

1 **BARNES & THORNBURG LLP**
 2 David P. Schack (SBN 106288)
 3 david.schack@btlaw.com
 4 Matthew B. O'Hanlon (SBN 253648)
 5 matthew.o'hanlon@btlaw.com
 6 Jonathan J. Boustani (SBN 274748)
 Jonathan.Boustani@btlaw.com
 2029 Century Park East, Suite 300
 Los Angeles, CA 90067
 Telephone: 310-284-3880
 Facsimile: 310-284-3894

7
 8 Attorneys for Defendant and Counterclaimant
 Quaid Harley-Davidson, Inc.

9
 10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 SENTRY SELECT INSURANCE
 13 COMPANY, a Wisconsin corporation,

14 Plaintiff,

15 v.

16 QUAID HARLEY DAVIDSON, INC.,
 17 a California corporation; LISA HALL,
 18 an individual, on behalf of herself, the
 proposed class(es), all other similarly
 19 situated, and on behalf of the general
 public,

20 Defendants.

Case No. 5:20-cv-02145-JWH-KK

DISCOVERY MATTER

**STIPULATED PROTECTIVE
 ORDER**

1 1. A. PURPOSES AND LIMITATIONS

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

15 B. GOOD CAUSE STATEMENT

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

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

7
8 **2. DEFINITIONS**

9 **2.1 Action:** the above-captioned action pending in the United States District
10 Court for the Central District of California styled as *Select Insurance Company v.*
11 *Quaid Harley Davidson, Inc. et al.*, Case No. 5:20-cv-02145-JWH-KK.

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

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

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

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

22 **2.6 Disclosure or Discovery Material:** all items or information, regardless of the
23 medium or manner in which it is generated, stored, or maintained (including, among
24 other things, testimony, transcripts, and tangible things), that are produced or generated
25 in disclosures or responses to discovery in this matter.

26 **2.7 Expert:** a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
28 expert witness or as a consultant in this Action.

1 2.8 House Counsel: attorneys who are employees of a party to this Action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this Action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
7 this Action but are retained to represent or advise a party to this Action and have
8 appeared in this Action on behalf of that party or are affiliated with a law firm which
9 has appeared on behalf of that party, and includes support staff.

10 2.11 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 2.13 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
18 their employees and subcontractors.

19 2.14 Protected Material: any Disclosure or Discovery Material that is designated
20 as “CONFIDENTIAL.”

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
22 from a Producing Party.

23
24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only Protected
26 Material (as defined above), but also (1) any information copied or extracted from
27 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
28 Material; and (3) any testimony, conversations, or presentations by Parties or their

1 Counsel that might reveal Protected Material. Any use of Protected Material at trial
2 shall be governed by the orders of the trial judge. This Order does not govern the use
3 of Protected Material at trial.

4
5 4. DURATION

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

13
14 5. DESIGNATING PROTECTED MATERIAL

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

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

27 If it comes to a Designating Party's attention that information or items that it
28 designated for protection do not qualify for protection, that Designating Party must

1 promptly notify all other Parties that it is withdrawing the inapplicable designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in this
3 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
4 or ordered, Disclosure or Discovery Material that qualifies for protection under this
5 Order must be clearly so designated before the material is disclosed or produced.

6 Designation in conformity with this Order requires:

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

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

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

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

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

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

11 12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
16 process under Local Rule 37.1 et seq.

17 6.3 The burden of persuasion in any such challenge proceeding shall be on the
18 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
19 to harass or impose unnecessary expenses and burdens on other parties) may expose
20 the Challenging Party to sanctions. Unless the Designating Party has waived or
21 withdrawn the confidentiality designation, all parties shall continue to afford the
22 material in question the level of protection to which it is entitled under the Producing
23 Party’s designation until the Court rules on the challenge.

