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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 KIERRA THOMAS, an individual,) **CASE NO.: 8:23-cv-00164 FWS (JDEx)**
11)
12 Plaintiff,)
13 vs.) **STIPULATED PROTECTIVE ORDER**
14)
15 NISSAN NORTH AMERICA, INC.,)
16 a California Corporation, and DOES 1)
17 through 10, inclusive,)
Defendants.)

18
19 1. PURPOSES AND LIMITATIONS

20 Discovery in this action is likely to involve production of confidential,
21 proprietary or private information for which special protection from public
22 disclosure and from use for any purpose other than pursuing this litigation may be
23 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter
24 the following Stipulated Protective Order. The parties acknowledge that this Order
25 does not confer blanket protections on all disclosures or responses to discovery and
26 that the protection it affords from public disclosure and use extends only to the
27 limited information or items that are entitled to confidential treatment under the
28 applicable legal principles.

1 2. GOOD CAUSE STATEMENT

2 This action is likely to involve other valuable research, development,
3 commercial, financial, technical and/or proprietary information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecution of this action is warranted. Such confidential and proprietary materials
6 and information consist of, among other things, confidential business or financial
7 information, information regarding confidential business practices, or other
8 confidential research, development, or commercial information (including
9 information implicating privacy rights of third parties), information otherwise
10 generally unavailable to the public, or which may be privileged or otherwise
11 protected from disclosure under state or federal statutes, court rules, case decisions,
12 or common law. Accordingly, to expedite the flow of information, to facilitate the
13 prompt resolution of disputes over confidentiality of discovery materials, to
14 adequately protect information the parties are entitled to keep confidential, to ensure
15 that the parties are permitted reasonable necessary uses of such material in
16 preparation for and in the conduct of trial, to address their handling at the end of the
17 litigation, and serve the ends of justice, a protective order for such information is
18 justified in this matter. It is the intent of the parties that information will not be
19 designated as confidential for tactical reasons and that nothing be so designated
20 without a good faith belief that it has been maintained in a confidential, non-public
21 manner, and there is good cause why it should not be part of the public record of this
22 case.

23 3. ACKNOWLEDGMENT OF UNDER SEAL FILING
24 PROCEDURE

25 The parties further acknowledge, as set forth in Section 14.3, below, that this
26 Stipulated Protective Order does not entitle them to file confidential information
27 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
28 and the standards that will be applied when a party seeks permission from the court

1 to file material under seal. There is a strong presumption that the public has a right
2 of access to judicial proceedings and records in civil cases. In connection with non-
3 dispositive motions, good cause must be shown to support a filing under seal. See
4 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006),
5 Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-
6 Welbon v. Sony Electrics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even
7 stipulated protective orders require good cause showing), and a specific showing of
8 good cause or compelling reasons with proper evidentiary support and legal
9 justification, must be made with respect to Protected Material that a party seeks to
10 file under seal. The parties' mere designation of Disclosure or Discovery Material
11 as CONFIDENTIAL does not— without the submission of competent evidence by
12 declaration, establishing that the material sought to be filed under seal qualifies as
13 confidential, privileged, or otherwise protectable—constitute good cause.

14 Further, if a party requests sealing related to a dispositive motion or trial, then
15 compelling reasons, not only good cause, for the sealing must be shown, and the
16 relief sought shall be narrowly tailored to serve the specific interest to be protected.
17 See Pintos v. Pacific Creditors Ass'n., 605 F.3d 665, 677-79 (9th Cir. 2010). For
18 each item or type of information, document, or thing sought to be filed or introduced
19 under seal, the party seeking protection must articulate compelling reasons,
20 supported by specific facts and legal justification, for the requested sealing order.
21 Again, competent evidence supporting the application to file documents under seal
22 must be provided by declaration.

