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NOTE: CHANGES MADE BY THE COURT

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14 *vice, Inc. and Barry Rudin*

15 **UNITED STATES DISTRICT COURT**

16 **CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION**

17 A. ARTHUR FISHER,

18 Plaintiff,

19 vs.

No. 2:17-cv-06438-MWF-JPR

20 BARRY'S TICKET SERVICE, INC.
and BARRY RUDIN,

STIPULATED PROTECTIVE ORDER

21 Defendant.

22
23 **1. PURPOSE AND LIMITS OF THIS ORDER**

24 Discovery in this action is likely to involve confidential, proprietary, or private
25 information requiring special protection from public disclosure and from use for any
26 purpose other than this litigation. Thus, the Court enters this Protective Order. This
27 Order does not confer blanket protections on all disclosures or responses to discov-
28 ery, and the protection it gives from public disclosure and use extends only to the

1 specific material entitled to confidential treatment under the applicable legal princi-
2 ples. This Order does not automatically authorize the filing under seal of material
3 designated under this Order. Instead, the parties must comply with L.R. 79-5.1 if they
4 seek to file anything under seal. This Order does not govern the use at trial of materi-
5 al designated under this Order.

6 **2. DESIGNATING PROTECTED MATERIAL**

7 **2.1 Over-Designation Prohibited.** Any party or non-party who designates
8 information or items for protection under this Order as “CONFIDENTIAL,” “HIGH-
9 LY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDEN-
10 TIAL – SOURCE CODE” (a “designator”) must only designate specific material that
11 qualifies under the appropriate standards. To the extent practicable, only those parts
12 of documents, items, or oral or written communications that require protection shall
13 be designated. Designations with a higher confidentiality level when a lower level
14 would suffice are prohibited. Mass, indiscriminate, or routinized designations are
15 prohibited. Unjustified designations expose the designator to sanctions, including the
16 Court’s striking all confidentiality designations made by that designator. Designation
17 under this Order is allowed only if the designation is necessary to protect material
18 that, if disclosed to persons not authorized to view it, would cause competitive or oth-
19 er recognized harm. Material may not be designated if it has been made public, or if
20 designation is otherwise unnecessary to protect a secrecy interest. If a designator
21 learns that information or items that it designated for protection do not qualify for
22 protection at all or do not qualify for the level of protection initially asserted, that des-
23 ignator must promptly notify all parties that it is withdrawing the mistaken designa-
24 tion.

25 **2.2 Manner and Timing of Designations.** Designation under this Order re-
26 quires the designator to affix the applicable legend (“CONFIDENTIAL,” “HIGHLY
27 CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL –
28 SOURCE CODE”) to each page that contains protected material. For testimony given

1 in deposition or other proceeding, the designator shall specify all protected testimony
2 and the level of protection being asserted. It may make that designation during the
3 deposition or proceeding, or may invoke, on the record or by written notice to all par-
4 ties on or before the next business day, a right to have up to 21 days from the deposi-
5 tion or proceeding to make its designation.

6 2.2.1 A party or non-party that makes original documents or materials
7 available for inspection need not designate them for protection until after the
8 inspecting party has identified which material it would like copied and pro-
9 duced. During the inspection and before the designation, all material shall be
10 treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the
11 inspecting party has identified the documents it wants copied and produced, the
12 producing party must designate the documents, or portions thereof, that qualify
13 for protection under this Order.

14 2.2.2 Parties shall give advance notice if they expect a deposition or
15 other proceeding to include designated material so that the other parties can en-
16 sure that only authorized individuals are present at those proceedings when
17 such material is disclosed or used. The use of a document as an exhibit at a
18 deposition shall not in any way affect its designation. Transcripts containing
19 designated material shall have a legend on the title page noting the presence of
20 designated material, and the title page shall be followed by a list of all pages
21 (including line numbers as appropriate) that have been designated, and the lev-
22 el of protection being asserted. The designator shall inform the court reporter
23 of these requirements. Any transcript that is prepared before the expiration of
24 the 21-day period for designation shall be treated during that period as if it had
25 been designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY un-
26 less otherwise agreed. After the expiration of the 21-day period, the transcript
27 shall be treated only as actually designated.

1 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to designate
2 does not, standing alone, waive protection under this Order. Upon timely assertion or
3 correction of a designation, all recipients must make reasonable efforts to ensure that
4 the material is treated according to this Order.

5 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6 All challenges to confidentiality designations shall proceed under L.R. 37-1
7 through L.R. 37-4.

