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 9 Attorneys for Plaintiff Kia Davidson

10 UNITED STATES DISTRICT COURT  
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 KIA DAVIDSON, individually, and  
 on behalf of other members of the  
 14 general public similarly situated,  
 15 Plaintiff,  
 16 vs.  
 17 O'REILLY AUTO ENTERPRISES,  
 LLC, a Delaware corporation;,  
 18 Defendant.  
 19  
 20  
 21

Case No.: 5:17-cv-00603  
**STIPULATED PROTECTIVE  
 ORDER**

1           A. PURPOSES AND LIMITATIONS

2           Disclosure and discovery in this action is likely to involve production of  
3 confidential, proprietary or private information for which special protection from  
4 public disclosure and from use for any purpose other than prosecuting this  
5 litigation may be warranted. Accordingly, the parties to this case, KIA  
6 DAVIDSON and O'REILLY AUTO ENTERPRISES, LLC (the "Parties"),  
7 hereby stipulate to and petition the Court to enter the following Stipulated  
8 Protective Order. The parties acknowledge that this Order does not confer blanket  
9 protections on all disclosures, documents, or responses to discovery and that the  
10 protection it affords from public disclosure and use extends only to the limited  
11 information or items that are entitled to confidential treatment under the applicable  
12 legal principles.

13           B. GOOD CAUSE STATEMENT

14           This action is likely to involve trade secrets and other valuable research,  
15 development, commercial, financial, technical and/or proprietary information for  
16 which special protection from public disclosure and from use for any purpose  
17 other than prosecution of this action is warranted. Such confidential and  
18 proprietary materials and information consist of, among other things, confidential  
19 business or financial information, information regarding confidential business  
20 practices, or other confidential research, development, or commercial information  
21 (including 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 rules,  
24 case decisions, or common law. Accordingly, to expedite the flow of information,  
25 to facilitate the prompt resolution of disputes over confidentiality of discovery  
26 materials, to adequately protect information the parties are entitled to keep  
27 confidential, to ensure that the parties are permitted reasonable necessary uses of  
28 such material in preparation for and in the conduct of trial, to address their



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

7 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER  
8 SEAL

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

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

1 relief sought shall be narrowly tailored to serve the specific interest to be  
2 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.  
3 2010). For each item or type of information, document, or thing sought to be filed  
4 or introduced under seal in connection with a dispositive motion or trial, the party  
5 seeking protection must articulate compelling reasons, supported by specific facts  
6 and legal justification, for the requested sealing order. Again, competent evidence  
7 supporting the application to file documents under seal must be provided by  
8 declaration.

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

16 1. DEFINITIONS

17 1.1 Action: *Davidson v. O'Reilly Auto Enterprises, LLC*, United States  
18 District Court for the Central District of California Case No. 5:17-cv-00603-RGK-  
19 AJW

20 1.2 Challenging Party: a Party or Non-Party that challenges the designation  
21 of information or items under this Order.

22 1.3 "CONFIDENTIAL" Information or Items: information (regardless of  
23 how it is generated, stored or maintained) or tangible things that qualify for  
24 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
25 the Good Cause Statement.

26 Such information shall include, but not necessarily be limited to:

27 (a) Any and all documents referring or related to confidential and  
28 proprietary human resources or business information; financial records of the



1 parties; compensation of Defendant's current or former personnel; policies,  
2 procedures or training materials of Defendant; or Defendant's organizational  
3 structure;

4 (b) Any documents from the personnel, medical or workers'  
5 compensation file of any current or former employee or contractor;

6 (c) Any documents relating to the medical or health information of  
7 any of Defendant's current or former employees or contractors;

8 (d) Any portions of depositions (audio or video) where Confidential  
9 Information is disclosed or used as exhibits.

10 1.4 Counsel: Counsel for Plaintiff, Outside Counsel of Record for  
11 Defendant, and In-House Counsel for Defendant (as well as their support staff).

12 1.5 Designating Party: a Party or Non-Party that designates information or items  
13 that it produces in disclosures or in responses to discovery as  
14 "CONFIDENTIAL".

15 1.6 Disclosure or Discovery Material: all items or information, regardless of  
16 the medium or manner in which it is generated, stored, or maintained (including,  
17 among other things, testimony, transcripts, and tangible things), that are produced  
18 or generated in disclosures or responses to discovery in this matter.

19 1.7 Expert: a person with specialized knowledge or experience in a matter  
20 pertinent to the litigation who has been retained by a Party or its counsel to serve  
21 as an expert witness or as a consultant in this Action.

22 1.8 In-House Counsel: attorneys who are employees of a party to this  
23 Action. In-House Counsel does not include Outside Counsel of Record or any  
24 other outside counsel.

25 1.9 Non-Party: any natural person, partnership, corporation, association or  
26 other legal entity not named as a Party to this action.

27 1.10 Outside Counsel of Record: attorneys who are not employees of a  
28 party to this Action but are retained to represent or advise a party to this Action

1 and have appeared in this Action on behalf of that party or are affiliated with a law  
2 firm that has appeared on behalf of that party, and includes support staff.

3 1.11 Party: any party to this Action, including all of its officers, directors,  
4 employees, consultants, retained experts, and Outside Counsel of Record (and  
5 their support staffs).

6 1.12 Producing Party: a Party or Non-Party that produces Disclosure or  
7 Discovery Material in this Action.

8 1.13 Professional Vendors: persons or entities that provide litigation support  
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
11 and their employees and subcontractors.

12 1.14 Protected Material: any Disclosure or Discovery Material that is  
13 designated as "CONFIDENTIAL".

