item on any ground not addressed in
22 this Stipulated Protective Order. Similarly, no Party waives any right to object on
23 any ground to use in evidence of any of the material covered by this Protective
24 Order.

25 12.3 Filing Protected Material. A Party that seeks to file under seal any
26 Protected Material must comply with Civil Local Rule 79-5. Protected Material
27 may only be filed under seal pursuant to a court order authorizing the sealing of the
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1 specific Protected Material at issue; good cause must be shown in the request to file
2 under seal. If a Party's request to file Protected Material under seal is denied by the
3 Court, then the Receiving Party may file the information in the public record unless
4 otherwise instructed by the Court.

5 13. **FINAL DISPOSITION**

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

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

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

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3 DATED: November 14, 2017

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5 /s/ Michael J. Shilub

6 MICHAEL J. SHILUB

7 Attorneys for Plaintiff WEI WENG

8

9 DATED: November 14, 2017

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11 /s/ Vacharaesorn Vivacharawongse

12 VACHARAESORN VIVACHARAWONGSE

13 GUY R. GRUPPIE

14 KELSEY L. MAXWELL

15 Attorneys for Defendants AZIMUT-BENETTI S.p.A.
16 and MARINEMAX, INC.

17

18 DATED: November 14, 2017

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20 /s/ Amanda Semaan

21 TARIFA B. LADDON

22 AMANDA SEMAAN

23 Attorneys for Defendant CUMMINS INC.

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25 **ATTESTATION**

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27 I attest that all other signatories listed, and on whose behalf the filing is
28 submitted, concur in the filing's content and have authorized the filing.

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30 DATED: November 14, 2017

/s/ Amanda Semaan

Amanda Semaan

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IT IS SO ORDERED.

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DATED: 11/20/2017

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Alicia G. Rosenberg

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UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Central District of
California on [date] in the case of *Wei Weng v. MarineMax, Inc., et al.*, Case No.
2:17-cv-02827-FMO (AGRx). 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: _____