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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CAMERON GAINER, an individual
Plaintiff,

vs.

THE KETCHUM GROUP, INC., d/b/a
OUTDOOR TECHNOLOGY,
Defendant.

Case No.: 8:17-CV-00672 JVS (DFMx)

PROTECTIVE ORDER

**DISCOVERY DOCUMENT:
REFERRED TO MAGISTRATE
JUDGE DOUGLAS F.
MCCORMICK**

THE KETCHUM GROUP, INC., d/b/a
OUTDOOR TECHNOLOGY,

Counter-claimant,

vs.

CAMERON GAINER, an individual

Counter-defendant

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 use
4 for any purpose other than this litigation. Thus, the Court enters this Protective
5 Order. This Order does not confer blanket protections on all disclosures or responses
6 to discovery, and the protection it gives from public disclosure and use extends only
7 to the specific material entitled to confidential treatment under the applicable legal
8 principles. This Order does not automatically authorize the filing under seal of
9 material designated under this Order. Instead, the parties must comply with L.R. 79-
10 5.1 if they seek to file anything under seal. This Order does not govern the use at
11 trial of material designated 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” or
15 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” must only designate
16 specific material that qualifies under the appropriate standards. To the extent
17 practicable, only those parts of documents, items, or oral or written communications
18 that require protection shall be designated. Designations with a higher
19 confidentiality level when a lower level would suffice are prohibited. Mass,
20 indiscriminate, or routinized designations are prohibited. Unjustified designations
21 expose the designator to sanctions, including the Court’s striking all confidentiality
22 designations made by that designator. Designation under this Order is allowed only
23 if the designation is necessary to protect material that, if disclosed to persons not
24 authorized to view it, would cause competitive or other recognized harm. Material
25 may not be designated if it has been made public, or if designation is otherwise
26 unnecessary to protect a secrecy interest. If a designator learns that information or
27 items that it designated for protection do not qualify for protection at all or do not
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1 qualify for the level of protection initially asserted, that designator must promptly
2 notify all parties that it is withdrawing the mistaken designation.

3 **2.2 Manner and Timing of Designations.** Designation under this Order
4 requires the designator to affix the applicable legend (“CONFIDENTIAL” or
5 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”) to each page that
6 contains protected material. For testimony given in deposition or other proceeding,
7 the designator shall specify all protected testimony and the level of protection being
8 asserted. It may make that designation during the deposition or proceeding, or may
9 invoke, on the record or by written notice to all parties on or before the next
10 business day, a right to have up to 21 days from the deposition or proceeding to
11 make its designation.

12 **2.2.1** A party or non-party that makes original documents or materials
13 available for inspection need not designate them for protection until after the
14 inspecting party has identified which material it would like copied and
15 produced. During the inspection and before the designation, all material shall
16 be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY.
17 After the inspecting party has identified the documents it wants copied and
18 produced, the producing party must designate the documents, or portions
19 thereof, that qualify for protection under this Order.

20 **2.2.2** Parties shall give advance notice if they expect a deposition or
21 other proceeding to include designated material so that the other parties can
22 ensure that only authorized individuals are present at those proceedings when
23 such material is disclosed or used. The use of a document as an exhibit at a
24 deposition shall not in any way affect its designation. Transcripts containing
25 designated material shall have a legend on the title page noting the presence
26 of designated material, and the title page shall be followed by a list of all
27 pages (including line numbers as appropriate) that have been designated, and
28 the level of protection being asserted. The designator shall inform the court

1 reporter of these requirements. Any transcript that is prepared before the
2 expiration of the 21-day period for designation shall be treated during that
3 period as if it had been designated HIGHLY CONFIDENTIAL –
4 ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of
5 the 21-day period, the transcript shall be treated only as actually designated.

6 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to
7 designate does not, standing alone, waive protection under this Order. Upon timely
8 assertion or correction of a designation, all recipients must make reasonable efforts
9 to ensure that the material is treated according to this Order.

10 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

13 **4. ACCESS TO DESIGNATED MATERIAL**

14 **4.1 Basic Principles.** A receiving party may use designated material only
15 for this litigation. Designated material may be disclosed only to the categories of
16 persons and under the conditions described in this Order.

17 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
18 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
19 designator, a receiving party may disclose any material designated
20 CONFIDENTIAL only to:

21 **4.2.1** The receiving party's outside counsel of record in this action
22 and employees of outside counsel of record to whom disclosure is reasonably
23 necessary;

24 **4.2.2** The officers, directors, and employees of the receiving party to
25 whom disclosure is reasonably necessary, and who have signed the
26 Agreement to Be Bound (Exhibit A);

1 **4.2.3** Experts retained by the receiving party's outside counsel of
2 record to whom disclosure is reasonably necessary, and who have signed the
3 Agreement to Be Bound (Exhibit A);

4 **4.2.4** The Court and its personnel;

5 **4.2.5** Outside court reporters and their staff, professional jury or trial
6 consultants, and professional vendors to whom disclosure is reasonably
7 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

8 **4.2.6** During their depositions, witnesses in the action to whom
9 disclosure is reasonably necessary and who have signed the Agreement to Be
10 Bound (Exhibit A); and

11 **4.2.7** The author or recipient of a document containing the material, or
12 a custodian or other person who otherwise possessed or knew the information.