14 1.15 Receiving Party: a Party that receives Disclosure or Discovery  
15 Material from a Producing Party.

## 16 2. SCOPE

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

## 24 3. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations  
26 imposed by this Order shall remain in effect until a Designating Party agrees  
27 otherwise in writing or a court order otherwise directs. Final disposition shall be  
28 deemed to be the later of (1) dismissal of all claims and defenses in this action,



1 with or without prejudice; or (2) final judgment herein after the completion and  
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
3 including the time limits for filing any motions or applications for extension of  
4 time pursuant to applicable law.

5 4. DESIGNATING PROTECTED MATERIAL

6 4.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

23 4.2 Manner and Timing of Designations. Except as otherwise provided in  
24 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
25 stipulated or ordered, Disclosure or Discovery Material that qualifies for  
26 protection under this Order must be clearly so designated before the material is  
27 disclosed or produced. Designation in conformity with this Order requires:  
28

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

8 A Party or Non-Party that makes original documents available for  
9 inspection need not designate them for protection until after the inspecting Party  
10 has indicated which documents it would like copied and produced. During the  
11 inspection and before the designation, all of the material made available for  
12 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has  
13 identified the documents it wants copied and produced, the Producing Party must  
14 determine which documents, or portions thereof, it believes qualify for protection  
15 under this Order. Then, before producing the specified documents, the Producing  
16 Party must affix the “CONFIDENTIAL” legend to each page that contains  
17 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 (b) for testimony given in depositions that the Designating Party identifies  
21 the Disclosure or Discovery Material on the record, before the close of the  
22 deposition all protected testimony.

23 (c) for information produced in some form other than documentary and for  
24 any other tangible items, that the Producing Party affix in a prominent place on the  
25 exterior of the container or containers in which the information is stored the  
26 legend “CONFIDENTIAL.” If only a portion or portions of the information  
27 warrants protection, the Producing Party, to the extent practicable, shall identify  
28 the protected portion(s).



1           4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
2 failure to designate qualified information or items does not, standing alone, waive  
3 the Designating Party's right to secure protection under this Order for such  
4 material. Upon timely correction of a designation, the Receiving Party must make  
5 reasonable efforts to assure that the material is treated in accordance with the  
6 provisions of this Order.

7           5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8           5.1 Timing of Challenges. Any Party or Non-Party may challenge a  
9 designation of confidentiality at any time that is consistent with the Court's  
10 Scheduling Order.

11           5.2 Meet and Confer. The Challenging Party shall initiate the dispute  
12 resolution process in full accordance with Local Rule 37-1 by providing written  
13 notice of each designation it is challenging and describing the basis for each  
14 challenge. To avoid ambiguity as to whether a challenge has been made, the  
15 written notice must recite that the challenge to confidentiality is being made in  
16 accordance with this specific paragraph of the Protective Order. The parties shall  
17 attempt to resolve each challenge in good faith and must begin the process by  
18 conferring directly (in voice-to-voice dialogue; other forms of communication are  
19 not sufficient) within 14 days of the date of service of notice. In conferring, the  
20 Challenging Party must explain the basis for its belief that the designation was not  
21 proper and must give the Designating Party an opportunity to review the  
22 designated material, to reconsider the circumstances, and, if no change in  
23 designation is offered, to explain the basis for the chosen designation. A  
24 Challenging Party may proceed to the next stage of the challenge process only if it  
25 has engaged in this meet and confer process first or establishes that the  
26 Designating Party is unwilling to participate in the meet and confer process in a  
27 timely manner.

28

1           5.3 Joint Stipulation. If the Parties cannot resolve a challenge without court  
2 intervention, the Challenging Party shall file and serve a motion to remove  
3 confidentiality designation in compliance with Local Rule 37-2 (including the  
4 Joint Stipulation Requirement) within 28 days of the initial notice of challenge or  
5 within 14 days of the parties agreeing that the meet and confer process will not  
6 resolve their dispute, whichever is earlier. Each such motion must be accompanied  
7 by a competent declaration affirming that the movant has complied with the meet  
8 and confer requirements imposed in the preceding paragraph and Local Rule 37-1.  
9 Failure by the Challenging Party to make such a motion including the required  
10 declaration within 28 days (or 14 days, if applicable) shall automatically waive the  
11 confidentiality objection for each challenged designation. In addition, the  
12 Designating Party may file a motion to retain a confidentiality designation at any  
13 time if there is good cause for doing so, including a challenge to the designation of  
14 a deposition transcript or any portions thereof. Any motion brought pursuant to  
15 this provision must be accompanied by a competent declaration affirming that the  
16 movant has complied with the meet and confer requirements imposed by the  
17 preceding paragraph.

18  
19           5.4 The burden of persuasion in any such challenge proceeding shall be on  
20 the Designating Party. Frivolous challenges, and those made for an improper  
21 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
22 parties) may expose the Challenging Party to sanctions. Unless the Designating  
23 Party has waived or withdrawn the confidentiality designation, all parties shall  
24 continue to afford the material in question the level of protection to which it is  
25 entitled under the Producing Party's designation until the Court rules on the  
26 challenge.

27           6. ACCESS TO AND USE OF PROTECTED MATERIAL

28



1           6.1 Basic Principles. A Receiving Party may use Protected Material that is  
2 disclosed or produced by another Party or by a Non-Party in connection with this  
3 Action only for prosecuting, defending or attempting to settle this Action. This  
4 Stipulated Protective Order is expressly intended to comply with Rule 1-500(A) of  
5 the California Rules of Professional Conduct. Such Protected Material may be  
6 disclosed only to the categories of persons and under the conditions described in  
7 this Order. When the Action has been terminated, a Receiving Party must comply  
8 with the provisions of section 12 below (FINAL DISPOSITION).