8 **4. ACCESS TO DESIGNATED MATERIAL**

9 **4.1 Basic Principles.** A receiving party may use designated material only
10 for this litigation. Designated material may be disclosed only to the categories of per-
11 sons and under the conditions described in this Order.

12 **4.2 Disclosure of CONFIDENTIAL Material Without Further Approv-**
13 **al.** Unless otherwise ordered by the Court or permitted in writing by the designator, a
14 receiving party may disclose any material designated CONFIDENTIAL only to:

15 **4.2.1** The receiving party's outside counsel of record in this action and
16 employees of outside counsel of record to whom disclosure is reasonably nec-
17 essary;

18 **4.2.2** The officers, directors, and employees of the receiving party to
19 whom disclosure is reasonably necessary, and who have signed the Agreement
20 to Be Bound (Exhibit A);

21 **4.2.3** Experts retained by the receiving party's outside counsel of record
22 to whom disclosure is reasonably necessary, and who have signed the Agree-
23 ment to Be Bound (Exhibit A);

24 **4.2.4** The Court and its personnel;

25 **4.2.5** Outside court reporters and their staff, professional jury or trial
26 consultants, and professional vendors to whom disclosure is reasonably neces-
27 sary, and who have signed the Agreement to Be Bound (Exhibit A);
28

1 **4.2.6** During their depositions, witnesses in the action to whom disclo-
2 sure is reasonably necessary and who have signed the Agreement to Be Bound
3 (Exhibit A); and

4 **4.2.7** The author or recipient of a document containing the material, or a
5 custodian or other person who otherwise possessed or knew the information.

6 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
7 **ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without**
8 **Further Approval.** Unless permitted in writing by the designator, a receiving party
9 may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES
10 ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE without further approval
11 only to:

12 **4.3.1** The receiving party’s outside counsel of record in this action and
13 employees of outside counsel of record to whom it is reasonably necessary to
14 disclose the information;

15 **4.3.2** The Court and its personnel;

16 **4.3.3** Outside court reporters and their staff, professional jury or trial
17 consultants, and professional vendors to whom disclosure is reasonably neces-
18 sary, and who have signed the Agreement to Be Bound (Exhibit A); and

19 **4.3.4** The author or recipient of a document containing the material, or a
20 custodian or other person who otherwise possessed or knew the information.

21 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
22 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL**
23 **– SOURCE CODE Material to In-House Counsel or Experts.** Unless agreed to in
24 writing by the designator:

25 **4.4.1** A party seeking to disclose to in-house counsel any material des-
26 ignated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first
27 make a written request to the designator providing the full name of the in-
28 house counsel, the city and state of such counsel’s residence, and such coun-

1 sel's current and reasonably foreseeable future primary job duties and respon-
2 sibilities in sufficient detail to determine present or potential involvement in
3 any competitive decision-making. In-house counsel are not authorized to re-
4 ceive material designated HIGHLY CONFIDENTIAL – SOURCE CODE.

5 **4.4.2** A party seeking to disclose to an expert retained by outside coun-
6 sel of record any information or item that has been designated HIGHLY CON-
7 FIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
8 SOURCE CODE must first make a written request to the designator that (1)
9 identifies the general categories of HIGHLY CONFIDENTIAL – ATTORNEY
10 EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE information
11 that the receiving party seeks permission to disclose to the expert, (2) sets forth
12 the full name of the expert and the city and state of his or her primary resi-
13 dence, (3) attaches a copy of the expert's current resume, (4) identifies the ex-
14 pert's current employer(s), (5) identifies each person or entity from whom the
15 expert has received compensation or funding for work in his or her areas of ex-
16 pertise (including in connection with litigation) in the past five years, and (6)
17 identifies (by name and number of the case, filing date, and location of court)
18 any litigation where the expert has offered expert testimony, including by dec-
19 laration, report, or testimony at deposition or trial, in the past five years. If the
20 expert believes any of this information at (4) - (6) is subject to a confidentiality
21 obligation to a third party, then the expert should provide whatever information
22 the expert believes can be disclosed without violating any confidentiality
23 agreements, and the party seeking to disclose the information to the expert
24 shall be available to meet and confer with the designator regarding any such
25 confidentiality obligations.

26 **4.4.3** A party that makes a request and provides the information speci-
27 fied in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the
28 identified in-house counsel or expert unless, within seven days of delivering

1 the request, the party receives a written objection from the designator providing
2 detailed grounds for the objection.

