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18 and DUNLOP SPORTS CO. LTD.

19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

21 ROGER CLEVELAND GOLF
22 COMPANY, INC., a California
23 corporation; and DUNLOP SPORTS CO.
24 LTD., a Japanese corporation

25 Plaintiffs,

26 v.

27 CALLAWAY GOLF COMPANY, a
28 Delaware corporation,

Defendant.

Case No. 8:13-cv-01642 AG (RNBx)

~~(Proposed)~~
PROTECTIVE ORDER

1 **1. PURPOSE AND LIMITS OF THIS ORDER**

2 Discovery in this action is likely to involve confidential, proprietary, or private
3 information requiring special protection from public disclosure and from use for any
4 purpose other than this litigation. Thus, the Court enters this Protective Order. This
5 Order does not confer blanket protections on all disclosures or responses to discovery,
6 and the protection it gives from public disclosure and use extends only to the specific
7 material entitled to confidential treatment under the applicable legal principles. This
8 Order does not automatically authorize the filing under seal of material designated
9 under this Order. Instead, the parties must comply with L.R. 79-5.1 if they seek to file
10 anything under seal. This Order does not govern the use at trial of material designated
11 under this Order.

12 **2. DESIGNATING PROTECTED MATERIAL**

13 **2.1 Over-Designation Prohibited.** Any party or non-party who designates
14 information or items for protection under this Order as “CONFIDENTIAL,”
15 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY
16 CONFIDENTIAL – SOURCE CODE” (a “designator”) must only designate specific
17 material that qualifies under the appropriate standards. To the extent practicable, only
18 those parts of documents, items, or oral or written communications that require
19 protection shall be designated. Designations with a higher confidentiality level when a
20 lower level would suffice are prohibited. Mass, indiscriminate, or routinized
21 designations are prohibited. Unjustified designations expose the designator to
22 sanctions, including the Court’s striking all confidentiality designations made by that
23 designator. Designation under this Order is allowed only if the designation is necessary
24 to protect material that, if disclosed to persons not authorized to view it, would cause
25 competitive or other recognized harm. Material may not be designated if it has been
26 made public, or if designation is otherwise unnecessary to protect a secrecy interest. If a
27 designator learns that information or items that it designated for protection do not
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1 qualify for protection at all or do not qualify for the level of protection initially asserted,
2 that designator must promptly notify all parties that it is withdrawing the mistaken
3 designation.

4 **2.2 Manner and Timing of Designations.** Designation under this Order
5 requires the designator to affix the applicable legend (“CONFIDENTIAL,”
6 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY
7 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected
8 material. For testimony given in deposition or other proceeding, the designator shall
9 specify all protected testimony and the level of protection being asserted. It may make
10 that designation during the deposition or proceeding, or may invoke, on the record or
11 by written notice to all parties on or before the next business day, a right to have up to
12 21 days from the deposition or proceeding to make its designation.

13 **2.2.1** A party or non-party that makes original documents or materials
14 available for inspection need not designate them for protection until after the
15 inspecting party has identified which material it would like copied and produced.
16 During the inspection and before the designation, all material shall be treated as
17 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the
18 inspecting party has identified the documents it wants copied and produced, the
19 producing party must designate the documents, or portions thereof, that qualify
20 for protection under this Order.

21 **2.2.2** Parties shall give advance notice if they expect a deposition or other
22 proceeding to include designated material so that the other parties can ensure
23 that only authorized individuals are present at those proceedings when such
24 material is disclosed or used. The use of a document as an exhibit at a deposition
25 shall not in any way affect its designation. Transcripts containing designated
26 material shall have a legend on the title page noting the presence of designated
27 material, and the title page shall be followed by a list of all pages (including line
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1 numbers as appropriate) that have been designated, and the level of protection
2 being asserted. The designator shall inform the court reporter of these
3 requirements. Any transcript that is prepared before the expiration of the 21-day
4 period for designation shall be treated during that period as if it had been
5 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY unless
6 otherwise agreed. After the expiration of the 21-day period, the transcript shall
7 be treated only as actually designated.