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

12           6.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
13 otherwise ordered by the court or permitted in writing by the Designating Party, a  
14 Receiving Party may disclose any information or item designated  
15 "CONFIDENTIAL" only to:

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

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

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

24           (d) the court and its personnel;

25           (e) court reporters and their staff;

26           (f) professional jury or trial consultants, mock jurors, and Professional  
27 Vendors (as defined in this Order) to whom disclosure is reasonably necessary for  
28

1 this Action and who have signed the “Acknowledgment and Agreement to Be  
2 Bound” (Exhibit A);

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

5 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
6 Action to whom disclosure is reasonably necessary provided: (1) the deposing  
7 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)  
8 they will not be permitted to keep any confidential information unless they sign  
9 the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
10 agreed by the Designating Party or ordered by the court. Pages of transcribed  
11 deposition testimony or exhibits to depositions that reveal Protected Material may  
12 be 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 personnel,  
15 mutually agreed upon by any of the parties engaged in settlement discussions.

16 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
17 IN OTHER LITIGATION

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

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

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

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



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

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

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

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

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

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

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

28

1 (c) If the Non-Party fails to seek a protective order from this court within 14  
2 days of receiving the notice and accompanying information, the Receiving Party  
3 may produce the Non-Party's confidential information responsive to the discovery  
4 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
5 not produce any information in its possession or control that is subject to the  
6 confidentiality agreement with the Non-Party before a determination by the court.

7 Absent a court order to the contrary, the Non-Party shall bear the burden  
8 and expense of seeking protection in this court of its Protected Material.

9 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

19 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
20 PROTECTED MATERIAL

21 Pursuant to FRE 502 (d) and (e), the parties agree to, and the Court orders  
22 protection of privileged and otherwise Protected Material against claims of waiver  
23 (including as against third parties and in other federal and state proceedings) as  
24 follows:

25 (a) The disclosure or production of documents by a Producing Party  
26 subject to a legally recognized claim of privilege, including without limitation the  
27 attorney-client privilege and the work-product doctrine, to a Receiving Party, shall  
28 in no way constitute the voluntary disclosure of such Document, provided that the



1 requirements of Fed. R. Evid. 502(b)(1)-(3) are met;

2 (b) The inadvertent disclosure or production of any document in this  
3 action shall not result in the waiver of any privilege, evidentiary protection or  
4 other protection associated with such document as to the Receiving Party or any  
5 third parties, and shall not result in any waiver, including subject matter waiver, of  
6 any kind, provided that the requirements of Fed. R. Evid. 502(b)(1)-(3) are met;

7 (c) If, during the course of this litigation, a party determines that any  
8 document produced by another party is or may reasonably be subject to a legally  
9 recognizable privilege or evidentiary protection ("Protected Document"):

10 (i) the Receiving Party shall: (A) refrain from reading the  
11 Protected Document any more closely than is necessary to ascertain that it is  
12 privileged or otherwise protected from disclosure; (B) immediately notify the  
13 Producing Party in writing that it has discovered documents believed to be  
14 privileged or protected; (C) specifically identify the Protected Documents by bates  
15 number range or hash value, and, (D) within ten (10) days of discovery by the  
16 Receiving Party, return, sequester, or destroy all copies of such Protected  
17 Documents, along with any notes, abstracts or compilations of the content  
18 thereof. To the extent that a Protected Document has been loaded into a litigation  
19 review database under the control of the Receiving Party, the Receiving Party  
20 shall have all electronic copies of the Protected Document extracted from the  
21 database. Where such Protected Documents cannot be destroyed or separated,  
22 they shall not be reviewed, disclosed, or otherwise used by the Receiving  
23 Party. Notwithstanding, the Receiving Party is under no obligation to search or  
24 review the Producing Party's documents to identify potentially privileged or work  
25 product Protected Documents.

26 (ii) If the Producing Party intends to assert a claim of privilege or  
27 other protection over documents identified by the Receiving Party as Protected  
28 Documents, the Producing Party will, within ten (10) days of receiving the



1 Receiving Party's written notification described above, inform the Receiving Party  
2 of such intention in writing and shall provide the Receiving Party with a log for  
3 such Protected Documents that is consistent with the requirements of the Federal  
4 Rules of Civil Procedure, setting forth the basis for the claim of privilege or other  
5 protection. In the event that any portion of a Protected Document does not contain  
6 privileged or protected information, the Producing Party shall also provide to the  
7 Receiving Party a redacted copy of the document that omits the information that  
8 the Producing Party believes is subject to a claim of privilege or other protection.

9 (d) If, during the course of this litigation, a party determines it has  
10 produced a Protected Document:

11 (i) the Producing Party may notify the Receiving Party of such  
12 inadvertent production in writing, and demand the return of such  
13 documents. Such notice shall be in writing, however, it may be delivered orally  
14 on the record at a deposition, promptly followed up in writing. The Producing  
15 Party's written notice will identify the Protected Document inadvertently  
16 produced by bates number range or hash value, the privilege or protection  
17 claimed, and the basis for the assertion of the privilege and shall provide the  
18 Receiving Party with a log for such Protected Documents that is consistent with  
19 the requirements of the Federal Rules of Civil Procedure, setting forth the basis for  
20 the claim of privilege or other protection. In the event that any portion of the  
21 Protected Document does not contain privileged or protected information, the  
22 Producing Party shall also provide to the Receiving Party a redacted copy of the  
23 Document that omits the information that the Producing Party believes is subject  
24 to a claim of privilege or other protection.

