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1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 C.C. CALZONE, LLC, a California
4 Limited Liability Company,
5 Plaintiff,

6 v.

7 USAC AIRWAYS 691 LLC dba
8 PARAGON JETS, a New Jersey
9 Limited Liability Company,
10 Defendant.

Case No. 8:17-CV-01019-JVS-DFM

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

JUDGE: HON. JAMES V. SELNA

11
12 1. PURPOSE AND LIMITS OF THIS ORDER

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14 Discovery in this action is likely to involve confidential, proprietary, or
15 private information requiring special protection from public disclosure and from
16 use for any purpose other than this litigation. Thus, the Court enters this Protective
17 Order. This Order does not confer blanket protections of all disclosures or
18 responses to discovery, and the protection it gives from public disclosure and use
19 extends only to the specific material entitled to confidential treatment under the
20 applicable legal principles. This Order does not automatically authorize the filing
21 under seal of material designated under this Order. Instead, the parties must
22 comply with L.R. 79-5 if they seek to file anything under seal. This Order does not
23 govern the use at trial of material designated under this Order.

24 2. DESIGNATING PROTECTED MATERIAL

25 2.1 Over-Designation Prohibited. Any party or non-party who
26 designates information or items for protection under this Order as
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEY EYES
28 ONLY" (a "designator") must only designate specific material that qualifies under

1 the appropriate standards. To the extent practicable, only those parts of documents,
2 items, or oral or written communications that require protection shall be
3 designated. Designations with a higher confidentiality level when a lower level
4 would suffice are prohibited. Mass, indiscriminate, or routinized designations are
5 prohibited. Unjustified designations expose the designator to sanctions, including
6 the Court's striking all confidentiality designations made by that designator.

7 Designation under this Order is allowed only if the designation is necessary to
8 protect material that, if disclosed to persons not authorized to view it, would cause
9 competitive or other recognized harm. Material may not be designated if it has
10 been made public, or if designation is otherwise unnecessary to protect a secrecy
11 interest. If a designator learns that information or items that it designated for
12 protection do not qualify for protection at all or do not qualify for the level of
13 protection initially asserted, that designator must promptly notify all parties that it
14 is withdrawing the mistaken designation.

15
16 2.2 Manner and Timing of Designations. Designation under this
17 Order requires the designator to affix the applicable legend ("CONFIDENTIAL" or
18 "HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY") to each page that
19 contains protected material. For testimony given in deposition or other proceeding,
20 the designator shall specify all protected testimony and the level of protection
21 being asserted. It may make that designation during the deposition or proceeding,
22 or may make that designation up to 15 days from receipt of the transcript of the
23 deposition or proceeding.

24 2.2.1 A party or non-party that makes original documents or materials
25 available for inspection need not designate them for protection until after the
26 inspecting party has identified which material it would like copied and produced.
27 During the inspection and before the designation, all material shall be treated as
28 HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY. After the inspecting

1 party has identified the documents it wants copied and produced, the producing
2 party must designate the documents, or portions thereof, that qualify for protection
3 under this Order.

4 2.2.2 Parties shall give advance notice if they expect a deposition or other
5 proceeding to include designated material so that the other parties can ensure that
6 only authorized individuals are present at those parts of the deposition or
7 proceeding when such material is disclosed or used. The use of a document as an
8 exhibit at a deposition shall not in any way affect its designation. Transcripts
9 containing designated material shall have a legend on the title page noting the
10 presence of designated material, and the title page shall be followed by a list of all
11 pages (including line numbers as appropriate) that have been designated, and the
12 level of protection being asserted. The designator shall inform the court reporter of
13 these requirements. Any transcript that is prepared before the expiration of the 15-
14 day period for designation shall be treated during that period as if it had been
15 designated HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY unless
16 otherwise agreed. After the expiration of the 15-day period, the transcript shall be
17 treated only as actually designated.
18

19 2.3 Inadvertent Failures to Designate. An inadvertent failure to
20 designate does not, standing alone, waive protection under this Order. Upon timely
21 assertion or correction of a designation, all recipients must make reasonable efforts
22 to ensure that the material is treated according to this Order.

23 3. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

26 4. ACCESS TO DESIGNATED MATERIAL

27 4.1 Basic Principles. A receiving party may use designated material
28 only for this litigation. Designated material may be disclosed only to the categories

1 of persons and under the conditions described in this Order.

2 4.2 Disclosure of CONFIDENTIAL Material Without Further
3 Approval. Unless otherwise ordered by the Court or permitted in writing by the
4 designator, a receiving party may disclose any material designated
5 CONFIDENTIAL only to:

6 4.2.1 The receiving party's outside counsel of record in this action and
7 employees of outside counsel of record to whom disclosure is reasonably
8 necessary;

9 4.2.2 The officers, directors, and employees of the receiving party to whom
10 disclosure is reasonably necessary, and who have signed the Agreement to Be
11 Bound (Exhibit A);

12 4.2.3 Experts retained by the receiving party's outside counsel of record to
13 whom disclosure is reasonably necessary, and who have signed the Agreement to
14 Be Bound (Exhibit A);

15 4.2.4 The Court and its personnel;

16 4.2.5 Outside court reporters and their staff, professional jury or trial
17 consultants, and professional vendors to whom disclosure is reasonably necessary;

18 4.2.6 During their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary and who have signed the Agreement to Be Bound (Exhibit
20 A); and

21 4.2.7 The author or recipient of a document containing the material, or a
22 custodian or other person who otherwise possessed or knew the information.

