

1 David C. Powell (SBN 129781)  
 Email: [dpowell@reedsmith.com](mailto:dpowell@reedsmith.com)  
 2 Heather B. Hoesterey (SBN 201254)  
 Email: [hhoesterey@reedsmith.com](mailto:hhoesterey@reedsmith.com)  
 3 REED SMITH LLP  
 101 Second Street, Suite 1800  
 4 San Francisco, CA 94105-3659  
 Telephone: +1 415 543 8700  
 5 Facsimile: +1 415 391 8269

6 Attorneys for Defendant  
 Harley-Davidson Credit Corp.

8 UNITED STATES DISTRICT COURT  
 9 EASTERN DISTRICT OF CALIFORNIA

10 LUIS MANUAL MORA, individually and on  
 behalf of the class,  
 11  
 Plaintiff,  
 12  
 vs.  
 13  
 HARLEY-DAVIDSON CREDIT CORP., a  
 14 corporation; and DOES 1 through 10, inclusive,  
 15  
 Defendants.

No.: 1:08-CV-01453-OWW-GSA

**STIPULATION AND PROTECTIVE  
 ORDER REGARDING CONFIDENTIAL,  
 TRADE SECRET AND PRIVATE  
 CONSUMER INFORMATION**

REED SMITH LLP  
 A limited liability partnership formed in the State of Delaware

16  
 17  
 18 In order to protect confidential, proprietary, trade secret and private consumer information,  
 19 the parties to this action, by and through their respective counsel of record, hereby agree as follows:

20  
 21 1. This Stipulation and [Proposed] Protective Order Regarding Confidential, Trade  
 22 Secret and Private Consumer Information (“Order”) shall govern the use of confidential, proprietary,  
 23 trade secret and private consumer information produced during discovery in the above-entitled  
 24 action. As used in this Order, the term “party” shall mean all named parties to this action, including  
 25 any named party added or joined to this action. As used in this Order, the term “non-party” shall  
 26 mean any individual, corporation, association, or other natural person or entity other than a party.  
 27 The term “document” or “documents” as used herein are intended to be comprehensive and include  
 28 any and all materials in the broadest sense contemplated by Rule 34 of the Federal Rules of Civil

1 Procedure. For purposes of this Order, the party or non-party designating information, documents,  
2 materials or items as “Confidential” bears the burden of establishing the confidentiality of all such  
3 information, documents, materials or items.

4           2.       “Confidential Information” is defined for purposes of this Order as the following  
5 types of documents and information:  
6

7           a.       Information that constitutes a trade secret in accordance with Cal. Civil Code  
8 § 3426.1 or other equivalent, such as the Illinois Trade Secrets Act (765 Illinois Compiled Statutes, §  
9 1065) or Nevada’s adaptation of the Uniform Trade Secrets Act (Nevada Revised Statutes, §  
10 600A.010, *et seq.*);

11           b.       Non-public business or financial strategies, and/or confidential competitive  
12 information which, if disclosed, would result in prejudice or harm to the disclosing party;  
13

14           c.       Consumer-specific information, including private consumer information that  
15 contains identifying, contact or private financial information provided by a consumer, including any  
16 “nonpublic personal information” such as identified by the Gramm-Leach-Bliley Act, 15 U.S.C. §  
17 6801 *et seq.*, and other equivalent privacy laws.

18           d.       Information which otherwise qualifies for protection under standards  
19 developed under statutory and common law.  
20

21       3.       Documents claimed by the producing party or non-party (“Designating Party”) to be  
22 or contain Confidential Information shall be so designated by stamping copies of the document  
23 produced to a party with one of the following legends: “CONFIDENTIAL-SUBJECT TO  
24 PROTECTIVE ORDER” and/or “CONFIDENTIAL.”

25           Any such stamp or designation shall not cover up, obscure or otherwise conceal any text,  
26 picture, drawing, graph or other communication or depiction in the document. If such designation is  
27  
28

1 not feasible (e.g. in the case of certain electronic documents), then such designation may be made by  
2 informing the other parties in writing.

3 4. The designation of any material as “CONFIDENTIAL” pursuant to this Order shall  
4 constitute the verification of counsel for the producing party or non-party that the material  
5 constitutes Confidential information as defined in Paragraph 2 of this Order.  
6

7 5. Documents produced by a Designating Party and as confidential under this Order  
8 (hereinafter “Confidential Material”) may be disclosed or made available only to the following  
9 persons (hereinafter “Qualified Persons”):

10 a. The parties to this action or an officer, director, or employee of a party deemed  
11 reasonably necessary by counsel to aid in the prosecution, defense, or settlement of this action;  
12 excluding putative class members not named as plaintiffs in the putative class litigation unless and  
13 until one or more classes have been certified.  
14

15 b. Counsel for the parties to this action (“Counsel”), including all partners and  
16 associate attorneys of such Counsels’ law firms and all clerks, employees, independent contractors,  
17 investigators, paralegals, assistants, secretaries, staff and stenographic, computer, audio-visual and  
18 clerical employees and agents thereof when operating under the direct supervision of such partners  
19 or associate attorneys and who are actually working on this action, all of whom shall be bound by  
20 this Order;