25 (ii) the Receiving Party must, within ten (10) days of receiving the  
26 Producing Party's written notification described above, return, sequester, or  
27 destroy the Protected Document and any copies, along with any notes, abstracts or  
28 compilations of the content thereof. To the extent that a Protected Document has



1 been loaded into a litigation review database under the control of the Receiving  
2 Party, the Receiving Party shall have all electronic copies of the Protected  
3 Document extracted from the database.

4 (e) To the extent that the information contained in a Protected Document  
5 has already been used in or described in other documents generated or maintained  
6 by the Receiving Party prior to the date of receipt of written notice by the  
7 Producing Party as set forth in paragraphs 11(c)(ii) and 11(d)(i), then the  
8 Receiving Party shall sequester such documents until the claim has been  
9 resolved. If the Receiving Party disclosed the Protected Document before being  
10 notified of its inadvertent production, it must take reasonable steps to retrieve it.

11 (f) The Receiving Party's return, sequestering or destruction of Protected  
12 Documents as provided herein will not act as a waiver of the Requesting Party's  
13 right to move for the production of the returned, sequestered or destroyed  
14 documents on the grounds that the documents are not, in fact, subject to a viable  
15 claim of privilege or protection. However, the Receiving Party is prohibited and  
16 estopped from arguing that:

17 (i) the disclosure or production of the Protected Documents acts  
18 as a waiver of an applicable privilege or evidentiary protection;

19 (ii) the disclosure of the Protected Documents was not inadvertent;

20 (iii) the Producing Party did not take reasonable steps to prevent the  
21 disclosure of the Protected Documents; or

22 (iv) the Producing Party failed to take reasonable or timely steps to  
23 rectify the error.

24 (g) Either party may submit Protected Documents to the Court under seal  
25 for a determination of the claim of privilege or other protection. The Producing  
26 Party shall preserve the Protected Documents until such claim is resolved. The  
27 Receiving Party may not use the Protected Documents for any purpose absent this  
28 Court's Order.

1 (h) Upon a determination by the Court that the Protected Documents are  
2 protected by the applicable privilege or evidentiary protection, and if the Protected  
3 Documents have been sequestered rather than returned or destroyed by the  
4 Receiving Party, the Protected Documents shall be returned or destroyed within 10  
5 (ten) days of the Court's order. The Court may also order the identification by the  
6 Receiving Party of Protected Documents by search terms or other means.

7 (i) Nothing contained herein is intended to, or shall serve to limit a  
8 party's right to conduct a review of documents, data (including electronically  
9 stored information) and other information, including without limitation, metadata,  
10 for relevance, responsiveness or the segregation of privileged or protected  
11 information before such information is produced to another party.

12 (j) By operation of the parties' agreement and Court Order, the parties  
13 are specifically afforded the protections of FRE 502 (d) and (e).

14 11. MISCELLANEOUS

15 11.1 Right to Further Relief. Nothing in this Order abridges the right of any  
16 person to seek its modification by the Court in the future.

17 11.2 Right to Assert Other Objections. By stipulating to the entry of this  
18 Protective Order, no Party waives any right it otherwise would have to object to  
19 disclosing or producing any information or item on any ground not addressed in  
20 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
21 any ground to use in evidence of any of the material covered by this Protective  
22 Order.

23 11.3 Filing Protected Material. A Party that seeks to file under seal any  
24 Protected Material must comply with Local Civil Rule 79-5. Protected Material  
25 may only be filed under seal pursuant to a court order authorizing the sealing of  
26 the specific Protected Material at issue. If a Party's request to file Protected  
27 Material under seal is denied by the court, then the Receiving Party may file the  
28 information in the public record unless otherwise instructed by the court.



1           12.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           13.VIOLATION

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

24           ///

25           ///

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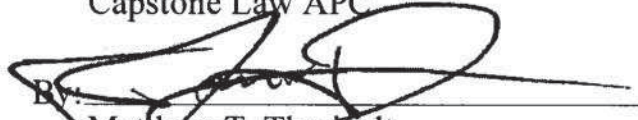
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**IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

Dated: August 24, 2017

Capstone Law APC



By: Matthew T. Theriault  
Robert J. Drexler, Jr.  
Jonathan Lee  
Natalie Torbati

Attorneys for Plaintiff Kia Davidson

Dated: August 24, 2017

Higgs Fletcher & Mack LLP



By: James M. Peterson  
Jason C. Ross  
Kyle W. Nageotte

Attorneys for Defendant O'Reilly Auto Enterprises, LLC

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. R. Gary Klausner  
District Court 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  
in the case of *Davidson v. O'Reilly Auto Enterprises, LLC*, Case No. 5:17-cv-  
00603-RGK-AJW. 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 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: \_\_\_\_\_

1 Matthew T. Theriault (SBN 244037)  
Matthew.Theriault@CapstoneLawyers.com  
2 Robert J. Drexler, Jr. (SBN 119119)  
Robert.Drexler@CapstoneLawyers.com  
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6 Los Angeles, California 90067  
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7 Facsimile: (310) 943-0396

8  
9 Attorneys for Plaintiff Kia Davidson

10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12  
13 KIA DAVIDSON, individually, and  
14 on behalf of other members of the  
general public similarly situated,

15 Plaintiff,

16 vs.

