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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AVAG YURDUNYAN,

 Plaintiff(s),

 v.

EXTENDED STAY AMERICA, a
Delaware Corporation; and DOES 1
through 100, Inclusive,

 Defendant(s).

Case No. 2:18-cv-06935 SJO (GJSx)

**~~PROPOSED~~ ORDER GRANTING
STUPLATED PROTECTIVE
ORDER**

State Complaint Filed: June 28, 2018

District Judge: S. James Otero
Magistrate Judge: Gail J. Standish

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: After full
consideration of the Request by the parties for Order granting approval of
the stipulated protective order, and FOR GOOD CAUSE SHOWN, IT IS
HEREBY ORDERED that:

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
5 may be warranted. Accordingly, the parties hereby stipulate to and petition
6 the Court to enter the following Stipulated Protective Order. The parties
7 acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items
10 that are entitled to confidential treatment under the applicable legal
11 principles.

12 B. GOOD CAUSE STATEMENT

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

1 in the conduct of trial, to address their handling at the end of the litigation,
2 and serve the ends of justice, a protective order for such information is
3 justified in this matter. It is the intent of the parties that information will not
4 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
6 confidential, non-public manner, and there is good cause why it should not
7 be part of the public record of this case.

8 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING
9 UNDER SEAL

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

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

1 Further, if a party requests sealing related to a dispositive motion or
2 trial, then compelling reasons, not only good cause, for the sealing must be
3 shown, and the relief sought shall be narrowly tailored to serve the specific
4 interest to be protected. *See Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665,
5 677-79 (9th Cir. 2010). For each item or type of information, document, or
6 thing sought to be filed or introduced under seal in connection with a
7 dispositive motion or trial, the party seeking protection must articulate
8 compelling reasons, supported by specific facts and legal justification, for
9 the requested sealing order. Again, competent evidence supporting the
10 application to file documents under seal must be provided by declaration.

11 Any document that is not confidential, privileged, or otherwise
12 protectable in its entirety will not be filed under seal if the confidential
13 portions can be redacted. If documents can be redacted, then a redacted
14 version for public viewing, omitting only the confidential, privileged, or
15 otherwise protectable portions of the document, shall be filed. Any
16 application that seeks to file documents under seal in their entirety should
17 include an explanation of why redaction is not feasible.

18 2. DEFINITIONS

19 2.1 Action: this pending federal lawsuit.

20 2.2 Challenging Party: a Party or Non-Party that challenges the
21 designation of information or items under this Order.

22 2.3 “CONFIDENTIAL” Information or Items: information
23 (regardless of how it is generated, stored or maintained) or tangible things
24 that qualify for protection under Federal Rule of Civil Procedure 26(c), and
25 as specified above in the Good Cause Statement.

26 2.4 Counsel: Outside Counsel of Record and House Counsel (as
27 well as their support staff).

28 2.5 Designating Party: a Party or Non-Party that designates

1 information or items that it produces in disclosures or in responses to
2 discovery as “CONFIDENTIAL.”

3 2.6 Disclosure or Discovery Material: all items or information,
4 regardless of the medium or manner in which it is generated, stored, or
5 maintained (including, among other things, testimony, transcripts, and
6 tangible things), that are produced or generated in disclosures or responses
7 to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a
9 matter pertinent to the litigation who has been retained by a Party or its
10 counsel to serve as an expert witness or as a consultant in this Action.

11 2.8 House Counsel: attorneys who are employees of a party to this
12 Action. House Counsel does not include Outside Counsel of Record or any
13 other outside counsel.

14 2.9 Non-Party: any natural person, partnership, corporation,
15 association or other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys who are not employees
17 of a party to this Action but are retained to represent or advise a party to this
18 Action and have appeared in this Action on behalf of that party or are
19 affiliated with a law firm that has appeared on behalf of that party, and
20 includes support staff.

21 2.11 Party: any party to this Action, including all of its officers,
22 directors, employees, consultants, retained experts, and Outside Counsel of
23 Record (and their support staffs).

24 2.12 Producing Party: a Party or Non-Party that produces Disclosure
25 or Discovery Material in this Action.

26 2.13 Professional Vendors: persons or entities that provide litigation
27 support services (e.g., photocopying, videotaping, translating, preparing
28 exhibits or demonstrations, and organizing, storing, or retrieving data in any

1 form or medium) and their employees and subcontractors.