3 **4.4.4** All challenges to objections from the designator shall proceed un-
4 der L.R. 37-1 through L.R. 37-4.

5 **5. SOURCE CODE**

6 **5.1 Designation of Source Code.** If production of source code is necessary,
7 a party may designate it as HIGHLY CONFIDENTIAL – SOURCE CODE if it is, or
8 includes, confidential, proprietary, or trade secret source code.

9 **5.2 Location and Supervision of Inspection.** Any HIGHLY CONFIDEN-
10 TIAL – SOURCE CODE produced in discovery shall be made available for inspec-
11 tion, in a format allowing it to be reasonably reviewed and searched, during normal
12 business hours or at other mutually agreeable times, at an office of the designating
13 party’s counsel or another mutually agreeable location. The source code shall be
14 made available for inspection on a secured computer in a secured room, and the in-
15 specting party shall not copy, remove, or otherwise transfer any portion of the source
16 code onto any recordable media or recordable device. The designator may visually
17 monitor the activities of the inspecting party’s representatives during any source code
18 review, but only to ensure that there is no unauthorized recording, copying, or trans-
19 mission of the source code.

20 **5.3 Paper Copies of Source Code Excerpts.** The inspecting party may re-
21 quest paper copies of limited portions of source code that are reasonably necessary
22 for the preparation of court filings, pleadings, expert reports, other papers, or for dep-
23 osition or trial. The designator shall provide all such source code in paper form, in-
24 cluding Bates numbers and the label “HIGHLY CONFIDENTIAL – SOURCE
25 CODE.”

26 **5.4 Access Record.** The inspecting party shall maintain a record of any in-
27 dividual who has inspected any portion of the source code in electronic or paper
28 form, and shall maintain all paper copies of any printed portions of the source code in

1 a secured, locked area. The inspecting party shall not convert any of the information
2 contained in the paper copies into any electronic format other than for the preparation
3 of a pleading, exhibit, expert report, discovery document, deposition transcript, or
4 other Court document. Any paper copies used during a deposition shall be retrieved at
5 the end of each day and must not be left with a court reporter or any other unauthor-
6 ized individual.

7 **6. PROSECUTION BAR**

8 Absent written consent from the designator, any individual who receives access
9 to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE information shall not be involved in the prosecution of
10 patents or patent applications concerning the field of the invention of the patents-in-
11 suit for the receiving party or its acquirer, successor, predecessor, or other affiliate
12 during the pendency of this action and for one year after its conclusion, including any
13 appeals. “Prosecution” means drafting, amending, advising on the content of, or oth-
14 erwise affecting the scope or content of patent claims or specifications. These prohi-
15 bitions shall not preclude counsel from participating in reexamination or *inter partes*
16 review proceedings to challenge or defend the validity of any patent, but counsel may
17 not participate in the drafting of amended claims in any such proceedings.

19 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRO-** 20 **DUCED IN OTHER LITIGATION**

21 **7.1 Subpoenas and Court Orders.** This Order in no way excuses non-
22 compliance with a lawful subpoena or court order. The purpose of the duties de-
23 scribed in this section is to alert the interested parties to the existence of this Order
24 and to give the designator an opportunity to protect its confidentiality interests in the
25 court where the subpoena or order issued.

26 **7.2 Notification Requirement.** If a party is served with a subpoena or a
27 court order issued in other litigation that compels disclosure of any information or
28 items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL –

1 ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE, that
2 party must:

3 **7.2.1** Promptly notify the designator in writing. Such notification shall
4 include a copy of the subpoena or court order unless prohibited by law;

5 **7.2.2** Promptly notify in writing the party who caused the subpoena or
6 order to issue in the other litigation that some or all of the material covered by
7 the subpoena or order is subject to this Order. Such notification shall include a
8 copy of this Order; and

9 **7.2.3** Cooperate with all reasonable procedures sought by the designator
10 whose material may be affected.

11 **7.3 Wait For Resolution of Protective Order.** If the designator timely
12 seeks a protective order, the party served with the subpoena or court order shall not
13 produce any information designated in this action as CONFIDENTIAL, HIGHLY
14 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
15 SOURCE CODE before a determination by the court where the subpoena or order is
16 sued, unless the party has obtained the designator’s permission or a court so orders.
17 The designator shall bear the burden and expense of seeking protection of its confi-
18 dential material in that court.

19
20 **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

21 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
22 designated material to any person or in any circumstance not authorized under this
23 Order, it must immediately (1) notify in writing the designator of the unauthorized
24 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the designated
25 material, (3) inform the person or persons to whom unauthorized disclosures were
26 made of all the terms of this Order, and (4) use reasonable efforts to have such person
27 or persons execute the Agreement to Be Bound (Exhibit A).