17 O'REILLY AUTO ENTERPRISES,  
18 LLC, a Delaware corporation,;

19 Defendant.  
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Case No.: 5:17-cv-00603

**STIPULATED PROTECTIVE  
ORDER**



1           A. PURPOSES AND LIMITATIONS

2           Disclosure and discovery in this action is likely to involve production of  
3 confidential, proprietary or private information for which special protection from  
4 public disclosure and from use for any purpose other than prosecuting this  
5 litigation may be warranted. Accordingly, the parties to this case, KIA  
6 DAVIDSON and O'REILLY AUTO ENTERPRISES, LLC (the "Parties"),  
7 hereby stipulate to and petition the Court to enter the following Stipulated  
8 Protective Order. The parties acknowledge that this Order does not confer blanket  
9 protections on all disclosures, documents, or responses to discovery and that the  
10 protection it affords from public disclosure and use extends only to the limited  
11 information or items that are entitled to confidential treatment under the applicable  
12 legal principles.

13           B. GOOD CAUSE STATEMENT

14           This action is likely to involve trade secrets and other valuable research,  
15 development, commercial, financial, technical and/or proprietary information for  
16 which special protection from public disclosure and from use for any purpose  
17 other than prosecution of this action is warranted. Such confidential and  
18 proprietary materials and information consist of, among other things, confidential  
19 business or financial information, information regarding confidential business  
20 practices, or other confidential research, development, or commercial information  
21 (including 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 rules,  
24 case decisions, or common law. Accordingly, to expedite the flow of information,  
25 to facilitate the prompt resolution of disputes over confidentiality of discovery  
26 materials, to adequately protect information the parties are entitled to keep  
27 confidential, to ensure that the parties are permitted reasonable necessary uses of  
28 such material in preparation for and in the conduct of trial, to address their

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

7 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER  
8 SEAL

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

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



1 relief sought shall be narrowly tailored to serve the specific interest to be  
2 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.  
3 2010). For each item or type of information, document, or thing sought to be filed  
4 or introduced under seal in connection with a dispositive motion or trial, the party  
5 seeking protection must articulate compelling reasons, supported by specific facts  
6 and legal justification, for the requested sealing order. Again, competent evidence  
7 supporting the application to file documents under seal must be provided by  
8 declaration.

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

16 1. DEFINITIONS

17 1.1 Action: *Davidson v. O'Reilly Auto Enterprises, LLC*, United States  
18 District Court for the Central District of California Case No. 5:17-cv-00603-RGK-  
19 AJW

20 1.2 Challenging Party: a Party or Non-Party that challenges the designation  
21 of information or items under this Order.

22 1.3 "CONFIDENTIAL" Information or Items: information (regardless of  
23 how it is generated, stored or maintained) or tangible things that qualify for  
24 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
25 the Good Cause Statement.

26 Such information shall include, but not necessarily be limited to:

27 (a) Any and all documents referring or related to confidential and  
28 proprietary human resources or business information; financial records of the

1 parties; compensation of Defendant's current or former personnel; policies,  
2 procedures or training materials of Defendant; or Defendant's organizational  
3 structure;

4 (b) Any documents from the personnel, medical or workers'  
5 compensation file of any current or former employee or contractor;

6 (c) Any documents relating to the medical or health information of  
7 any of Defendant's current or former employees or contractors;

8 (d) Any portions of depositions (audio or video) where Confidential  
9 Information is disclosed or used as exhibits.

10 1.4 Counsel: Counsel for Plaintiff, Outside Counsel of Record for  
11 Defendant, and In-House Counsel for Defendant (as well as their support staff).

12 1.5 Designating Party: a Party or Non-Party that designates information or items  
13 that it produces in disclosures or in responses to discovery as  
14 "CONFIDENTIAL".

15 1.6 Disclosure or Discovery Material: all items or information, regardless of  
16 the medium or manner in which it is generated, stored, or maintained (including,  
17 among other things, testimony, transcripts, and tangible things), that are produced  
18 or generated in disclosures or responses to discovery in this matter.

19 1.7 Expert: a person with specialized knowledge or experience in a matter  
20 pertinent to the litigation who has been retained by a Party or its counsel to serve  
21 as an expert witness or as a consultant in this Action.

22 1.8 In-House Counsel: attorneys who are employees of a party to this  
23 Action. In-House Counsel does not include Outside Counsel of Record or any  
24 other outside counsel.

25 1.9 Non-Party: any natural person, partnership, corporation, association or  
26 other legal entity not named as a Party to this action.

27 1.10 Outside Counsel of Record: attorneys who are not employees of a  
28 party to this Action but are retained to represent or advise a party to this Action



1 and have appeared in this Action on behalf of that party or are affiliated with a law  
2 firm that has appeared on behalf of that party, and includes support staff.

3 1.11 Party: any party to this Action, including all of its officers, directors,  
4 employees, consultants, retained experts, and Outside Counsel of Record (and  
5 their support staffs).

6 1.12 Producing Party: a Party or Non-Party that produces Disclosure or  
7 Discovery Material in this Action.

8 1.13 Professional Vendors: persons or entities that provide litigation support  
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
11 and their employees and subcontractors.

12 1.14 Protected Material: any Disclosure or Discovery Material that is  
13 designated as "CONFIDENTIAL".

14 1.15 Receiving Party: a Party that receives Disclosure or Discovery  
15 Material from a Producing Party.

16 2. SCOPE

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

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

24 3. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations  
26 imposed by this Order shall remain in effect until a Designating Party agrees  
27 otherwise in writing or a court order otherwise directs. Final disposition shall be  
28 deemed to be the later of (1) dismissal of all claims and defenses in this action,

1 with or without prejudice; or (2) final judgment herein after the completion and  
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
3 including the time limits for filing any motions or applications for extension of  
4 time pursuant to applicable law.