2 2.14 Protected Material: any Disclosure or Discovery Material that
3 is designated as “CONFIDENTIAL.”

4 2.15 Receiving Party: a Party that receives Disclosure or Discovery
5 Material from a Producing Party.

6 3. SCOPE

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

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

16 4. DURATION

17 FINAL DISPOSITION of the action is defined as the conclusion of
18 any appellate proceedings, or, if no appeal is taken, when the time for filing
19 of an appeal has run. Except as set forth below, the terms of this protective
20 order apply through FINAL DISPOSITION of the action. The parties may
21 stipulate that they will be contractually bound by the terms of this
22 agreement beyond FINAL DISPOSITION, but will have to file a separate
23 action for enforcement of the agreement once all proceedings in this case are
24 complete.

25 Once a case proceeds to trial, information that was designated as
26 CONFIDENTIAL or maintained pursuant to this protective order used or
27 introduced as an exhibit at trial becomes public and will be presumptively
28 available to all members of the public, including the press, unless

1 compelling reasons supported by specific factual findings to proceed
2 otherwise are made to the trial judge in advance of the trial. *See Kamakana*,
3 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing
4 documents produced in discovery from “compelling reasons” standard when
5 merits-related documents are part of court record). Accordingly, for such
6 materials, the terms of this protective order do not extend beyond the
7 commencement of the trial.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for
10 Protection. Each Party or Non-Party that designates information or items for
11 protection under this Order must take care to limit any such designation to
12 specific material that qualifies under the appropriate standards. The
13 Designating Party must designate for protection only those parts of material,
14 documents, items or oral or written communications that qualify so that
15 other portions of the material, documents, items or communications for
16 which protection is not warranted are not swept unjustifiably within the
17 ambit of this Order.

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

23 If it comes to a Designating Party’s attention that information or items
24 that it designated for protection do not qualify for protection, that
25 Designating Party must promptly notify all other Parties that it is
26 withdrawing the inapplicable designation.

27 5.2 Manner and Timing of Designations. Except as otherwise
28 provided in this Order (see, e.g., second paragraph of section 5.2(a) below),

1 or as otherwise stipulated or ordered, Disclosure or Discovery Material that
2 qualifies for protection under this Order must be clearly so designated before
3 the material is disclosed or produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic
6 documents, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), that the Producing Party affix at a minimum, the legend
8 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page
9 that contains protected material. If only a portion of the material on a page
10 qualifies for protection, the Producing Party also must clearly identify the
11 protected portion(s) (e.g., by making appropriate markings in the margins).

12 A Party or Non-Party that makes original documents available for
13 inspection need not designate them for protection until after the inspecting
14 Party has indicated which documents it would like copied and produced.
15 During the inspection and before the designation, all of the material made
16 available for inspection shall be deemed “CONFIDENTIAL.” After the
17 inspecting Party has identified the documents it wants copied and produced,
18 the Producing Party must determine which documents, or portions thereof,
19 qualify for protection under this Order. Then, before producing the specified
20 documents, the Producing Party must affix the “CONFIDENTIAL legend”
21 to each page that contains Protected Material. If only a portion of the
22 material on a page qualifies for protection, the Producing Party also must
23 clearly identify the protected portion(s) (e.g., by making appropriate
24 markings in the margins).

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

28 (c) for information produced in some form other than

1 documentary and for any other tangible items, that the Producing Party affix
2 in a prominent place on the exterior of the container or containers in which
3 the information is stored the legend “CONFIDENTIAL.” If only a portion
4 or portions of the information warrants protection, the Producing Party, to
5 the extent practicable, shall identify the protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an
7 inadvertent failure to designate qualified information or items does not,
8 standing alone, waive the Designating Party’s right to secure protection
9 under this Order for such material. Upon timely correction of a designation,
10 the Receiving Party must make reasonable efforts to assure that the material
11 is treated in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge
14 a designation of confidentiality at any time that is consistent with the Court’s
15 Scheduling Order.

16 6.2 Meet and Confer. The Challenging Party shall initiate the
17 dispute resolution process under Local Rule 37.1 et seq.