23 4.3 Disclosure of HIGHLY CONFIDENTIAL - ATTORNEY
24 EYES ONLY Material without Further Approval. Unless permitted in writing by
25 the designator, a receiving party may disclose material designated HIGHLY
26 CONFIDENTIAL - ATTORNEY EYES ONLY without further approval only to:

27 4.3.1 The receiving party's outside counsel of record in this action and
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1 employees of outside counsel of record to whom it is reasonably necessary to
2 disclose the information;

3 4.3.2 The Court and its personnel;

4 4.3.3 Outside court reporters and their staff, professional jury or trial
5 consultants, and professional vendors to whom disclosure is reasonably necessary,;
6 and

7 4.3.4 The author or recipient of a document containing the material, or a
8 custodian or other person who otherwise possessed or knew the information.

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

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

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

11 4.4.3 A party that makes a request and provides the information specified in
12 paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified in-
13 house counsel or expert unless, within seven days of delivering the request, the
14 party receives a written objection from the designator providing detailed grounds
15 for the objection.

16 4.4.4 All challenges to objections from the designator shall proceed under
17 L.R. 37-1 through L.R. 37-4.

18 5. PROTECTED MATERIAL SUBPOENAED OR ORDERED
19 PRODUCED IN OTHER LITIGATION

20 5.1 Subpoenas and Court Orders. This Order in no way excuses
21 non-compliance with a lawful subpoena or court order. The purpose of the duties
22 described in this section is to alert the interested parties to the existence of this
23 Order and to give the designator an opportunity to protect its confidentiality
24 interests in the court where the subpoena or order issued.

25 5.2 Notification Requirement. If a party is served with a subpoena
26 or a court order issued in other litigation that compels disclosure of any
27 information or items designated in this action as CONFIDENTIAL or HIGHLY
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1 CONFIDENTIAL - ATTORNEY EYES ONLY that party must:

2 5.2.1 Promptly notify the designator in writing. Such notification shall
3 include a copy of the subpoena or court order;

4 5.2.2 Promptly notify in writing the party who caused the subpoena or order
5 to issue in the other litigation that some or all of the material covered by the
6 subpoena or order is subject to this Order. Such notification shall include a copy of
7 this Order; and

8 5.2.3 Cooperate with all reasonable procedures sought by the designator
9 whose material may be affected.

10 5.3 Wait For Resolution of Protective Order. If the designator
11 timely seeks a protective order, the party served with the subpoena or court order
12 shall not produce any information designated in this action as CONFIDENTIAL or
13 HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY before a determination
14 by the court where the subpoena or order issued, unless the party has obtained the
15 designator's permission. The designator shall bear the burden and expense of
16 seeking protection of its confidential material in that court.

17 6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL

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

25 7. INADVERTENT PRODUCTION OF PRIVILEGED OR
26 OTHERWISE PROTECTED MATERIAL

27 When a producing party gives notice that certain inadvertently produced
28

1 material is subject to a claim of privilege or other protection, the obligations of the
2 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)
3 (B). This provision is not intended to modify whatever procedure may be
4 established in an e-discovery order that provides for production without prior
5 privilege review pursuant to Federal Rule of Evidence 502(d) and (e).

6 8. PRODUCTION OF THIRD PARTY MATERIAL

7 Any third party from whom discovery is sought in the action may designate
8 some or all of the material or deposition testimony as CONFIDENTIAL or
9 HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY under this Protective
10 Order. If it does so, then each party to the action will have with respect to such
11 CONFIDENTIAL OR HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY
12 Material the same obligations which that party has with respect to
13 CONFIDENTIAL and HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY
14 Material of another party to the action.

15 9. FILING UNDER SEAL

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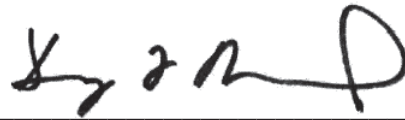
1 record unless (1) the designator seeks reconsideration within four days of the
2 denial, or (2) as otherwise instructed by the Court.

3 10. FINAL DISPOSITION

4 Within 60 days after the final disposition of this action, including all
5 appeals, each party, at its option, shall return all designated material to the
6 designator or destroy such material, including all copies, abstracts, compilations,
7 summaries, and any other format reproducing or capturing any designated material.
8 This provision shall not prevent counsel from retaining an archival copy of all
9 pleadings, motion papers, trial, deposition, and hearing transcripts, legal
10 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
11 work product, and consultant and expert work product, even if such materials
12 contain designated material. Any such archival copies remain subject to this Order.
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14 IT IS SO ORDERED.

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16 DATED: November 30, 2017



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18 HON. DOUGLAS F. McCORMICK
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1 Respectfully submitted,
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By: /s/ Ben T. Lila
Ben Lila
Attorneys for Plaintiff,
C.C. Calzone, LLC

By: /s/ David A. Shimkin
David A. Shimkin
Attorneys for Defendant
USAC AIRWAYS 691 LLC dba PARAGON
JETS

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the below date, I filed the foregoing document via
3 the Court’s CM/ECF filing system, which will provide notice of the same on the
4 following:

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22 dba PARAGON JETS

23 Dated: November 30, 2017

24 /s/ Ben T. Lila
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