5 4. DESIGNATING PROTECTED MATERIAL

6 4.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

23 4.2 Manner and Timing of Designations. Except as otherwise provided in  
24 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
25 stipulated or ordered, Disclosure or Discovery Material that qualifies for  
26 protection under this Order must be clearly so designated before the material is  
27 disclosed or produced. Designation in conformity with this Order requires:  
28



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

8 A Party or Non-Party that makes original documents available for  
9 inspection need not designate them for protection until after the inspecting Party  
10 has indicated which documents it would like copied and produced. During the  
11 inspection and before the designation, all of the material made available for  
12 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has  
13 identified the documents it wants copied and produced, the Producing Party must  
14 determine which documents, or portions thereof, it believes qualify for protection  
15 under this Order. Then, before producing the specified documents, the Producing  
16 Party must affix the “CONFIDENTIAL” legend to each page that contains  
17 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 (b) for testimony given in depositions that the Designating Party identifies  
21 the Disclosure or Discovery Material on the record, before the close of the  
22 deposition all protected testimony.

23 (c) for information produced in some form other than documentary and for  
24 any other tangible items, that the Producing Party affix in a prominent place on the  
25 exterior of the container or containers in which the information is stored the  
26 legend “CONFIDENTIAL.” If only a portion or portions of the information  
27 warrants protection, the Producing Party, to the extent practicable, shall identify  
28 the protected portion(s).

1           4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
2 failure to designate qualified information or items does not, standing alone, waive  
3 the Designating Party's right to secure protection under this Order for such  
4 material. Upon timely correction of a designation, the Receiving Party must make  
5 reasonable efforts to assure that the material is treated in accordance with the  
6 provisions of this Order.

7           5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8           5.1 Timing of Challenges. Any Party or Non-Party may challenge a  
9 designation of confidentiality at any time that is consistent with the Court's  
10 Scheduling Order.

11           5.2 Meet and Confer. The Challenging Party shall initiate the dispute  
12 resolution process in full accordance with Local Rule 37-1 by providing written  
13 notice of each designation it is challenging and describing the basis for each  
14 challenge. To avoid ambiguity as to whether a challenge has been made, the  
15 written notice must recite that the challenge to confidentiality is being made in  
16 accordance with this specific paragraph of the Protective Order. The parties shall  
17 attempt to resolve each challenge in good faith and must begin the process by  
18 conferring directly (in voice-to-voice dialogue; other forms of communication are  
19 not sufficient) within 14 days of the date of service of notice. In conferring, the  
20 Challenging Party must explain the basis for its belief that the designation was not  
21 proper and must give the Designating Party an opportunity to review the  
22 designated material, to reconsider the circumstances, and, if no change in  
23 designation is offered, to explain the basis for the chosen designation. A  
24 Challenging Party may proceed to the next stage of the challenge process only if it  
25 has engaged in this meet and confer process first or establishes that the  
26 Designating Party is unwilling to participate in the meet and confer process in a  
27 timely manner.

28



1           5.3 Joint Stipulation. If the Parties cannot resolve a challenge without court  
2 intervention, the Challenging Party shall file and serve a motion to remove  
3 confidentiality designation in compliance with Local Rule 37-2 (including the  
4 Joint Stipulation Requirement) within 28 days of the initial notice of challenge or  
5 within 14 days of the parties agreeing that the meet and confer process will not  
6 resolve their dispute, whichever is earlier. Each such motion must be accompanied  
7 by a competent declaration affirming that the movant has complied with the meet  
8 and confer requirements imposed in the preceding paragraph and Local Rule 37-1.  
9 Failure by the Challenging Party to make such a motion including the required  
10 declaration within 28 days (or 14 days, if applicable) shall automatically waive the  
11 confidentiality objection for each challenged designation. In addition, the  
12 Designating Party may file a motion to retain a confidentiality designation at any  
13 time if there is good cause for doing so, including a challenge to the designation of  
14 a deposition transcript or any portions thereof. Any motion brought pursuant to  
15 this provision must be accompanied by a competent declaration affirming that the  
16 movant has complied with the meet and confer requirements imposed by the  
17 preceding paragraph.

18  
19           5.4 The burden of persuasion in any such challenge proceeding shall be on  
20 the Designating Party. Frivolous challenges, and those made for an improper  
21 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
22 parties) may expose the Challenging Party to sanctions. Unless the Designating  
23 Party has waived or withdrawn the confidentiality designation, all parties shall  
24 continue to afford the material in question the level of protection to which it is  
25 entitled under the Producing Party's designation until the Court rules on the  
26 challenge.

27           6. ACCESS TO AND USE OF PROTECTED MATERIAL  
28

1           6.1 Basic Principles. A Receiving Party may use Protected Material that is  
2 disclosed or produced by another Party or by a Non-Party in connection with this  
3 Action only for prosecuting, defending or attempting to settle this Action. This  
4 Stipulated Protective Order is expressly intended to comply with Rule 1-500(A) of  
5 the California Rules of Professional Conduct. Such Protected Material may be  
6 disclosed only to the categories of persons and under the conditions described in  
7 this Order. When the Action has been terminated, a Receiving Party must comply  
8 with the provisions of section 12 below (FINAL DISPOSITION).

