

1 **LANAK & HANNA, P.C.**
 2 **MICHAEL K. MURRAY (265785)**
 3 mkmurray@lanak-hanna.com
 4 625 The City Drive South, Suite 190
 5 Orange, California 92868
 6 Telephone: (714) 550-0418
 7 Facsimile: (714) 703-1610

8 **YOUNG BASILE HANLON & MACFARLANE, P.C.**
 9 **JEFFREY D. WILSON (PRO HAC VICE)**
 10 wilson@youngbasile.com
 11 **GEORGE S. FISH (PRO HAC VICE)**
 12 fish@youngbasile.com
 13 **RYAN T. MCCLEARY (PRO HAC VICE)**
 14 mccleary@youngbasile.com
 15 3001 W. Big Beaver Rd., Ste. 624
 16 Troy, Michigan 48084
 17 Telephone: (248) 649-3333
 18 Facsimile: (248) 649-3338

19 Attorneys for Plaintiff
 20 The Sherwin-Williams Company,
 21 d/b/a Sherwin-Williams Automotive Finishes

22 UNITED STATES DISTRICT COURT
 23 CENTRAL DISTRICT OF CALIFORNIA

24 THE SHERWIN-WILLIAMS
 25 COMPANY, d/b/a SHERWIN-
 26 WILLIAMS AUTOMOTIVE FINISHES,
 27
 28 Plaintiff,
 29
 30 vs.
 31 AUTO COLLISION INCORPORATED,
 32 d/b/a SNYDER'S AUTO BODY AND
 33 JON ZYLA,
 34
 35 Defendants.

36 Case No.: 8:15-cv-00867-DOC-DFMx
 37
 38 **PROTECTIVE ORDER**

1 **1. Restrictions on Disclosure of Information Designated Confidential.** Until
2 further Order of this Court, no document, or copy thereof (or any contents, portions,
3 summaries, digests, compilations or extracts thereof), produced pursuant to FRCP 26, in
4 response to FRCP 33 Interrogatories, FRCP 34 Requests For Production, or by any non-
5 party in response to a party subpoena, which is designated “Confidential,” shall be
6 disclosed in any way, directly or indirectly, in any form, to anyone other than in
7 connection with this case, and then only to the following persons:

- 8 a. the Court and its staff assigned to this case;
- 9 b. the parties (whether or not dismissed at any time);
- 10 c. outside counsel of record in this case and their respective
11 shareholders, partners, associates, legal assistants, and staff employees
12 who are involved in this case;
- 13 d. general counsel for any of the parties and their respective associates,
14 legal assistants, any staff employees who are involved in this case;
- 15 e. officers, directors, employees, accountants and agents of the parties,
16 or affiliated companies, who are assisting or dealing with counsel of
17 record or general counsel;
- 18 f. independent experts, investigators, consultants, and the like,
19 retained by any party in connection with this litigation;
- 20 g. witnesses disclosed and persons to be deposed by any party but only
21 to the extent necessary to prepare such person for their respective and
22 expected testimony and/or cross examination in discovery and/or at
23 trial; or
- 24 h. persons deemed by counsel of record, whether or not a party, witness
25 or deponent, necessary to effectively represent their respective
26 client(s) in this litigation.

27 **2. Scope of Protective Order.** This Protective Order:
28

- 1 a. shall only apply to those specific documents that are designated as
2 Confidential or Highly Confidential/Attorneys' Eyes Only as set forth
3 herein;
4 b. shall apply to documents obtained by the parties or their respective
5 counsel from non-parties via subpoena; and
6 c. shall not apply to documents obtained by the parties or their
7 respective counsel from sources independent of and not otherwise
8 affiliated with any of the parties to this case.

9 3. **Notice of Protective Order.** Any person who is permitted by counsel to
10 view and/or retain a copy of any document covered by this Protective Order shall be
11 provided with a copy of this Protective Order and shall, by receiving a copy of same and
12 viewing and/or retaining such document, agrees to be bound by the terms hereof and shall
13 acknowledge the same in writing.

14 4. **Designation as Highly Confidential/Attorneys' Eyes Only.** In addition to
15 the protections afforded Confidential Information or Material under this Order, a
16 producing party may designate any Confidential Information or Material which it further
17 reasonably believes constitutes a trade secret or other highly confidential research,
18 development, or commercial information, the disclosure of which to the other party or
19 public would cause the producing party competitive harm, as "Highly
20 Confidential/Attorneys' Eyes Only" by visibly designating such documents or by
21 otherwise so designating sections of deposition transcripts or answers to interrogatories
22 that contain such "Highly Confidential/Attorneys' Eyes Only." Materials designated as
23 "Highly Confidential/Attorney's Eyes Only" may be disclosed only to counsel and
24 general counsel for the parties (including staff as described in paragraph 1 (c) and (d)),
25 and experts as defined in paragraph 1(f) who have signed the Confidentiality Undertaking
26 of paragraph 10. Any further disclosure of such information to others shall occur only by
27 agreement of the parties in writing or court order.
28

1 5. **Voluminous Documents.** In the case of voluminous documents, the
2 producing parties may designate documents as “Confidential” or “Highly
3 Confidential/Attorneys’ Eyes Only” by identifying ranges of numbered documents that
4 are either “Confidential” or “Highly Confidential/Attorneys’ Eyes Only”.