1 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a producing party gives notice that certain inadvertently produced mate-
4 rial is subject to a claim of privilege or other protection, the obligations of the receiv-
5 ing parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-
7 discovery order that provides for production without prior privilege review pursuant
8 to Federal Rule of Evidence 502(d) and (e).

9
10 **10. FILING UNDER SEAL**

11 Without written permission from the designator or a Court order, a party may
12 not file in the public record in this action any designated material. A party seeking to
13 file under seal any designated material must comply with L.R. 79-5.1. Filings may be
14 made under seal only pursuant to a court order authorizing the sealing of the specific
15 material at issue. The fact that a document has been designated under this Order is
16 insufficient to justify filing under seal. Instead, parties must explain the basis for con-
17 fidentiality of each document sought to be filed under seal. Because a party other
18 than the designator will often be seeking to file designated material, cooperation be-
19 tween the parties in preparing, and in reducing the number and extent of, requests for
20 under seal filing is essential. If a receiving party's request to file designated material
21 under seal pursuant to L.R. 79-5.1 is denied by the Court, then the receiving party ma-
22 y file the material in the public record unless (1) the designator seeks reconsidera-
23 tion within four days of the denial, or (2) as otherwise instructed by the Court.

24
25 **11. FINAL DISPOSITION**

26 Within 60 days after the final disposition of this action, each party shall return
27 all designated material to the designator or destroy such material, including all copies,
28 abstracts, compilations, summaries, and any other format reproducing or capturing

1 any designated material. The receiving party must submit a written certification to the
2 designator by the 60- day deadline that (1) identifies (by category, where appropriate)
3 all the designated material that was returned or destroyed, and (2) affirms that the re-
4 ceiving party has not retained any copies, abstracts, compilations, summaries, or any
5 other format reproducing or capturing any of the designated material. This provision
6 shall not prevent counsel from retaining an archival copy of all pleadings, motion pa-
7 pers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
8 deposition and trial exhibits, expert reports, attorney work product, and consultant and
9 expert work product, even if such materials contain designated material. Any such
10 archival copies remain subject to this Order.

11 Dated: November 27, 2017

Respectfully Submitted,

13 /s/ Marina Lang
14 Marina Lang, Cal Bar No. 251,087
mlang@socalip.com
15 Michael D. Harris, Cal. Bar No. 59,470
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16 **SoCAL IP LAW GROUP LLP**

/s/ C. Dennis Loomis
C. DENNIS LOOMIS, Bar No. 82359
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BAKER & HOSTETLER LLP
*Attorney for Defendants, Barry's Ticket
Service, Inc. and Barry Rudin*

17 *Attorneys for Plaintiff A. Arthur Fisher*

18 **ATTESTATION**

19 Pursuant to Local Rule 5-4.3.4, Marina Lang hereby attests that the following
20 signatory concurs in the filing's content and has authorized the filing.

21 Dated: November 27, 2017 /s/ C. Dennis Loomis

22
23
24 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

25 Dated: November 30, 2017



Honorable Jean P. Rosenbluth
United States Magistrate Judge

1 EXHIBIT A

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

5
6 A. ARTHUR FISHER,
Plaintiff,

7 vs.

No. 2:17-cv-06438-MWF-JPR

8 BARRY'S TICKET SERVICE, INC.
9 and BARRY RUDIN,

10 Defendant.

AGREEMENT TO BE BOUND

11 I, [print or type full name], of

12 [print or type full address], declare under penalty of per-

13 jury that I have read in its entirety and understand the Protective Order that was issued
14 by the United States District Court for the Central District of California on

15 [date] in the case of [insert formal name of the case and the number
16 and initials assigned to it by the court]. I agree to comply with and to be bound by

17 all the terms of this Protective Order, and I understand and acknowledge that failure
18 to so comply could expose me to sanctions and punishment for contempt. I solemnly
19 promise that I will not disclose in any manner any information or item that is subject
20 to this Protective Order to any person or entity except in strict compliance with this
21 Order.

22 I further agree to submit to the jurisdiction of the United States District Court
23 for the Central District of California for the purpose of enforcing this Order, even if
24 such enforcement proceedings occur after termination of this action.

25 I hereby appoint _ [print or type full name] of

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[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 Order.

Date:

City and State where sworn and signed:

Printed name:

[printed name]

Signature:

[signature]