24 25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Non-Party in connection with this
28 Action only for prosecuting, defending, or attempting to settle this Action. Such

1 Protected Material may be disclosed only to the categories of persons and under the
2 conditions described in this Order. When the Action has been terminated, a Receiving
3 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
8 ordered by the court or permitted in writing by the Designating Party, a Receiving
9 Party may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

18 (d) the court and its personnel;

19 (e) court reporters and their staff;

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

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

25 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action
26 to whom disclosure is reasonably necessary provided: (1) the deposing party requests
27 that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be
28 permitted to keep any confidential information unless they sign the “Acknowledgment

1 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
2 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
3 depositions that reveal Protected Material may be separately bound by the court
4 reporter and may not be disclosed to anyone except as permitted under this Stipulated
5 Protective Order; and

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

8
9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
10 OTHER LITIGATION

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

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

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

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

22 If the Designating Party timely seeks a protective order, the Party served with
23 the subpoena or court order shall not produce any information designated in this Action
24 as “CONFIDENTIAL” before a determination by the court from which the subpoena
25 or order issued, unless the Party has obtained the Designating Party’s permission. The
26 Designating Party shall bear the burden and expense of seeking protection in that court
27 of its confidential material and nothing in these provisions should be construed as
28 authorizing or encouraging a Receiving Party in this Action to disobey a lawful

1 directive from another court.

2
3 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
4 IN THIS LITIGATION

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

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

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

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

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

22 (c) If the Non-Party fails to seek a protective order from this court within 14
23 days of receiving the notice and accompanying information, the Receiving Party may
24 produce the Non-Party’s confidential information responsive to the discovery request.
25 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
26 any information in its possession or control that is subject to the confidentiality
27 agreement with the Non-Party before a determination by the court. Absent a court
28 order to the contrary, the Non-Party shall bear the burden and expense of seeking

1 protection in this court of its Protected Material.

2
3 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

12
13 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
14 **PROTECTED MATERIAL**

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

25
26 **12. MISCELLANEOUS**

27 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any
28 person to seek its modification by the Court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
8 only be filed under seal pursuant to a court order authorizing the sealing of the specific
9 Protected Material at issue. If a Party's request to file Protected Material under seal is
10 denied by the court, then the Receiving Party may file the information in the public
11 record unless otherwise instructed by the court.

12
13 13. FINAL DISPOSITION

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

1 contain Protected Material. Any such archival copies that contain or constitute
2 Protected Material remain subject to this Protective Order as set forth in Section 4
3 (DURATION).
4

5 14. Any violation of this Order may be punished by any and all appropriate
6 measures including, without limitation, contempt proceedings and/or monetary
7 sanctions.
8

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

10 **BARNES & THORNBURG LLP**

11
12 Dated: 11/18/2021

By: /s/ Matthew B. O'Hanlon

13 David P. Schack
14 david.schack@btlaw.com
15 Matthew B. O'Hanlon
16 matthew.o'hanlon@btlaw.com
17 Jonathan J. Boustani
18 Jonathan.Boustani@btlaw.com
19 Attorneys for Defendant and
20 Counterclaimant Quaid Harley-Davidson,
21 Inc.

22 **SELMAN BREITMAN LLP**

23
24 Dated: 11/10/2021

By: 

25 Alan B. Yuter
26 ayuter@selmanlaw.com
27 Rachel E. Hobbs
28 rhobbs@selmanlaw.com
Attorneys for Plaintiff and Counter-
Defendant Sentry Select Insurance
Company

29 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

30 Date: November 19, 2021



Hon. Kenly Kiya Kato
United States Magistrate 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 that I
5 have read in its entirety and understand the Stipulated Protective Order that was issued
6 by the United States District Court for the Central District of California on [date] in the
7 case of *Sentry Select Insurance Company v. Quaid Harley Davidson, Inc.; et al.*,
8 United States District Court for the Central District of California Case No. 5:20-CV-
9 02145-JWH-KK. I agree to comply with and to be bound by all the terms of this
10 Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item that is
13 subject to this Stipulated Protective Order to any person or entity except in strict
14 compliance with the provisions of this Order. I further agree to submit to the
15 jurisdiction of the United States District Court for the Central District of California for
16 the purpose of enforcing the terms of this Stipulated Protective Order, even if such
17 enforcement proceedings occur after termination of this action. I hereby appoint
18 _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23
24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____

28