23 Any document that is not confidential, privileged, or otherwise protectable in
24 its entirety will not be filed under seal if the confidential portions can be redacted. If
25 documents can be redacted, then a redacted version for public viewing, omitting only
26 the confidential, privileged, or otherwise protectable portions of the document, shall
27 be filed. Any application that seeks to file documents under seal in their entirety
28 should include an explanation of why redaction is not feasible.

1 4. DEFINITIONS

2 4.1 Action: this pending federal lawsuit.

3 4.2 Challenging Party: a Party or Non-Party that challenges the
4 designation of information or items under this Order.

5 4.3 “CONFIDENTIAL” Information or Items: information (regardless of
6 how it is generated, stored or maintained) or tangible things that qualify for
7 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
8 the Good Cause Statement.

9 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
10 their support staff).

11 4.5 Designating Party: a Party or Non-Party that designates information or
12 items that it produces in disclosures or in responses to discovery as
13 “CONFIDENTIAL.”

14 4.6 Disclosure or Discovery Material: all items or information, regardless
15 of the medium or manner in which it is generated, stored, or maintained (including,
16 among other things, testimony, transcripts, and tangible things), that are produced or
17 generated in disclosures or responses to discovery.

18 4.7 Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as
20 an expert witness or as a consultant in this Action.

21 4.8 House Counsel: attorneys who are employees of a party to this Action.
22 House Counsel does not include Outside Counsel of Record or any other outside
23 counsel.

24 4.9 Non-Party: any natural person, partnership, corporation, association or
25 other legal entity not named as a Party to this action.

26 4.10 Outside Counsel of Record: attorneys who are not employees of a party
27 to this Action but are retained to represent a party to this Action and have appeared
28 in this Action on behalf of that party or are affiliated with a law firm that has

1 appeared on behalf of that party, and includes support staff.

2 4.11 Party: any party to this Action, including all of its officers, directors,
3 employees, consultants, retained experts, and Outside Counsel of Record (and their
4 support staffs).

5 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
6 Discovery Material in this Action.

7 4.13 Professional Vendors: persons or entities that provide litigation support
8 services (e.g., photocopying, videotaping, translating, preparing exhibits or
9 demonstrations, and organizing, storing, or retrieving data in any form or medium)
10 and their employees and subcontractors.

11 4.14 Protected Material: any Disclosure or Discovery Material that is
12 designated as “CONFIDENTIAL.”

13 4.15 Receiving Party: a Party that receives Disclosure or Discovery
14 Material from a Producing Party.

15 5. SCOPE

16 The protections conferred by this Stipulation and Order cover not only
17 Protected Material (as defined above), but also (1) any information copied or
18 extracted from Protected Material; (2) all copies, excerpts, summaries, or
19 compilations of Protected Material; and (3) any testimony, conversations, or
20 presentations by Parties or their Counsel that might reveal Protected Material.

21 Any use of Protected Material at trial shall be governed by the orders of the
22 trial judge and other applicable authorities. This Order does not govern the use of
23 Protected Material at trial.

24 6. DURATION

25 Once a case proceeds to trial, information that was designated as
26 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
27 as an exhibit at trial becomes public and will be presumptively available to all
28 members of the public, including the press, unless compelling reasons supported by

1 specific factual findings to proceed otherwise are made to the trial judge in advance
2 of the trial. See Kamakana, 447 F.3d at 1180-81 (distinguishing “good cause”
3 showing for sealing documents produced in discovery from “compelling reasons”
4 standard when merits-related documents are part of court record). Accordingly, the
5 terms of this protective order do not extend beyond the commencement of the trial.

6 7. DESIGNATING PROTECTED MATERIAL

7 7.1 Exercise of Restraint and Care in Designating Material for

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

15 Mass, indiscriminate or routinized designations are prohibited. Designations
16 that are shown to be clearly unjustified or that have been made for an improper
17 purpose (e.g., to unnecessarily encumber the case development process or to impose
18 unnecessary expenses and burdens on other parties) may expose the Designating
19 Party to sanctions.

