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8 *Attorneys for Defendant,*
 BOX-N-GO, LLC

9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 ADRIAN BACON, on behalf of
 13 himself and all others similarly
 14 situated,

15 Plaintiff,

16 vs.

17
 18 BOX-N-GO, LLC, a California
 19 limited liability company; and DOES
 20 1 through 50, inclusive, and each of
 21 them,

22 Defendants.

) **Case No. 8:17-cv-00378-DOC(DFMx)**

) **STIPULATED**
) **CONFIDENTIALITY**
) **AGREEMENT AND**
) **PROTECTIVE ORDER**

1 1. PURPOSES AND LIMITATIONS

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

15
16 2. DEFINITIONS

17 2.1. Challenging Party: a Party or Non-Party that challenges the designation
18 of information or items under this Order.

19 2.2. “CONFIDENTIAL” Information or Items: information (regardless of
20 how it is generated, stored or maintained) or tangible things that qualify for protection
21 under Federal Rule of Civil Procedure 26(c).

22 2.3. Counsel (without qualifier): Outside Counsel of Record and House
23 Counsel (as well as their support staff).

24 2.4. Designating Party: a Party or Non-Party that designates information or
25 items that it produces in disclosures or in responses to discovery as
26 “CONFIDENTIAL.”

27 2.5. Disclosure or Discovery Material: all items or information, regardless of
28 the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.6. Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
5 expert witness or as a consultant in this action.

6 2.7. House Counsel: attorneys who are employees of a party to this action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.8. Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.9. Outside Counsel of Record: attorneys who are not employees of a party
12 to this action but are retained to represent or advise a party to this action and have
13 appeared in this action on behalf of that party or are affiliated with a law firm which
14 has appeared on behalf of that party.

15 2.10. Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.11. Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this action.

20 2.12. Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.13. Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 2.14. Receiving Party: a Party that receives Disclosure or Discovery Material
27 from a Producing Party.

28

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or extracted
4 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
5 Protected Material; and (3) any testimony, conversations, or presentations by Parties
6 or their Counsel that might reveal Protected Material. However, the protections
7 conferred by this Stipulation and Order do not cover the following information: (a)
8 any information that is in the public domain at the time of disclosure to a Receiving
9 Party or becomes part of the public domain after its disclosure to a Receiving Party as
10 a result of publication not involving a violation of this Order, including becoming part
11 of the public record through trial or otherwise; and (b) any information known to the
12 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
13 disclosure from a source who obtained the information lawfully and under no
14 obligation of confidentiality to the Designating Party. Any use of Protected Material at
15 trial shall be governed by a separate agreement or order.

16
17 4. DURATION

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

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1. Exercise of Restraint and Care in Designating Material for Protection.

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

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

15 If it comes to a Designating Party’s attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the mistaken designation.
18

19 5.2. Manner and Timing of Designations. Except as otherwise provided in
20 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
21 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
22 under this Order must be clearly so designated before the material is disclosed or
23 produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic
26 documents, but excluding transcripts of depositions or other pretrial or trial
27 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
28 page that contains protected material. If only a portion or portions of the material on a

1 page qualifies for protection, the Producing Party also must clearly identify the
2 protected portion(s) (e.g., by making appropriate markings in the margins).
3 A Party or Non-Party that makes original documents or materials available for
4 inspection need not designate them for protection until after the inspecting Party has
5 indicated which material it would like copied and produced. During the inspection and
6 before the designation, all of the material made available for inspection shall be
7 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
8 it wants copied and produced, the Producing Party must determine which documents,
9 or portions thereof, qualify for protection under this Order. Then, before producing the
10 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend
11 to each page that contains Protected Material. If only a portion or portions of the
12 material on a page qualifies for protection, the Producing Party also must clearly
13 identify the protected portion(s) (e.g., by making appropriate markings in the
14 margins).

15 (b) for testimony given in deposition or in other pretrial or trial
16 proceedings, that the Designating Party identify on the record, before the close of the
17 deposition, hearing, or other proceeding, all protected testimony.

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

24 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items does not, standing alone, waive the
26 Designating Party’s right to secure protection under this Order for such material.
27 Upon timely correction of a designation, the Receiving Party must make reasonable
28

1 efforts to assure that the material is treated in accordance with the provisions of this
2 Order.

3
4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time. Unless a prompt challenge to a Designating
7 Party's confidentiality designation is necessary to avoid foreseeable, substantial
8 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
9 litigation, a Party does not waive its right to challenge a confidentiality designation by
10 electing not to mount a challenge promptly after the original designation is disclosed.

11 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
12 resolution process by providing written notice of each designation it is challenging
13 and describing the basis for each challenge. To avoid ambiguity as to whether a
14 challenge has been made, the written notice must recite that the challenge to
15 confidentiality is being made in accordance with this specific paragraph of the
16 Protective Order. The parties shall attempt to resolve each challenge in good faith and
17 must begin the process by conferring directly (in voice to voice dialogue; other forms
18 of communication are not sufficient) within 14 days of the date of service of notice. In
19 conferring, the Challenging Party must explain the basis for its belief that the
20 confidentiality designation was not proper and must give the Designating Party an
21 opportunity to review the designated material, to reconsider the circumstances, and, if
22 no change in designation is offered, to explain the basis for the chosen designation. A
23 Challenging Party may proceed to the next stage of the challenge process only if it has
24 engaged in this meet and confer process first or establishes that the Designating Party
25 is unwilling to participate in the meet and confer process in a timely manner.