18 6.3 The burden of persuasion in any such challenge proceeding
19 shall be on the Designating Party. Frivolous challenges, and those made for
20 an improper purpose (e.g., to harass or impose unnecessary expenses and
21 burdens on other parties) may expose the Challenging Party to sanctions.
22 Unless the Designating Party has waived or withdrawn the confidentiality
23 designation, all parties shall continue to afford the material in question the
24 level of protection to which it is entitled under the Producing Party’s
25 designation until the Court rules on the challenge.

26
27 7. ACCESS TO AND USE OF PROTECTED MATERIAL

28 7.1 Basic Principles. A Receiving Party may use Protected

1 Material that is disclosed or produced by another Party or by a Non-Party in
2 connection with this Action only for prosecuting, defending or attempting to
3 settle this Action. Such Protected Material may be disclosed only to the
4 categories of persons and under the conditions described in this Order.
5 When the Action has been terminated, a Receiving Party must comply with
6 the provisions of section 13 below (FINAL DISPOSITION).

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

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items.

11 Unless otherwise ordered by the court or permitted in writing by the
12 Designating Party, a Receiving Party may disclose any information or item
13 designated “CONFIDENTIAL” only to:

14 (a) the Receiving Party’s Outside Counsel of Record in this
15 Action, as well as employees of said Outside Counsel of Record to whom it
16 is reasonably necessary to disclose the information for this Action;

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

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

23 (d) the court and its personnel;

24 (e) court reporters and their staff;

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

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

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

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

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
18 PRODUCED IN OTHER LITIGATION

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

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

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

28 (c) cooperate with respect to all reasonable procedures sought to

1 be pursued by the Designating Party whose Protected Material may be
2 affected.

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

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

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

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

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

27 (2) promptly provide the Non-Party with a copy of the
28 Stipulated Protective Order in this Action, the relevant discovery request(s),

1 and a reasonably specific description of the information requested; and

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

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

13 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
24 OTHERWISE PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other
27 protection, the obligations of the Receiving Parties are those set forth in
28 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended

1 to modify whatever procedure may be established in an e-discovery order
2 that provides for production without prior privilege review. Pursuant to
3 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
4 agreement on the effect of disclosure of a communication or information
5 covered by the attorney-client privilege or work product protection, the
6 parties may incorporate their agreement in the stipulated protective order
7 submitted to the court.

8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the
10 right of any person to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of
12 this Protective Order, no Party waives any right it otherwise would have to
13 object to disclosing or producing any information or item on any ground not
14 addressed in this Stipulated Protective Order. Similarly, no Party waives
15 any right to object on any ground to use in evidence of any of the material
16 covered by this Protective Order.

17 12.3 Filing Protected Material. A Party that seeks to file under seal
18 any Protected Material must comply with Local Civil Rule 79-5. Protected
19 Material may only be filed under seal pursuant to a court order authorizing
20 the sealing of the specific Protected Material at issue. If a Party's request to
21 file Protected Material under seal is denied by the court, then the Receiving
22 Party may file the information in the public record unless otherwise
23 instructed by the court.

24 13. FINAL DISPOSITION

25 After the final disposition of this Action, as defined in paragraph 4,
26 within 60 days of a written request by the Designating Party, each Receiving
27 Party must return all Protected Material to the Producing Party or destroy
28 such material. As used in this subdivision, "all Protected Material" includes

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

17 14. VIOLATION

18 Any violation of this Order may be punished by appropriate measures
19 including, without limitation, contempt proceedings and/or monetary
20 sanctions.

21 APPROVED AND SO ORDERED:

22
23 DATED: April 10, 2019

24 

25
26 _____
27 GAIL J. STANDISH
28 UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the
7 Central District of California on [date] in the case of _____ [**insert**
8 **formal name of the case and the number and initials assigned to it by**
9 **the court**]. I agree to comply with and to be bound by all the terms of this
10 Stipulated Protective Order and I understand and acknowledge that failure to
11 so comply could expose me to sanctions and punishment in the nature of
12 contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to any
14 person or entity except in strict compliance with the provisions of this Order.
15 I further agree to submit to the jurisdiction of the United States District
16 Court for the Central District of California for enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur
18 after termination of this action. I hereby appoint
19 _____ [print or type full name] of
20 _____ [print or type full address
21 and telephone number] as my California agent for service of process in
22 connection with this action or any proceedings related to enforcement of this
23 Stipulated Protective Order.

24 Date: _____

25 City and State where sworn and signed:

26 _____

27 Printed name: _____

28 Signature: _____