8 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to designate
9 does not, standing alone, waive protection under this Order. Upon timely assertion or
10 correction of a designation, all recipients must make reasonable efforts to ensure that
11 the material is treated according to this Order.

12 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 All challenges to confidentiality designations shall proceed under L.R. 37-1
14 through L.R. 37-4.

15 **4. ACCESS TO DESIGNATED MATERIAL**

16 **4.1 Basic Principles.** A receiving party may use designated material only for this
17 litigation. Designated material may be disclosed only to the categories of persons and
18 under the conditions described in this Order.

19 **4.2 Disclosure of CONFIDENTIAL Material Without Further Approval.**

20 Unless otherwise ordered by the Court or permitted in writing by the designator, a
21 receiving party may disclose any material designated CONFIDENTIAL only to:

22 **4.2.1** The receiving party's outside counsel of record in this action and
23 employees of outside counsel of record to whom disclosure is reasonably
24 necessary;

25 **4.2.2** Only one in-house counsel, of the receiving party, which one in-
26 house counsel has complied with 4.4.1, and whose written request has been
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1 approved by designator, and who has signed the Agreement to Be Bound
2 (Exhibit A);

3 4.2.3 Experts retained by the receiving party's outside counsel of record
4 to whom disclosure is reasonably necessary, and who have signed the Agreement
5 to Be Bound (Exhibit A);

6 4.2.4 The Court and its personnel;

7 4.2.5 Outside court reporters and their staff, professional jury or trial
8 consultants, and professional vendors to whom disclosure is reasonably
9 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

10 4.2.6 During their depositions, witnesses in the action to whom disclosure
11 is reasonably necessary and who have signed the Agreement to Be Bound
12 (Exhibit A); and

13 4.2.7 The author or recipient of a document containing the material, or a
14 custodian or other person who otherwise possessed or knew the information.

15 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY**
16 **and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without Further**
17 **Approval.** Unless permitted in writing by the designator, a receiving party may disclose
18 material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or
19 HIGHLY CONFIDENTIAL – SOURCE CODE without further approval only to:

20 4.3.1 The receiving party's outside counsel of record in this action and
21 employees of outside counsel of record to whom it is reasonably necessary to
22 disclose the information;

23 4.3.1A Only one in-house counsel, of the receiving party, which one in-
24 house counsel has complied with 4.4.1, and whose written request has been
25 approved by designator, and who has signed the Agreement to Be Bound
26 (Exhibit A);

27 4.3.2 The Court and its personnel;

1 **4.3.3** Outside court reporters and their staff, professional jury or trial
2 consultants, and professional vendors to whom disclosure is reasonably
3 necessary, and who have signed the Agreement to Be Bound (Exhibit A); and

4 **4.3.4** The author or recipient of a document containing the material, or a
5 custodian or other person who otherwise possessed or knew the information.

6 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
7 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY**
8 **CONFIDENTIAL – SOURCE CODE Material to In-House Counsel or**
9 **Experts.** Unless agreed to in writing by the designator:

10 **4.4.1** A party seeking to disclose to in-house counsel any material
11 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must
12 first make a written request to the designator providing the full name of the in-
13 house counsel, the city and state of such counsel's residence, and such counsel's
14 current and reasonably foreseeable future primary job duties and responsibilities
15 in sufficient detail to determine present or potential involvement in any
16 competitive decision-making. In-house counsel are not authorized to receive
17 material designated HIGHLY CONFIDENTIAL – SOURCE CODE.

18 **4.4.2** A party seeking to disclose to an expert retained by outside counsel
19 of record any information or item that has been designated HIGHLY
20 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
21 CONFIDENTIAL – SOURCE CODE must first make a written request to the
22 designator that (1) identifies the general categories of HIGHLY
23 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
24 CONFIDENTIAL – SOURCE CODE information that the receiving party
25 seeks permission to disclose to the expert, (2) sets forth the full name of the
26 expert and the city and state of his or her primary residence, (3) attaches a copy
27 of the expert's current resume, (4) identifies the expert's current employer(s), (5)
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1 identifies each person or entity from whom the expert has received
2 compensation or funding for work in his or her areas of expertise (including in
3 connection with litigation) in the past five years, and (6) identifies (by name and
4 number of the case, filing date, and location of court) any litigation where the
5 expert has offered expert testimony, including by declaration, report, or
6 testimony at deposition or trial, in the past five years. If the expert believes any
7 of this information at (4) - (6) is subject to a confidentiality obligation to a third
8 party, then the expert should provide whatever information the expert believes
9 can be disclosed without violating any confidentiality agreements, and the party
10 seeking to disclose the information to the expert shall be available to meet and
11 confer with the designator regarding any such confidentiality obligations.