26 6.3. Judicial Intervention. If the Parties cannot resolve a challenge without
27 court intervention, the Designating Party shall file and serve a motion to retain
28 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-

1 5, if applicable) within 21 days of the initial notice of challenge or within 14 days of
2 the parties agreeing that the meet and confer process will not resolve their dispute,
3 whichever is earlier. Each such motion must be accompanied by a competent
4 declaration affirming that the movant has complied with the meet and confer
5 requirements imposed in the preceding paragraph. Failure by the Designating Party to
6 make such a motion including the required declaration within 21 days (or 14 days, if
7 applicable) shall automatically waive the confidentiality designation for each
8 challenged designation. In addition, the Challenging Party may file a motion
9 challenging a confidentiality designation at any time if there is good cause for doing
10 so, including a challenge to the designation of a deposition transcript or any portions
11 thereof. Any motion brought pursuant to this provision must be accompanied by a
12 competent declaration affirming that the movant has complied with the meet and
13 confer requirements imposed by the preceding paragraph.

14 The burden of persuasion in any such challenge proceeding shall be on the
15 Designating Party. Frivolous challenges, and those made for an improper purpose
16 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
17 expose the Challenging Party to sanctions. Unless the Designating Party has waived
18 the confidentiality designation by failing to file a motion to retain confidentiality as
19 described above, all parties shall continue to afford the material in question the level
20 of protection to which it is entitled under the Producing Party's designation until the
21 court rules on the challenge.

22 23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1. Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this case
26 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
27 Material may be disclosed only to the categories of persons and under the conditions
28

1 described in this Order. When the litigation has been terminated, a Receiving Party
2 must comply with the provisions of section 13 below (FINAL DISPOSITION).
3 Protected Material must be stored and maintained by a Receiving Party at a location
4 and in a secure manner that ensures that access is limited to the persons authorized
5 under this Order.

6 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
9 only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this action, as
11 well as employees of said Outside Counsel of Record to whom it is reasonably
12 necessary to disclose the information for this litigation and who have signed the
13 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

14 (b) the officers, directors, and employees (including House Counsel) of
15 the Receiving Party to whom disclosure is reasonably necessary for this litigation and
16 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

20 (d) the court and its personnel;

21 (e) court reporters and their staff, professional jury or trial consultants,
22 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
23 for this litigation and who have signed the “Acknowledgment and Agreement to Be
24 Bound” (Exhibit A);

25 (f) during their depositions, witnesses in the action to whom disclosure is
26 reasonably necessary and who have signed the “Acknowledgment and Agreement to
27 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
28 by the court. Pages of transcribed deposition testimony or exhibits to depositions that

1 reveal Protected Material must be separately bound by the court reporter and may not
2 be disclosed to anyone except as permitted under this Stipulated Protective Order.

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

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this action as
10 “CONFIDENTIAL,” that Party must:

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

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

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

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

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

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

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

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

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

18 (3) make the information requested available for inspection by the Non-
19 Party.

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

28

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

10
11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED MATERIAL

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

23
24 12. MISCELLANEOUS

25 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the court in the future.

27 12.2. Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order.

4 12.3. Filing Protected Material. Without written permission from the
5 Designating Party or a court order secured after appropriate notice to all interested
6 persons, a Party may not file in the public record in this action any Protected Material.
7 A Party that seeks to file under seal any Protected Material must comply with Civil
8 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
9 order authorizing the sealing of the specific Protected Material at issue. Pursuant to
10 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that
11 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
12 entitled to protection under the law. If a Receiving Party's request to file Protected
13 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
14 the Receiving Party may file the information in the public record pursuant to Civil
15 Local Rule 79-5(e) unless otherwise instructed by the court.

16
17 13. FINAL DISPOSITION

18 Within 60 days after the final disposition of this action, as defined in paragraph
19 4, each Receiving Party must return all Protected Material to the Producing Party or
20 destroy such material. As used in this subdivision, "all Protected Material" includes
21 all copies, abstracts, compilations, summaries, and any other format reproducing or
22 capturing any of the Protected Material. Whether the Protected Material is returned or
23 destroyed, the Receiving Party must submit a written certification to the Producing
24 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
25 deadline that (1) identifies (by category, where appropriate) all the Protected Material
26 that was returned or destroyed and (2) affirms that the Receiving Party has not
27 retained any copies, abstracts, compilations, summaries or any other format
28 reproducing or capturing any of the Protected Material. Notwithstanding this

1 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
2 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and
4 expert work product, even if such materials contain Protected Material. Any such
5 archival copies that contain or constitute Protected Material remain subject to this
6 Protective Order as set forth in Section 4 (DURATION).

7
8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9
10 DATED: 9/6/2017

BEITCHMAN & ZEKIAN, P.C.

11
12 By: /s/ Andre Boniadi
13 Andre Boniadi,
14 *Attorneys for Defendant,*
15 BOX-N-GO, LLC

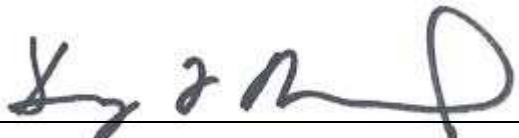
16 DATED: 9/6/2017

KRISTENSEN WEISBERG, LLP

17
18 By: /s/ John P. Kristensen
19 John P. Kristensen,
20 *Attorneys for Plaintiff,*
21 ADRIAN BACON

22
23 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

24
25 DATED: September 21, 2017


26 Honorable Douglas F. McCormick
27 United States Magistrate Judge
28

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
5 I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Central District of California on
7 [date] in the case of *Adrian Bacon et al. v. Box-N-Go, LLC et al.* (Case No. 8:17-cv-
8 00378-DOC). 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 that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action.

18 I hereby appoint _____ [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 Stipulated Protective Order.

22
23 DATED: _____

24 CITY/STATE WHERE SWORN AND SIGNED: _____

25
26 PRINT NAME: _____

27
28 SIGNATURE: _____