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

12           6.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
13 otherwise ordered by the court or permitted in writing by the Designating Party, a  
14 Receiving Party may disclose any information or item designated  
15 "CONFIDENTIAL" only to:

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

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

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

24           (d) the court and its personnel;

25           (e) court reporters and their staff;

26           (f) professional jury or trial consultants, mock jurors, and Professional  
27 Vendors (as defined in this Order) to whom disclosure is reasonably necessary for  
28



1 this Action and who have signed the “Acknowledgment and Agreement to Be  
2 Bound” (Exhibit A);

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

5 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
6 Action to whom disclosure is reasonably necessary provided: (1) the deposing  
7 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)  
8 they will not be permitted to keep any confidential information unless they sign  
9 the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
10 agreed by the Designating Party or ordered by the court. Pages of transcribed  
11 deposition testimony or exhibits to depositions that reveal Protected Material may  
12 be 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 personnel,  
15 mutually agreed upon by any of the parties engaged in settlement discussions.

16 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
17 IN OTHER LITIGATION

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

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

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

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

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

9 8. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
10 PRODUCED IN THIS LITIGATION

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

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

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

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

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

28



1 (c) If the Non-Party fails to seek a protective order from this court within 14  
2 days of receiving the notice and accompanying information, the Receiving Party  
3 may produce the Non-Party's confidential information responsive to the discovery  
4 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
5 not produce any information in its possession or control that is subject to the  
6 confidentiality agreement with the Non-Party before a determination by the court.

7 Absent a court order to the contrary, the Non-Party shall bear the burden  
8 and expense of seeking protection in this court of its Protected Material.

9 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

19 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
20 PROTECTED MATERIAL

21 Pursuant to FRE 502 (d) and (e), the parties agree to, and the Court orders  
22 protection of privileged and otherwise Protected Material against claims of waiver  
23 (including as against third parties and in other federal and state proceedings) as  
24 follows:

25 (a) The disclosure or production of documents by a Producing Party  
26 subject to a legally recognized claim of privilege, including without limitation the  
27 attorney-client privilege and the work-product doctrine, to a Receiving Party, shall  
28 in no way constitute the voluntary disclosure of such Document, provided that the



1 requirements of Fed. R. Evid. 502(b)(1)-(3) are met;

2 (b) The inadvertent disclosure or production of any document in this  
3 action shall not result in the waiver of any privilege, evidentiary protection or  
4 other protection associated with such document as to the Receiving Party or any  
5 third parties, and shall not result in any waiver, including subject matter waiver, of  
6 any kind, provided that the requirements of Fed. R. Evid. 502(b)(1)-(3) are met;

7 (c) If, during the course of this litigation, a party determines that any  
8 document produced by another party is or may reasonably be subject to a legally  
9 recognizable privilege or evidentiary protection ("Protected Document"):

10 (i) the Receiving Party shall: (A) refrain from reading the  
11 Protected Document any more closely than is necessary to ascertain that it is  
12 privileged or otherwise protected from disclosure; (B) immediately notify the  
13 Producing Party in writing that it has discovered documents believed to be  
14 privileged or protected; (C) specifically identify the Protected Documents by bates  
15 number range or hash value, and, (D) within ten (10) days of discovery by the  
16 Receiving Party, return, sequester, or destroy all copies of such Protected  
17 Documents, along with any notes, abstracts or compilations of the content  
18 thereof. To the extent that a Protected Document has been loaded into a litigation  
19 review database under the control of the Receiving Party, the Receiving Party  
20 shall have all electronic copies of the Protected Document extracted from the  
21 database. Where such Protected Documents cannot be destroyed or separated,  
22 they shall not be reviewed, disclosed, or otherwise used by the Receiving  
23 Party. Notwithstanding, the Receiving Party is under no obligation to search or  
24 review the Producing Party's documents to identify potentially privileged or work  
25 product Protected Documents.

26 (ii) If the Producing Party intends to assert a claim of privilege or  
27 other protection over documents identified by the Receiving Party as Protected  
28 Documents, the Producing Party will, within ten (10) days of receiving the



1 Receiving Party's written notification described above, inform the Receiving Party  
2 of such intention in writing and shall provide the Receiving Party with a log for  
3 such Protected Documents that is consistent with the requirements of the Federal  
4 Rules of Civil Procedure, setting forth the basis for the claim of privilege or other  
5 protection. In the event that any portion of a Protected Document does not contain  
6 privileged or protected information, the Producing Party shall also provide to the  
7 Receiving Party a redacted copy of the document that omits the information that  
8 the Producing Party believes is subject to a claim of privilege or other protection.

9 (d) If, during the course of this litigation, a party determines it has  
10 produced a Protected Document:

11 (i) the Producing Party may notify the Receiving Party of such  
12 inadvertent production in writing, and demand the return of such  
13 documents. Such notice shall be in writing, however, it may be delivered orally  
14 on the record at a deposition, promptly followed up in writing. The Producing  
15 Party's written notice will identify the Protected Document inadvertently  
16 produced by bates number range or hash value, the privilege or protection  
17 claimed, and the basis for the assertion of the privilege and shall provide the  
18 Receiving Party with a log for such Protected Documents that is consistent with  
19 the requirements of the Federal Rules of Civil Procedure, setting forth the basis for  
20 the claim of privilege or other protection. In the event that any portion of the  
21 Protected Document does not contain privileged or protected information, the  
22 Producing Party shall also provide to the Receiving Party a redacted copy of the  
23 Document that omits the information that the Producing Party believes is subject  
24 to a claim of privilege or other protection.

25 (ii) the Receiving Party must, within ten (10) days of receiving the  
26 Producing Party's written notification described above, return, sequester, or  
27 destroy the Protected Document and any copies, along with any notes, abstracts or  
28 compilations of the content thereof. To the extent that a Protected Document has



1 been loaded into a litigation review database under the control of the Receiving  
2 Party, the Receiving Party shall have all electronic copies of the Protected  
3 Document extracted from the database.

