

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

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA

BARBARA CASTILLO, individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

v.

FLUIDMASTER, INC.,

Defendant.

Case No. 8:16-cv-01743-AG (KES)

ORDER RE: STIPULATED  
PROTECTIVE ORDER

Judge: Hon. Andrew J. Guilford  
Courtroom: 10D, Santa Ana

Magistrate Judge: Hon. Karen E. Scott  
Courtroom: 6D, Santa Ana

Complaint Filed: September 19, 2016

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

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

13 **2. DESIGNATING PROTECTED MATERIAL**

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

1 protection do not qualify for protection at all or do not qualify for the level of  
2 protection initially asserted, that designator must promptly notify all parties that it  
3 is withdrawing the mistaken designation.

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

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

21 **2.2.2** Parties shall give advance notice if they expect a deposition  
22 or other proceeding to include designated material so that the other  
23 parties can ensure that only authorized individuals are present at those  
24 proceedings when such material is disclosed or used. The use of a  
25 document as an exhibit at a deposition shall not in any way affect its  
26 designation. Transcripts containing designated material shall have a  
27 legend on the title page noting the presence of designated material, and  
28 the title page shall be followed by a list of all pages (including line

1 numbers as appropriate) that have been designated, and the level of  
2 protection being asserted. The designator shall inform the court reporter  
3 of these requirements. Any transcript that is prepared before the  
4 expiration of the 21-day period for designation shall be treated during  
5 that period as if it had been designated HIGHLY CONFIDENTIAL -  
6 ATTORNEY EYES ONLY unless otherwise agreed. After the expiration  
7 of the 21-day period, the transcript shall be treated only as actually  
8 designated.

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

13 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

16 **4. ACCESS TO DESIGNATED MATERIAL**

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

20 **4.2 Disclosure of CONFIDENTIAL Material Without Further**  
21 **Approval.** Unless otherwise ordered by the Court or permitted in writing by  
22 the designator, a receiving party may disclose any material designated  
23 CONFIDENTIAL only to:

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

27 **4.2.2** The officers, directors, and employees of the receiving party  
28 to whom disclosure is reasonably necessary, and who have signed the

1 Agreement to Be Bound (Exhibit A);

2 **4.2.3** Experts and other vendors retained by the receiving party's  
3 outside counsel of record to whom disclosure is reasonably necessary,  
4 and who have signed the Agreement to Be Bound (Exhibit A);

5 **4.2.4** The Court and its personnel;

6 **4.2.5** Outside court reporters and their staff, professional jury or  
7 trial consultants, and professional vendors to whom disclosure is  
8 reasonably necessary, and who have signed the Agreement to Be Bound  
9 (Exhibit A);

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

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

16 **4.3 Disclosure of HIGHLY CONFIDENTIAL - ATTORNEY**

17 **EYES ONLY Without Further Approval.** Unless permitted in writing by the  
18 designator, a receiving party may disclose material designated HIGHLY  
19 CONFIDENTIAL - ATTORNEY EYES ONLY without further approval only  
20 to:

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

24 **4.3.2** Experts and other vendors retained by the receiving party's  
25 outside counsel of record to whom disclosure is reasonably necessary, and  
26 who have signed the Agreement to Be Bound (Exhibit A);

27 **4.3.3** The Court and its personnel;

28 **4.3.4** Outside court reporters and their staff, professional jury or

1 trial consultants, and professional vendors to whom disclosure is  
2 reasonably necessary, and who have signed the Agreement to Be Bound  
3 (Exhibit A); and

4 **4.3.5** The author or recipient of a document containing the  
5 material, or a custodian or other person who otherwise possessed or  
6 knew the information.

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

11 **4.4.1** A party seeking to disclose to in-house counsel any material  
12 designated HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY  
13 must first make a written request to the designator providing the full name  
14 of the in-house counsel, the city and state of such counsel's residence, and  
15 such counsel's current and reasonably foreseeable future primary job  
16 duties and responsibilities in sufficient detail to determine present or  
17 potential involvement in any competitive decision-making.

18 **4.4.2** A party that makes a request and provides the information  
19 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated  
20 material to the identified in- house counsel, within seven days of  
21 delivering the request, the party receives a written objection from the  
22 designator providing detailed grounds for the objection.

23 **4.4.3** All challenges to objections from the designator shall  
24 proceed under L.R. 37-1 through L.R. 37-4.

25 **5. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
26 **PRODUCED IN OTHER LITIGATION**

27 **5.1 Subpoenas and Court Orders.** This Order in no way excuses  
28 non- compliance with a lawful subpoena or court order. The purpose of the

1 duties described in this section is to alert the interested parties to the existence  
2 of this Order and to give the designator an opportunity to protect its  
3 confidentiality interests in the court where the subpoena or order issued.