20 If it comes to a Designating Party’s attention that information or items that it
21 designated for protection do not qualify for protection, that Designating Party must
22 promptly notify all other Parties that it is withdrawing the inapplicable designation.

23 7.2 Manner and Timing of Designations. Except as otherwise provided in
24 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
25 that qualifies for protection under this Order must be clearly so designated before
26 the material is disclosed or produced.

27 Designation in conformity with this Order requires:

- 28 (a) for information in documentary form (e.g., paper or electronic

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

18 (b) for testimony given in depositions that the Designating Party
19 identifies the Disclosure or Discovery Material on the record, before the close of the
20 deposition all protected testimony.

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

26 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items does not, standing alone, waive
28 the Designating Party’s right to secure protection under this Order for such material.

1 Upon timely correction of a designation, the Receiving Party must make reasonable
2 efforts to assure the material is treated in accordance with this Order.

3 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
5 designation of confidentiality at any time that is consistent with the Court's
6 Scheduling Order.

7 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
8 resolution process under Local Rule 37-1 et seq.

9 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a joint
10 stipulation pursuant to Local Rule 37-2.

11 8.4 The burden of persuasion in any such challenge proceeding shall be on the
12 Designating Party. Frivolous challenges, and those made for an improper purpose
13 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
14 expose the Challenging Party to sanctions. Unless the Designating Party has waived
15 or withdrawn the confidentiality designation, all parties shall continue to afford the
16 material in question the level of protection to which it is entitled under the Producing
17 Party's designation until the Court rules on the challenge.

18 9. ACCESS TO AND USE OF PROTECTED MATERIAL

19 9.1 Basic Principles. A Receiving Party may use Protected Material that is
20 disclosed or produced by another Party or by a Non-Party in connection with this
21 Action only for prosecuting, defending or attempting to settle this Action. Such
22 Protected Material may be disclosed only to the categories of persons and under the
23 conditions described in this Order. When the Action has been terminated, a
24 Receiving Party must comply with the provisions of section 15 below (FINAL
25 DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a
27 location and in a secure manner that ensures that access is limited to the persons
28 authorized under this Order.

1 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:
5 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
6 well as employees of said Outside Counsel of Record to whom it is reasonably
7 necessary to disclose the information for this Action;
8 (b) the officers, directors, and employees (including House Counsel) of
9 the Receiving Party to whom disclosure is reasonably necessary for this Action;
10 (c) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this Action and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
13 (d) the court and its personnel;
14 (e) court reporters and their staff;
15 (f) professional jury or trial consultants, mock jurors, and Professional
16 Vendors to whom disclosure is reasonably necessary for this Action and who have
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
18 (g) the author or recipient of a document containing the information or
19 a custodian or other person who otherwise possessed or knew the information;
20 (h) during their depositions, witnesses, and attorneys for witnesses, in
21 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
22 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
23 they will not be permitted to keep any confidential information unless they sign the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
25 agreed by the Designating Party or ordered by the court. Pages of transcribed
26 deposition testimony or exhibits to depositions that reveal Protected Material may
27 be separately bound by the court reporter and may not be disclosed to anyone except
28 as permitted under this Stipulated Protective Order; and

1 (i) any mediators or settlement officers and their supporting personnel,
2 mutually agreed upon by any of the parties engaged in settlement discussions.

3 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
4 PRODUCED IN OTHER LITIGATION

5 If a Party is served with a subpoena or a court order issued in other litigation
6 that compels disclosure of any information or items designated in this Action as
7 “CONFIDENTIAL,” that Party must:

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

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

14 (c) cooperate with respect to all reasonable procedures sought to be
15 pursued by the Designating Party whose Protected Material may be affected. If the
16 Designating Party timely seeks a protective order, the Party served with the
17 subpoena or court order shall not produce any information designated in this action
18 as “CONFIDENTIAL” before a determination by the court from which the subpoena
19 or order issued, unless the Party has obtained the Designating Party’s permission.
20 The Designating Party shall bear the burden and expense of seeking protection in
21 that court of its confidential material and nothing in these provisions should be
22 construed as authorizing or encouraging a Receiving Party in this Action to disobey
23 a lawful directive from another court.