12 **4.4.3** A party that makes a request and provides the information specified
13 in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified
14 in-house counsel or expert unless, within seven days of delivering the request,
15 the party receives a written objection from the designator providing detailed
16 grounds for the objection.

17 **4.4.4** All challenges to objections from the designator shall proceed under
18 L.R. 37-1 through L.R. 37-4.

19 **5. SOURCE CODE**

20 **5.1 Designation of Source Code.** If production of source code is necessary, a
21 party may designate it as HIGHLY CONFIDENTIAL – SOURCE CODE if it is, or
22 includes, confidential, proprietary, or trade secret source code.

23 **5.2 Location and Supervision of Inspection.** Any HIGHLY
24 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made available
25 for inspection, in a format allowing it to be reasonably reviewed and searched, during
26 normal business hours or at other mutually agreeable times, at an office of the
27 designating party's counsel or another mutually agreeable location. The source code
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1 shall be made available for inspection on a secured computer in a secured room, and
2 the inspecting party shall not copy, remove, or otherwise transfer any portion of the
3 source code onto any recordable media or recordable device. The designator may
4 visually monitor the activities of the inspecting party's representatives during any
5 source code review, but only to ensure that there is no unauthorized recording,
6 copying, or transmission of the source code.

7 **5.3 Paper Copies of Source Code Excerpts.** The inspecting party may request
8 paper copies of limited portions of source code that are reasonably necessary for the
9 preparation of court filings, pleadings, expert reports, other papers, or for deposition or
10 trial. The designator shall provide all such source code in paper form, including Bates
11 numbers and the label "HIGHLY CONFIDENTIAL – SOURCE CODE."

12 **5.4 Access Record.** The inspecting party shall maintain a record of any
13 individual who has inspected any portion of the source code in electronic or paper
14 form, and shall maintain all paper copies of any printed portions of the source code in a
15 secured, locked area. The inspecting party shall not convert any of the information
16 contained in the paper copies into any electronic format other than for the preparation
17 of a pleading, exhibit, expert report, discovery document, deposition transcript, or
18 other Court document. Any paper copies used during a deposition shall be retrieved at
19 the end of each day and must not be left with a court reporter or any other
20 unauthorized individual.

21 **6. PROSECUTION BAR**

22 Absent written consent from the designator, any individual who receives access
23 to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
24 CONFIDENTIAL – SOURCE CODE information shall not be involved in the
25 prosecution of patents or patent applications concerning the field of the invention of
26 the patents-in-suit for the receiving party or its acquirer, successor, predecessor, or
27 other affiliate during the pendency of this action and for one year after its conclusion,
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1 including any appeals. "Prosecution" means drafting, amending, advising on the
2 content of, or otherwise affecting the scope or content of patent claims or
3 specifications. These prohibitions shall not preclude counsel from participating in
4 reexamination or *inter partes* review proceedings to challenge or defend the validity of
5 any patent, but counsel may not participate in the drafting of amended claims in any
6 such proceedings.

7 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED** 8 **IN OTHER LITIGATION**

9 **7.1 Subpoenas and Court Orders.** This Order in no way excuses non-
10 compliance with a lawful subpoena or court order. The purpose of the duties described
11 in this section is to alert the interested parties to the existence of this Order and to give
12 the designator an opportunity to protect its confidentiality interests in the court where
13 the subpoena or order issued.

