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8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

11 MIN H. KIM, an individual;
 12 Plaintiff,
 13 vs.
 14 JAGUAR LAND ROVER NORTH
 AMERICA, LLC, a Delaware
 15 Limited Liability Company; LAND
 ROVER SOUTH BAY, a business
 16 entity form unknown; and DOES 1
 through 20, inclusive,
 17 Defendants.
 18

CASE NO.: 2:18-cv-2640-FMO (RAOx)

Assigned to Hon. Fernando M. Olguin

Magistrate Judge for discovery-related motions: *Hon. Rozella A. Oliver*

STIPULATED PROTECTIVE ORDER¹

20
21 1. A. PURPOSES AND LIMITATIONS

22 Discovery in this action is likely to involve production of confidential,
 23 proprietary or private information for which special protection from public
 24 disclosure and from use for any purpose other than prosecuting this litigation may
 25 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
 26 enter the following Stipulated Protective Order. The parties acknowledge that this

27
 28 ¹ This Stipulated Protective Order is substantially based on the model protective order provided
 under Magistrate Judge Rozella A. Oliver’s Procedures.

1 Order does not confer blanket protections on all disclosures or responses to
2 discovery and that the protection it affords from public disclosure and use extends
3 only to the limited information or items that are entitled to confidential treatment
4 under the applicable legal principles.

5 B. GOOD CAUSE STATEMENT

6 This action is likely to involve trade secrets, customer and pricing lists and
7 other valuable research, development, commercial, financial, technical and/or
8 proprietary information for which special protection from public disclosure and
9 from use for any purpose other than prosecution of this action is warranted. Such
10 confidential and proprietary materials and information consist of, among other
11 things, confidential business or financial information, information regarding
12 confidential business practices, or other confidential research, development, or
13 commercial information (including information implicating privacy rights of third
14 parties), information otherwise generally unavailable to the public, or which may
15 be privileged or otherwise protected from disclosure under state or federal statutes,
16 court rules, case decisions, or common law. Accordingly, to expedite the flow of
17 information, to facilitate the prompt resolution of disputes over confidentiality of
18 discovery materials, to adequately protect information the parties are entitled to
19 keep confidential, to ensure that the parties are permitted reasonable necessary
20 uses of such material in preparation for and in the conduct of trial, to address their
21 handling at the end of the litigation, and serve the ends of justice, a protective
22 order for such information is justified in this matter. It is the intent of the parties
23 that information will not be designated as confidential for tactical reasons and that
24 nothing be so designated without a good faith belief that it has been maintained in
25 a confidential, non-public manner, and there is good cause why it should not be
26 part of the public record of this case.

1 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
2 SEAL

3 The parties further acknowledge, as set forth in Section 12.3, below, that
4 this Stipulated Protective Order does not entitle them to file confidential
5 information under seal; Local Civil Rule 79-5 sets forth the procedures that must
6 be followed and the standards that will be applied when a party seeks permission
7 from the court to file material under seal.

8 There is a strong presumption that the public has a right of access to judicial
9 proceedings and records in civil cases. In connection with non-dispositive
10 motions, good cause must be shown to support a filing under seal. See *Kamakana*
11 *v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v.*
12 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v.*
13 *Sony Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
14 protective orders require good cause showing), and a specific showing of good
15 cause or compelling reasons with proper evidentiary support and legal
16 justification, must be made with respect to Protected Material that a party seeks to
17 file under seal. The parties' mere designation of Disclosure or Discovery Material
18 as CONFIDENTIAL does not— without the submission of competent evidence by
19 declaration, establishing that the material sought to be filed under seal qualifies as
20 confidential, privileged, or otherwise protectable—constitute good cause.