24 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO
25 BE PRODUCED IN THIS LITIGATION

26 (a) The terms of this Order are applicable to information produced by a
27 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
28 produced by Non-Parties in connection with this litigation is protected by the

1 remedies and relief provided by this Order. Nothing in these provisions should be
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to
4 produce a Non-Party's confidential information in its possession, and the Party is
5 subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

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

10 (2) promptly provide the Non-Party with a copy of the Stipulated
11 Protective Order in this Action, the relevant discovery request(s), and a reasonably
12 specific description of the information requested; and

13 (3) make the information requested available for inspection by the Non-
14 Party, if requested.

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

23 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
27 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
28 to retrieve all unauthorized copies of the Protected Material, (c) inform the person

1 or persons to whom unauthorized disclosures were made of all the terms of this
2 Order, and (d) request such person or persons to execute the “Acknowledgment and
3 Agreement to Be Bound” attached hereto as Exhibit A.

4 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
5 OTHERWISE PROTECTED MATERIAL

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

16 14. MISCELLANEOUS

17 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
18 person to seek its modification by the Court in the future.

19 14.2 Right to Assert Other Objections. By stipulating to the entry of this
20 Protective Order, no Party waives any right it otherwise would have to object to
21 disclosing or producing any information or item on any ground not addressed in this
22 Stipulated Protective Order. Similarly, no Party waives any right to object on any
23 ground to use in evidence of any of the material covered by this Protective Order.

24 14.3 Filing Protected Material. A Party that seeks to file under seal any
25 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
26 only be filed under seal pursuant to a court order authorizing the sealing of the
27 specific Protected Material. If a Party’s request to file Protected Material under seal
28 is denied by the court, then the Receiving Party may file the information in the public

1 record unless otherwise instructed by the court.

2 15. FINAL DISPOSITION


3 After the final disposition of this Action, as defined in paragraph 6, within 60
4 days of a written request by the Designating Party, each Receiving Party must return
5 all Protected Material to the Producing Party or destroy such material. As used in
6 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
7 summaries, and any other format reproducing or capturing any of the Protected
8 Material. Whether the Protected Material is returned or destroyed, the Receiving
9 Party must submit a written certification to the Producing Party (and, if not the same
10 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies
11 (by category, where appropriate) all the Protected Material that was returned or
12 destroyed and (2) affirms that the Receiving Party has not retained any copies,
13 abstracts, compilations, summaries or any other format reproducing or capturing any
14 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
15 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
16 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
17 reports, attorney work product, and consultant and expert work product, even if such
18 materials contain Protected Material. Any such archival copies that contain or
19 constitute Protected Material remain subject to this Protective Order as set forth in
20 Section 6 (DURATION).

21 16. VIOLATION

22 Any violation of this Order may be punished by appropriate measures
23 including, without limitation, contempt proceedings and/or monetary sanctions.

24 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

25 DATED: August 15, 2023

26 
27 _____
28 JOHN D. EARLY
United States Magistrate Judge

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
5 of perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United States District Court for the Central District of
7 California in Case No. **8:23-cv-00164 FWS (JDEx)**. I agree to comply with and to
8 be bound by all the terms of this Stipulated Protective Order and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment
10 in the nature of contempt. I solemnly promise that I will not disclose in any manner
11 any information or item that is subject to this Stipulated Protective Order to any
12 person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court
14 for the Central District of California for the purpose of enforcing the terms of this
15 Stipulated Protective Order, even if such enforcement proceedings occur after
16 termination of this action. I hereby appoint _____ [print or type full
17 name] of _____ [print or type full address and telephone
18 number] as my California agent for service of process in connection with this action
19 or any proceedings related to enforcement of this Stipulated Protective Order.

20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____

24
25 Signature: _____