4 (e) To the extent that the information contained in a Protected Document  
5 has already been used in or described in other documents generated or maintained  
6 by the Receiving Party prior to the date of receipt of written notice by the  
7 Producing Party as set forth in paragraphs 11(c)(ii) and 11(d)(i), then the  
8 Receiving Party shall sequester such documents until the claim has been  
9 resolved. If the Receiving Party disclosed the Protected Document before being  
10 notified of its inadvertent production, it must take reasonable steps to retrieve it.

11 (f) The Receiving Party's return, sequestering or destruction of Protected  
12 Documents as provided herein will not act as a waiver of the Requesting Party's  
13 right to move for the production of the returned, sequestered or destroyed  
14 documents on the grounds that the documents are not, in fact, subject to a viable  
15 claim of privilege or protection. However, the Receiving Party is prohibited and  
16 estopped from arguing that:

17 (i) the disclosure or production of the Protected Documents acts  
18 as a waiver of an applicable privilege or evidentiary protection;

19 (ii) the disclosure of the Protected Documents was not inadvertent;

20 (iii) the Producing Party did not take reasonable steps to prevent the  
21 disclosure of the Protected Documents; or

22 (iv) the Producing Party failed to take reasonable or timely steps to  
23 rectify the error.

24 (g) Either party may submit Protected Documents to the Court under seal  
25 for a determination of the claim of privilege or other protection. The Producing  
26 Party shall preserve the Protected Documents until such claim is resolved. The  
27 Receiving Party may not use the Protected Documents for any purpose absent this  
28 Court's Order.



1 (h) Upon a determination by the Court that the Protected Documents are  
2 protected by the applicable privilege or evidentiary protection, and if the Protected  
3 Documents have been sequestered rather than returned or destroyed by the  
4 Receiving Party, the Protected Documents shall be returned or destroyed within 10  
5 (ten) days of the Court's order. The Court may also order the identification by the  
6 Receiving Party of Protected Documents by search terms or other means.

7 (i) Nothing contained herein is intended to, or shall serve to limit a  
8 party's right to conduct a review of documents, data (including electronically  
9 stored information) and other information, including without limitation, metadata,  
10 for relevance, responsiveness or the segregation of privileged or protected  
11 information before such information is produced to another party.

12 (j) By operation of the parties' agreement and Court Order, the parties  
13 are specifically afforded the protections of FRE 502 (d) and (e).

14 11. MISCELLANEOUS

15 11.1 Right to Further Relief. Nothing in this Order abridges the right of any  
16 person to seek its modification by the Court in the future.

17 11.2 Right to Assert Other Objections. By stipulating to the entry of this  
18 Protective Order, no Party waives any right it otherwise would have to object to  
19 disclosing or producing any information or item on any ground not addressed in  
20 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
21 any ground to use in evidence of any of the material covered by this Protective  
22 Order.

23 11.3 Filing Protected Material. A Party that seeks to file under seal any  
24 Protected Material must comply with Local Civil Rule 79-5. Protected Material  
25 may only be filed under seal pursuant to a court order authorizing the sealing of  
26 the specific Protected Material at issue. If a Party's request to file Protected  
27 Material under seal is denied by the court, then the Receiving Party may file the  
28 information in the public record unless otherwise instructed by the court.

1            12.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           13.VIOLATION

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

24           ///

25           ///

26           ///

27           ///

28           ///

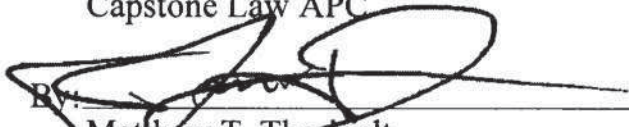


1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2

3 Dated: August 24, 2017

Capstone Law APC



By: Matthew T. Theriault  
Robert J. Drexler, Jr.  
Jonathan Lee  
Natalie Torbati

Attorneys for Plaintiff Kia Davidson

4

5 Dated: August 24, 2017

Higgs Fletcher & Mack LLP



By: James M. Peterson  
Jason C. Ross  
Kyle W. Nageotte

Attorneys for Defendant O'Reilly Auto Enterprises, LLC

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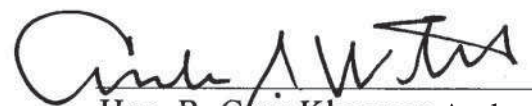
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27

Dated: 9.5.2017



Hon. R. Gary Klausner Andrew J. Wistrich  
Magistrate District Court Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
5 that I have read in its entirety and understand the Stipulated Protective Order that  
6 was issued by the United States District Court for the Central District of California  
7 in the case of *Davidson v. O'Reilly Auto Enterprises, LLC*, Case No. 5:17-cv-  
8 00603-RGK-AJW. I agree to comply with and to be bound by all the terms of this  
9 Stipulated Protective Order and I understand and acknowledge that failure to so  
10 comply could expose me to sanctions and punishment in the nature of contempt. I  
11 solemnly promise that I will not disclose in any manner any information or item  
12 that is subject to this Stipulated Protective Order to any person or entity except in  
13 strict compliance with the provisions of this Order. I further agree to submit to the  
14 jurisdiction of the United States District Court for the Central District of  
15 California for enforcing the terms of this Stipulated Protective Order, even if such  
16 enforcement proceedings occur after termination of this action. I hereby appoint  
17 \_\_\_\_\_ [print or type full name] of  
18 \_\_\_\_\_ [print or type full address and  
19 telephone number] as my California agent for service of process in connection  
20 with this action or any proceedings related to enforcement of this Stipulated  
21 Protective Order.

22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24 Printed name: \_\_\_\_\_

25  
26 Signature: \_\_\_\_\_  
27  
28