13 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
14 **ONLY Without Further Approval.** Unless permitted in writing by the designator,
15 a receiving party may disclose material designated HIGHLY CONFIDENTIAL –
16 ATTORNEY EYES ONLY without further approval only to:

17 **4.3.1** The receiving party's outside counsel of record in this action and
18 employees of outside counsel of record to whom it is reasonably necessary to
19 disclose the information;

20 **4.3.2** The Court and its personnel;

21 **4.3.3** Outside court reporters and their staff, professional jury or trial
22 consultants, and professional vendors to whom disclosure is reasonably
23 necessary, and who have signed the Agreement to Be Bound (Exhibit A); and

24 **4.3.4** The author or recipient of a document containing the material, or
25 a custodian or other person who otherwise possessed or knew the information.

26 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
27 **CONFIDENTIAL – ATTORNEY EYES ONLY Material to In-House Counsel**
28 **or Experts.** Unless agreed to in writing by the designator:

1 **4.4.1** A party seeking to disclose to in-house counsel any material
2 designated **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY** must
3 first make a written request to the designator providing the full name of the
4 in-house counsel, the city and state of such counsel’s residence, and such
5 counsel’s current and reasonably foreseeable future primary job duties and
6 responsibilities in sufficient detail to determine present or potential
7 involvement in any competitive decision-making.

8 **4.4.2** A party seeking to disclose to an expert retained by outside
9 counsel of record any information or item that has been designated **HIGHLY**
10 **CONFIDENTIAL – ATTORNEY EYES ONLY** must first make a written
11 request to the designator that (1) identifies the general categories of **HIGHLY**
12 **CONFIDENTIAL – ATTORNEY EYES ONLY** information that the
13 receiving party seeks permission to disclose to the expert, (2) sets forth the
14 full name of the expert and the city and state of his or her primary residence,
15 (3) attaches a copy of the expert’s current resume, (4) identifies the expert’s
16 current employer(s), (5) identifies each person or entity from whom the expert
17 has received compensation or funding for work in his or her areas of expertise
18 (including in connection with litigation) in the past five years, and (6)
19 identifies (by name and number of the case, filing date, and location of court)
20 any litigation where the expert has offered expert testimony, including by
21 declaration, report, or testimony at deposition or trial, in the past five years. If
22 the expert believes any of this information at (4) - (6) is subject to a
23 confidentiality obligation to a third party, then the expert should provide
24 whatever information the expert believes can be disclosed without violating
25 any confidentiality agreements, and the party seeking to disclose the
26 information to the expert shall be available to meet and confer with the
27 designator regarding any such confidentiality obligations.
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1 **4.4.3** A party that makes a request and provides the information
2 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to
3 the identified in-house counsel or expert unless, within seven days of
4 delivering the request, the party receives a written objection from the
5 designator providing detailed grounds for the objection.

6 **4.4.4** All challenges to objections from the designator shall proceed
7 under L.R. 37-1 through L.R. 37-4.

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

10 **5.1 Subpoenas and Court Orders.** This Order in no way excuses non-
11 compliance with a lawful subpoena or court order. The purpose of the duties
12 described in this section is to alert the interested parties to the existence of this
13 Order and to give the designator an opportunity to protect its confidentiality interests
14 in the court where the subpoena or order issued.

15 **5.2 Notification Requirement.** If a party is served with a subpoena or a
16 court order issued in other litigation that compels disclosure of any information or
17 items designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL
18 – ATTORNEY EYES ONLY that party must:

19 **5.2.1** Promptly notify the designator in writing. Such notification shall
20 include a copy of the subpoena or court order;

21 **5.2.2** Promptly notify in writing the party who caused the subpoena or order
22 to issue in the other litigation that some or all of the material covered by the
23 subpoena or order is subject to this Order. Such notification shall include a
24 copy of this Order; and

25 **5.2.3** Cooperate with all reasonable procedures sought by the designator
26 whose material may be affected.

27 **5.3 Wait For Resolution of Protective Order.** If the designator timely
28 seeks a protective order, the party served with the subpoena or court order shall not

1 produce any information designated in this action as CONFIDENTIAL or HIGHLY
2 CONFIDENTIAL – ATTORNEY EYES ONLY before a determination by the court
3 where the subpoena or order issued, unless the party has obtained the designator’s
4 permission. The designator shall bear the burden and expense of seeking protection
5 of its confidential material in that court.

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

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

14 **7. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
15 **PROTECTED MATERIAL**

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

22 **8. FILING UNDER SEAL**

23 Without written permission from the designator or a Court order, a party may
24 not file in the public record in this action any designated material. A party seeking to
25 file under seal any designated material must comply with L.R. 79-5.1. Filings may
26 be made under seal only pursuant to a court order authorizing the sealing of the
27 specific material at issue. The fact that a document has been designated under this
28 Order is insufficient to justify filing under seal. Instead, parties must explain the

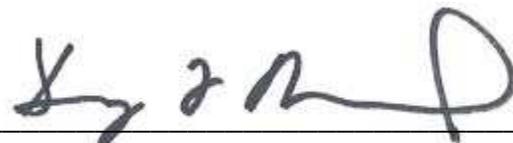
1 basis for confidentiality of each document sought to be filed under seal. Because a
2 party other than the designator will often be seeking to file designated material,
3 cooperation between the parties in preparing, and in reducing the number and extent
4 of, requests for under seal filing is essential. If a receiving party's request to file
5 designated material under seal pursuant to L.R. 79-5.1 is denied by the Court, then
6 the receiving party may file the material in the public record unless (1) the
7 designator seeks reconsideration within four days of the denial, or (2) as otherwise
8 instructed by the Court.

9 **9. FINAL DISPOSITION**

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

24 IT IS SO ORDERED.

25 DATED: August 8, 2017



26 Hon. Douglas F. McCormick
27 United States Magistrate Judge
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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 _____ [insert formal name of the case and the number
and initials assigned to it by the court]. 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]