21 Further, if a party requests sealing related to a dispositive motion or trial,
22 then compelling reasons, not only good cause, for the sealing must be shown, and
23 the relief sought shall be narrowly tailored to serve the specific interest to be
24 protected. See *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir.
25 2010). For each item or type of information, document, or thing sought to be filed
26 or introduced under seal in connection with a dispositive motion or trial, the party
27 seeking protection must articulate compelling reasons, supported by specific facts
28 and legal justification, for the requested sealing order. Again, competent evidence

1 supporting the application to file documents under seal must be provided by
2 declaration.

3 Any document that is not confidential, privileged, or otherwise protectable
4 in its entirety will not be filed under seal if the confidential portions can be
5 redacted. If documents can be redacted, then a redacted version for public
6 viewing, omitting only the confidential, privileged, or otherwise protectable
7 portions of the document, shall be filed. Any application that seeks to file
8 documents under seal in their entirety should include an explanation of why
9 redaction is not feasible.

10 2. DEFINITIONS

11 2.1 Action: this pending federal lawsuit.

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

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

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

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

23 2.6 Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained
25 (including, among other things, testimony, transcripts, and tangible things), that
26 are produced or generated in disclosures or responses to discovery in this matter.
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28

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
3 as an expert witness or as a consultant in this Action.

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

7 2.9 Non-Party: any natural person, partnership, corporation, association
8 or 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
11 and have appeared in this Action on behalf of that party or are affiliated with a law
12 firm that has appeared on behalf of that party, and includes 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
15 their 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
20 or demonstrations, and organizing, storing, or retrieving data in any form or
21 medium) 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.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

1 | extracted from Protected Material; (2) all copies, excerpts, summaries, or
2 | compilations of Protected Material; and (3) any testimony, conversations, or
3 | presentations by Parties or their Counsel that might reveal Protected Material.

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

6 | 4. DURATION

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

17 | 5. DESIGNATING PROTECTED MATERIAL

18 | 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

26 | Mass, indiscriminate or routinized designations are prohibited. Designations
27 | that are shown to be clearly unjustified or that have been made for an improper
28 | purpose (e.g., to unnecessarily encumber the case development process or to

1 impose unnecessary expenses and burdens on other parties) may expose the
2 Designating Party to sanctions.

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

7 5.2 Manner and Timing of Designations. Except as otherwise provided in
8 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for
10 protection under this Order must be clearly so designated before the material is
11 disclosed or produced.

12 Designation in conformity with this Order requires:

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

20 A Party or Non-Party that makes original documents available for
21 inspection need not designate them for protection until after the inspecting Party
22 has indicated which documents it would like copied and produced. During the
23 inspection and before the designation, all of the material made available for
24 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
25 identified the documents it wants copied and produced, the Producing Party must
26 determine which documents, or portions thereof, qualify for protection under this
27 Order. Then, before producing the specified documents, the Producing Party must
28 affix the "CONFIDENTIAL legend" to each page that contains Protected Material.

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

4 (b) for testimony given in depositions that the Designating Party
5 identifies the Disclosure or Discovery Material on the record, before the close of
6 the deposition all protected testimony.

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

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
14 failure to designate qualified information or items does not, standing alone, waive
15 the Designating Party's right to secure protection under this Order for such
16 material. Upon timely correction of a designation, the Receiving Party must make
17 reasonable efforts to assure that the material is treated in accordance with the
18 provisions of this Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
21 designation of confidentiality at any time that is consistent with the Court's
22 Scheduling Order.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
24 resolution process under Local Rule 37.1 et seq.

25 6.3 The burden of persuasion in any such challenge proceeding shall be
26 on the Designating Party. Frivolous challenges, and those made for an improper
27 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
28 parties) may expose the Challenging Party to sanctions. Unless the Designating

1 Party has waived or withdrawn the confidentiality designation, all parties shall
2 continue to afford the material in question the level of protection to which it is
3 entitled under the Producing Party's designation until the Court rules on the
4 challenge.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that
7 is disclosed or produced by another Party or by a Non-Party in connection with
8 this Action only for prosecuting, defending or attempting to settle this Action.
9 Such Protected Material may be disclosed only to the categories of persons and
10 under the conditions described in this Order. When the Action has been
11 terminated, a Receiving Party must comply with the provisions of section 13
12 below (FINAL DISPOSITION).