14 **7.2 Notification Requirement.** If a party is served with a subpoena or a court
15 order issued in other litigation that compels disclosure of any information or items
16 designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL –
17 ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE,
18 that party must:

19 **7.2.1** Promptly notify the designator in writing. Such notification shall
20 include a copy of the subpoena or court order;

21 **7.2.2** Promptly notify in writing the party who caused the subpoena or
22 order to issue in the other litigation that some or all of the material covered by
23 the subpoena or order is subject to this Order. Such notification shall include a
24 copy of this Order; and

25 **7.2.3** Cooperate with all reasonable procedures sought by the designator
26 whose material may be affected.
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1 **7.3 Wait For Resolution of Protective Order.** If the designator timely seeks a
2 protective order, the party served with the subpoena or court order shall not produce
3 any information designated in this action as CONFIDENTIAL, HIGHLY
4 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
5 SOURCE CODE before a determination by the court where the subpoena or order
6 issued, unless the party has obtained the designator's permission. The designator shall
7 bear the burden and expense of seeking protection of its confidential material in that
8 court.

9 **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

10 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
11 designated material to any person or in any circumstance not authorized under this
12 Order, it must immediately (1) notify in writing the designator of the unauthorized
13 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the designated
14 material, (3) inform the person or persons to whom unauthorized disclosures were
15 made of all the terms of this Order, and (4) use reasonable efforts to have such person
16 or persons execute the Agreement to Be Bound (Exhibit A).

17 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
18 **PROTECTED MATERIAL**

19 When a producing party gives notice that certain inadvertently produced material
20 is subject to a claim of privilege or other protection, the obligations of the receiving
21 parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
22 provision is not intended to modify whatever procedure may be established in an e-
23 discovery order that provides for production without prior privilege review pursuant to
24 Federal Rule of Evidence 502(d) and (e).

25 **10. FILING UNDER SEAL**

26 Without written permission from the designator or a Court order, a party may
27 not file in the public record in this action any designated material. A party seeking to
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1 file under seal any designated material must comply with L.R. 79-5.1. Filings may be
2 made under seal only pursuant to a court order authorizing the sealing of the specific
3 material at issue. The fact that a document has been designated under this Order is
4 insufficient to justify filing under seal. Instead, parties must explain the basis for
5 confidentiality of each document sought to be filed under seal. Because a party other
6 than the designator will often be seeking to file designated material, cooperation
7 between the parties in preparing, and in reducing the number and extent of, requests
8 for under seal filing is essential. If a *receiving party's* request to file designated
9 material under seal pursuant to L.R. 79-5.1 is denied by the Court, then the receiving
10 party *may file the material in the public record* unless (1) *the designator* seeks
11 reconsideration within four days of the denial, or (2) as otherwise instructed by the
12 Court.

13 **11. FINAL DISPOSITION**

14 Within 60 days after the final disposition of this action, each party shall return all
15 designated material to the designator or destroy such material, including all copies,
16 abstracts, compilations, summaries, and any other format reproducing or capturing any
17 designated material. The receiving party must submit a written certification to the
18 designator by the 60-day deadline that (1) identifies (by category, where appropriate) all
19 the designated material that was returned or destroyed, and (2) affirms that the
20 receiving party has not retained any copies, abstracts, compilations, summaries, or any
21 other format reproducing or capturing any of the designated material. This provision
22 shall not prevent counsel from retaining an archival copy of all pleadings, motion
23 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,

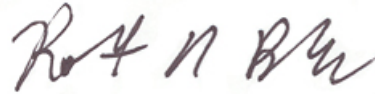
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1 deposition and trial exhibits, expert reports, attorney work product, and consultant and
2 expert work product, even if such materials contain designated material. Any such
3 archival copies remain subject to this Order.

4 IT IS SO ORDERED.

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6 DATED: 4/15/2014



United States District Judge/Magistrate Judge

EXHIBIT A

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 Protective Order that was
issued by the United States District Court for the Central District of California on
_____, 2014, in the case of Roger Cleveland Golf Company Inc.;
Dunlop Sports Co. Ltd. Vs. Callaway Golf Company, Case No. 8:13-cv-1642 AG
(RNBx), I agree to comply with and to be bound by all the terms of this Protective
Order, and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment for contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Protective Order to any
person or entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing this 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 Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]