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16
 17 **UNITED STATES DISTRICT COURT FOR**
 18 **THE CENTRAL DISTRICT OF CALIFORNIA**

19 JUAN TOBAR,) **Case No.: 2:19-cv-10754-ODW-SK**
 20)
 21 Plaintiff,)
 22) **STIPULATED PROTECTIVE ORDER**
 23 vs.)
 24)
 25)
 26 THE GOODYEAR TIRE & RUBBER)
 27 COMPANY, et al.,)
 28 Defendants.)

1. A. PURPOSES AND LIMITATIONS

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

B. GOOD CAUSE STATEMENT

This action is likely to involve private information and communications extracted from Plaintiff's personal cellular phone, as well as trade secrets, and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or

1 common law. Accordingly, to expedite the flow of information, to facilitate the prompt
2 resolution of disputes over confidentiality of discovery materials, to adequately protect
3 information the parties are entitled to keep confidential, to ensure that the parties are
4 permitted reasonable necessary uses of such material in preparation for and in the
5 conduct of trial, to address their handling at the end of the litigation, and serve the ends
6 of justice, a protective order for such information is justified in this matter. It is the
7 intent of the parties that information will not be designated as confidential for tactical
8 reasons and that nothing be so designated without a good faith belief that it has been
9 maintained in a confidential, non-public manner, and there is good cause why it should
10 not be part of the public record of this case.

11 2. DEFINITIONS

12 2.1 Action: this pending federal law suit entitled Juan Tobar v. The Goodyear
13 Tire & Rubber Company, et al. in The United States District Court for the Central
14 District of California, Case No. 2:19-cv-10754-ODW-SK.

15 2.2 Challenging Party: a Party or Non-Party that challenges the designation
16 of information or items under this Order.

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

21 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
22 support staff).

23 2.5 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL.”

26 2.6 Disclosure or Discovery Material: all items or information, regardless of
27 the medium or manner in which it is generated, stored, or maintained (including,
28

1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

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

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

9 2.9 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

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

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

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

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

24 2.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL.”

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.
28

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected
3 Material (as defined above), but also (1) any information copied or extracted from
4 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
5 Material; and (3) any testimony, conversations, or presentations by Parties or their
6 Counsel that might reveal Protected Material. Any use of Protected Material at trial
7 shall be governed by the orders of the trial judge. This Order does not govern the use
8 of Protected Material at trial.

9 4. DURATION

10 Even after final disposition of this litigation, the confidentiality obligations imposed
11 by this Order shall remain in effect until a Designating Party agrees otherwise in
12 writing or a court order otherwise directs. Final disposition shall be deemed to be the
13 later of (1) dismissal of all claims and defenses in this Action, with or without
14 prejudice; and (2) final judgment herein after the completion and exhaustion of all
15 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits
16 for filing any motions or applications for extension of time pursuant to applicable law.

17
18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

27 Mass, indiscriminate, or routinized designations are prohibited. Designations
28 that are shown to be clearly unjustified or that have been made for an improper purpose

1 (e.g., to unnecessarily encumber the case development process or to impose
2 unnecessary expenses and burdens on other parties) may expose the Designating Party
3 to sanctions.

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

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

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic documents,
13 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
14 Producing Party affix, the legend:

15 "CONFIDENTIAL – produced under court order in Juan Tobar v. The
16 Goodyear Tire & Rubber Company, et al. in The United States District
17 Court for the Central District of California, Case No. 2:19-cv-10754-
18 ODW-SK, and shall not be used for any other purpose whatsoever."

19 to each page that contains protected material. If only a portion or portions of the
20 material on a page qualifies for protection, the Producing Party also must clearly
21 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

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

1 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
2 to each page that contains Protected Material. If only a portion or portions of the
3 material on a page qualifies for protection, the Producing Party also must clearly
4 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

5 (b) for testimony given in depositions designation of the portion(s) of the
6 transcript that contain Confidential Information shall be made (i) by a statement to
7 such effect on the record during the proceeding in which the testimony is received, or
8 (ii) by written notice served on counsel of record in this Litigation within thirty (30)
9 business days after the receipt of the transcript of such proceeding. .

10 (c) for information produced in some form other than documentary and for any
11 other tangible items, that the Producing Party affix in a prominent place on the exterior
12 of the container or containers in which the information is stored the legend:

13 “CONFIDENTIAL – produced under court order in Juan Tobar v. The
14 Goodyear Tire & Rubber Company, et al. in The United States District
15 Court for the Central District of California, Case No. 2:19-cv-10754-
16 ODW-SK, and shall not be used for any other purpose whatsoever.”

17 If only a portion or portions of the information warrants protection, the
18 Producing Party, to the extent practicable, shall identify the protected portion(s).

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

24 25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Frivolous challenges, and those made for an improper purpose
5 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
6 expose the Challenging Party to sanctions. Unless the Designating Party has waived
7 or withdrawn the confidentiality designation, all parties shall continue to afford the
8 material in question the level of protection to which it is entitled under the Producing
9 Party's designation until the Court rules on the challenge.

10
11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
22 otherwise ordered by the court or permitted in writing by the Designating Party, a
23 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
24 only to:

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

28

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

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

6 (d) the court and its personnel;

7 (e) court reporters and their staff;

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

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

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

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

24
25 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
26 IN OTHER LITIGATION

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

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

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

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

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

20
21 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
22 PRODUCED IN THIS LITIGATION

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

28

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

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

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

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

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

21
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 writing
26 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
27 all unauthorized copies of the Protected Material, (c) inform the person or persons to
28 whom unauthorized disclosures were made of all the terms of this Order, and (d)

1 request such person or persons to execute the “Acknowledgment and Agreement to Be
2 Bound” that is attached hereto as Exhibit A.

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

16
17 12. MISCELLANEOUS

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

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

25 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
26 Material must comply with Civil Local Rule 79-5. Protected Material may only be
27 filed under seal pursuant to a court order authorizing the sealing of the specific
28 Protected Material at issue. If a Party's request to file Protected Material under seal is

1 denied by the court, then the Receiving Party may file the information in the public
2 record unless otherwise instructed by the court.

3
4 **13. FINAL DISPOSITION**

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

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: April 27, 2021

BY: /s/ Spencer R. Lucas, Esq.
Michael R. Rhames, Esq.
MICHAEL R. RHAMES & ASSOCIATES, PC

Adam Shea, Esq.
Brian Panish, Esq.
Spencer R. Lucas, Esq.
Marguerite Sisney Sanvictores, Esq.
PANISH SHEA & BOYLE, LLC
Attorneys for Plaintiff, JUAN TOVAR

DATED: April 27, 2021

BOWMAN AND BROOKE LLP

BY: /s/ Jordan S. Tabak
Lawrence R. Ramsey, Esq.
Jordan S. Tabak, Esq.
**Attorneys for Defendant, MAXION
WHEELS USA, LLC**

DATED: April 28, 2021

YOKA & SMITH, LLP

BY: /s/ Anthony F. Latiolait
Walter M. Yoka
Anthony F. Latiolait

Christopher S. Shank
SHANK & HEINEMANN, LLC
**Attorneys for Defendant, THE GOODYEAR
TIRE & RUBBER COMPANY**

IT IS SO ORDERED.

DATED: April 28, 2021



Honorable Steve Kim
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
_____ in the case of *Juan Tobar v. The Goodyear Tire & Rubber Company, et al.*
in The United States District Court for the Central District of California, Case No.
2:19-cv-10754-ODW-SK . 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: _____