5 6. **Conclusion of Litigation.** At the conclusion and final disposition of this
6 litigation, either party shall have the right to request in writing that all such documents
7 covered by this Protective Order either be returned to that party who shall have produced
8 the same or destroyed provided such written request shall be made within forty-five (45)
9 days following such conclusion and final disposition; otherwise, the right to a return or
10 destruction of such document shall be deemed waived.

11 7. **Order of Exclusion.** At any time, any party may apply to this Court for an
12 Order excluding specific documents from the protection of this Order.

13 8. **Non-Waiver of Privileges.** Notwithstanding any other provision in this
14 order to the contrary, the inadvertent or unintentional disclosure by any party of
15 Confidential information or information subject to the attorney client privilege, work
16 product privilege or any other privilege or protection provided by law, either by way of
17 document production or deposition testimony or exhibit thereto, regardless of whether the
18 information was so designated at the time of disclosure, shall not be deemed a waiver in
19 whole or in part of the party’ claim of confidentiality or privilege, either as to the specific
20 information disclosed or as to any other information relating thereto on the same or
21 related subject matter. Upon notice of any inadvertent or unintentional disclosure, the
22 receiving party shall return said documents and things and all copies immediately, and
23 shall not use any privileged documents or information in connection with this litigation.
24 This Protective Order shall be interpreted to provide the maximum protection allowed by
25 Federal Rule of Evidence 502(d). Nothing contained herein is intended to or shall serve
26 to limit a party’s right to conduct a review of documents, ESI or information (including
27 metadata) for relevance, responsiveness and/or segregation of privileged and/or protected
28 information before production.

1 9. **Violation of Order.** Any violation of this Order, whether or not intentional
2 or otherwise, by anyone having knowledge thereof, may subject that person or entity to
3 imposition of an appropriate sanction, in the discretion of the Court, as within or
4 authorized by any statute, rule, or inherent power of the Court, or as otherwise provided
5 by law.

6 10. **Undertaking.** All persons specified in paragraph 1(f) through (h) to whom
7 disclosure of Confidential Information or Highly Confidential/Attorneys' Eyes Only
8 material is made shall be given a copy of this Protective Order and shall sign the
9 Undertaking Regarding Confidentiality form attached hereto as Exhibit 1 indicating that
10 they have read this Protective Order and agree to be bound by its terms.

11 11. **Disclosure of Confidential Material at Deposition.** During any deposition
12 in which Confidential or Highly Confidential/Attorney's Eyes Only Information is
13 discussed, counsel attending the deposition must make a good-faith effort to designate, on
14 the record, the portions of the transcript that will contain Confidential or Highly
15 Confidential/Attorney's Eyes Only Information. The portions of any deposition
16 transcript that counsel for any party has designated on the record at the deposition as
17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY,"
18 and any such information marked as a deposition exhibit shall be treated as Confidential
19 or Highly Confidential/Attorney's Eyes Only information and placed in a separately
20 bound volume. For deposition testimony not designated on the record during the
21 deposition, portions of the transcript may be designated "CONFIDENTIAL" or
22 "HIGHLY CONFIDENTIAL/ATTORNEY'S EYES ONLY" if, within fourteen (14)
23 days of the transcript's delivery to the Parties' counsel of record, counsel designates in
24 writing, by page, any portion of the transcript as Confidential or Highly
25 Confidential/Attorney's Eyes Only Information. **In the time after the deposition but**
26 **before the expiration of this fourteen (14) day period, the entirety of all deposition**
27 **transcripts must be treated as if they contained Highly Confidential/Attorney's Eyes**
28 **Only Information.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 THE SHERWIN-WILLIAMS
4 COMPANY, d/b/a SHERWIN-
WILLIAMS AUTOMOTIVE FINISHES,

5 Plaintiff,

6 vs.

7 AUTO COLLISION INCORPORATED,
8 d/b/a SNYDER'S AUTO BODY AND
9 JON ZYLA,

10 Defendants.

) Case No.: 8:15-cv-00867-DOC-DFM

) **UNDERTAKING REGARDING**
) **CONFIDENTIALITY**

11 The undersigned individual hereby certifies that he/she has read the foregoing
12 Protective Order, understands the terms thereof, and agrees to be bound thereby
13 personally if receiving Confidential Information or Highly Confidential/Attorney's Eyes
14 Only in the course of the above-captioned litigation.

15 The undersigned acknowledges that breach of the Protective Order shall be
16 actionable by any aggrieved party to the Action that is the subject of the foregoing
17 Protective Order, and that such breach shall subject the undersigned to any and all
18 applicable legal and equitable remedies for enforcement for the Protective Order and/or
19 relief, including damages, for its breach.

20 Promptly upon termination of this action, I will return all Confidential Information
21 or Highly Confidential/Attorney's Eyes Only which came into my possession, and all
22 documents or things which I have prepared relating thereto, to counsel for the party
23 supplying such Information to me.

24 I hereby submit to the jurisdiction of this Court for the purpose of enforcement of
25 the Protective Order in this action.

26 Date: _____

27 Name: _____