4 **5.2 Notification Requirement.** If a party is served with a subpoena or  
5 a court order issued in other litigation that compels disclosure of any  
6 information or items designated in this action as CONFIDENTIAL or HIGHLY  
7 CONFIDENTIAL - ATTORNEY EYES ONLY, that party must:

8 **5.2.1** Promptly notify the designator in writing. Such  
9 notification shall include a copy of the subpoena or court order;

10 **5.2.2** Promptly notify in writing the party who caused the  
11 subpoena or order to issue in the other litigation that some or all of the  
12 material covered by the subpoena or order is subject to this Order. Such  
13 notification shall include a copy of this Order; and

14 **5.2.3** Cooperate with all reasonable procedures sought by the  
15 designator whose material may be affected.

16 **5.3 Wait For Resolution of Protective Order.** If the designator  
17 timely seeks a protective order, the party served with the subpoena or court  
18 order shall not produce any information designated in this action as  
19 CONFIDENTIAL, HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY  
20 before a determination by the court where the subpoena or order issued, unless  
21 the party has obtained the designator's permission. The designator shall bear the  
22 burden and expense of seeking protection of its confidential material in that  
23 court.

24 **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

25 If a receiving party learns that, by inadvertence or otherwise, it has  
26 disclosed designated material to any person or in any circumstance not  
27 authorized under this Order, it must immediately (1) notify in writing the  
28 designator of the unauthorized disclosures, (2) use its best efforts to retrieve all

1 unauthorized copies of the designated material, (3) inform the person or persons  
2 to whom unauthorized disclosures were made of all the terms of this Order, and  
3 (4) use reasonable efforts to have such person or persons execute the Agreement  
4 to Be Bound (Exhibit A).

5 **7. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
6 **OTHERWISE PROTECTED MATERIAL**

7 When a producing party gives notice that certain inadvertently produced  
8 material is subject to a claim of privilege or other protection, the obligations of  
9 the receiving parties are those set forth in Federal Rule of Civil Procedure  
10 26(b)(5)(B). This provision is not intended to modify whatever procedure may  
11 be established in an e-discovery order that provides for production without prior  
12 privilege review pursuant to Federal Rule of Evidence 502(d) and (e).

13 **8. FILING UNDER SEAL**

14 Without written permission from the designator or a Court order, a party  
15 may not file in the public record in this action any designated material. A party  
16 seeking to file under seal any designated material must comply with L.R. 79-5.1.  
17 Filings may be made under seal only pursuant to a court order authorizing the  
18 sealing of the specific material at issue. The fact that a document has been  
19 designated under this Order is insufficient to justify filing under seal. Instead,  
20 parties must explain the basis for confidentiality of each document sought to be  
21 filed under seal. Because a party other than the designator will often be seeking  
22 to file designated material, cooperation between the parties in preparing, and in  
23 reducing the number and extent of, requests for under seal filing is essential. If a  
24 *receiving party's* request to file designated material under seal pursuant to L.R. 79-  
25 5.1 is denied by the Court, then the receiving party *may file the material in the public*  
26 *record* unless (1) *the designator seeks* reconsideration within four days of the  
27 denial, or (2) as otherwise instructed by the Court.

28



1 **9. FINAL DISPOSITION**

2 Within 60 days after the final disposition of this action, each party shall  
3 return all designated material to the designator or destroy such material,  
4 including all copies, abstracts, compilations, summaries, and any other format  
5 reproducing or capturing any designated material. The receiving party must  
6 submit a written certification to the designator by the 60- day deadline that (1)  
7 identifies (by category, where appropriate) all the designated material that was  
8 returned or destroyed, and (2) affirms that the receiving party has not retained  
9 any copies, abstracts, compilations, summaries, or any other format reproducing  
10 or capturing any of the designated material. This provision shall not prevent  
11 counsel from retaining an archival copy of all pleadings, motion papers, trial,  
12 deposition, and hearing transcripts, legal memoranda, correspondence,  
13 deposition and trial exhibits, expert reports, attorney work product, and

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

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

3 Respectfully submitted,

4  
5 Dated: November 14, 2016

/s/ Simon B. Paris  
Simon Bahne Paris  
Patrick Howard  
Charles Kocher  
SALTZ, MONGELUZZI, BARRETT  
& BENDESKY, P.C.

6  
7  
8  
9  
10 *Counsel for Plaintiffs and the*  
11 *Proposed Classes*

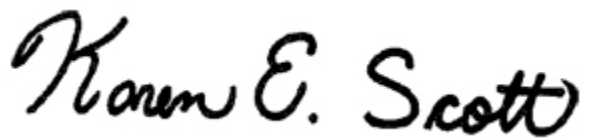
12  
13  
14 Dated: November 14, 2016

/s/ Carolyn S. Toto  
Mark D. Litvack  
Kimberly Buffington  
Carolyn S. Toto  
James Chang  
PILLSBURY WINTHROP SHAW  
PITTMAN LLP

15  
16  
17  
18  
19  
20 *Counsel for Defendant*  
21 *FLUIDMASTER, INC.*

22 ORDER

23 IT IS SO ORDERED.

24  
25 

26 DATED: November 15, 2016

27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

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 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 \_\_\_\_\_ [date] in the case of *Castillo v. Fluidmaster, Inc.*, Case  
No. 8:16-cv-01743-AG(KES). 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]