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

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party, a
18 Receiving Party may disclose any information or item designated
19 "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this
21 Action, as well as employees of said Outside Counsel of Record to whom it is
22 reasonably necessary to disclose the information for this Action;

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

26 (c) Experts (as defined in this Order) of the Receiving Party to
27 whom disclosure is reasonably necessary for this Action and who have signed the
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

1 (d) the court and its personnel;

2 (e) court reporters and their staff;

3 (f) professional jury or trial consultants, mock jurors, and
4 Professional Vendors to whom disclosure is reasonably necessary for this Action
5 and who have signed the "Acknowledgment and Agreement to Be Bound"
6 (Exhibit A);

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

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

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

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
23 IN OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation
25 that compels disclosure of any information or items designated in this Action as
26 "CONFIDENTIAL," that Party must:

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

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

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

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

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
16 PRODUCED IN THIS LITIGATION

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

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

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

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

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

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

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

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

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of
15 any person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order, no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in
19 this Stipulated Protective Order. Similarly, no Party waives any right to object on
20 any ground to use in evidence of any of the material covered by this Protective
21 Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Local Civil Rule 79-5. Protected Material
24 may only be filed under seal pursuant to a court order authorizing the sealing of
25 the specific Protected Material at issue. If a Party's request to file Protected
26 Material under seal is denied by the court, then the Receiving Party may file the
27 information in the public record unless otherwise instructed by the court.
28

1 | 13. FINAL DISPOSITION

2 | After the final disposition of this Action, as defined in paragraph 4, within
3 | 60 days of a written request by the Designating Party, each Receiving Party must
4 | return all Protected Material to the Producing Party or destroy such material. As
5 | used in this subdivision, “all Protected Material” includes all copies, abstracts,
6 | compilations, summaries, and any other format reproducing or capturing any of
7 | the Protected Material. Whether the Protected Material is returned or destroyed,
8 | the Receiving Party must submit a written certification to the Producing Party
9 | (and, if not the same person or entity, to the Designating Party) by the 60 day
10 | deadline that (1) identifies (by category, where appropriate) all the Protected
11 | Material that was returned or destroyed and (2) affirms that the Receiving Party
12 | has not retained any copies, abstracts, compilations, summaries or any other
13 | format reproducing or capturing any of the Protected Material. Notwithstanding
14 | this provision, Counsel are entitled to retain an archival copy of all pleadings,
15 | motion papers, trial, deposition, and hearing transcripts, legal memoranda,
16 | correspondence, deposition and trial exhibits, expert reports, attorney work
17 | product, and consultant and expert work product, even if such materials contain
18 | Protected Material. Any such archival copies that contain or constitute Protected
19 | Material remain subject to this Protective Order as set forth in Section 4
20 | (DURATION).

21 | 14. VIOLATION

22 | Any violation of this Order may be punished by appropriate measures
23 | including, without limitation, contempt proceedings and/or monetary sanctions.

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25 | / / /

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27 | / / /

28 | / / /

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 NITA LAW FIRM

3
4 BY: 

5 _____
6 M. Nicholas Nita
7 Attorneys for Plaintiff

8 DATED: 10-25-2018

9 BOWMAN AND BROOKE LLP

10
11 BY: 

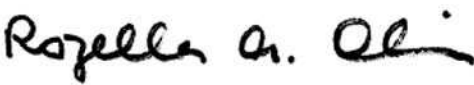
12 _____
13 Brian Takahashi
14 Theodore Dorenkamp III
15 Autumn E. Lewis

16 Attorneys for Defendant JAGUAR LAND ROVER NORTH AMERICA, LLC

17 DATED: October 25, 2018

18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

19
20 DATED: October 29, 2018

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22 

23 _____
24 HON. ROZELLA A. OLIVER
25 United States Magistrate Judge