21 c. The Court and any person employed or retained by the Court whose duties require  
22 access to confidential material;  
23

24 d. Stenographic reporters or audio-visual personnel engaged in connection with this  
25 action including deposition reporters, video operators and transcribers;  
26  
27  
28

1 e. Any person who created, authored, received or reviewed such Confidential  
2 Material and those persons identified on such Confidential Material as creators, authors or recipients  
3 of the Confidential Material;

4 f. Actual and/or potential trial or deposition witnesses, where counsel believes, in  
5 good faith, that disclosure is necessary to prepare for or develop the testimony of such witnesses;  
6

7 g. Experts or consultants retained by such counsel to assist in the prosecution,  
8 defense, or settlement of this action and their respective employees, associates or colleagues;

9 h. Employees of firms engaged by the parties for purposes of photocopying,  
10 electronic imaging or computer litigation support in connection with this litigation; or  
11

12 i. Such other persons as may be designated by written agreement of Counsel or by  
13 order of the Court.

14 6. Prior to receiving any Confidential Material, each Qualified Person described in  
15 paragraphs 5(e) through 5(g) shall be provided with a copy of this Order and shall execute an  
16 Agreement to Maintain Confidentiality (hereinafter "Confidentiality Agreement") in the form of  
17 Exhibit A, attached hereto. Each such person signing a Confidentiality Agreement shall be subject  
18 to and bound by this Order. Counsel for the party seeking to disclose Confidential Material to any  
19 Qualified Person pursuant to paragraphs 5(e) through 5(g) shall be responsible for retaining the  
20 executed originals of all such Confidentiality Agreements.  
21

22 7. No Party may file in the public record in this action any Confidential Material without  
23 taking appropriate action to insure that the documents receive proper protection from public  
24 disclosure, including (1) filing a redacted document with written permission from the Designating  
25 Party; (2) where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the  
26 documents solely for an *in camera* review; (3) seeking a court order secured after appropriate notice  
27 to all interested persons, or (4) where the preceding measures are not adequate, filing the  
28 Confidential Material under seal in compliance with Civil Local Rule 39-141. All papers that refer

1 to or rely upon any such Confidential Material shall designate the particular aspects of the papers  
2 that are confidential.

3           8.       If a person receiving Confidential Material learns that, by inadvertence or otherwise,  
4 it has disclosed Confidential Material to any person or in any circumstance not authorized under this  
5 Order, that person shall request the recipient to return the Confidential Material including all copies  
6 thereof, and notify the Designating Party that produced the Confidential Material of the disclosure.  
7

8           9.       Confidential Information or information derived therefrom may be used by the  
9 Receiving Party solely for purposes of the Action. Confidential Information or information derived  
10 therefrom may not be used for any other purpose. In addition, nothing in this Order shall prohibit  
11 disclosure of Confidential Material in response to compulsory process. If any person subject to this  
12 Order, including a person subject to a Confidentiality Agreement under this Order, is served with  
13 such process or receives notice of any subpoena or other discovery request seeking Confidential  
14 Material, such person shall promptly (not more than three (3) working days after receipt of such  
15 process or notice) notify the Designating Party of such process or request, shall take all reasonable  
16 steps to refrain from producing Confidential Material in response to such process, and shall afford a  
17 reasonable opportunity for the Designating Party to oppose the process or to seek a protective order.  
18 Notwithstanding the foregoing, nothing herein shall prohibit the Receiving Party from disclosing any  
19 of the Confidential Information to any bank regulators.

20           10.     Counsel for any deponent, party or non-party may designate specific portions of  
21 deposition testimony or exhibits as Confidential Material by indicating on the record at the  
22 deposition that the testimony of the deponent or any exhibits to his testimony are to be treated as  
23 confidential. The Court reporter shall separately bind such testimony and exhibits in a transcript  
24 bearing the legend “Confidential – Subject To Protective Order” on the cover page. Failure of  
25 Counsel to designate testimony or exhibits as confidential at deposition, however, shall not  
26 constitute a waiver of the confidentiality of the testimony or exhibits. Upon receipt of the transcript  
27 of the deposition, Counsel shall be entitled to designate specific pages and lines of the transcript or  
28

1 the exhibits as confidential within 30 (thirty) days after receipt of the transcript. Until Counsel for  
2 the deponent, party or non-party designates the transcript or exhibits as confidential, however, any  
3 other party shall be entitled to treat the transcript or exhibits as non-confidential material.

4  
5 11. No one may attend the portions of depositions or review the transcripts of the portions  
6 of any depositions at which Confidential Material is shown or discussed other than those persons  
7 designated in Paragraph 5 and outside counsel for any non-party deponent (who shall first sign the  
8 Confidentiality Agreement).

9  
10 12. A party or other person objecting to designation of any document(s) or material(s) as  
11 Confidential Material shall provide written notice of the objection to Counsel for the Designating  
12 Party, specifying the document(s) or material(s) that are the subject of the objection. Upon receipt of  
13 the written objection, counsel for the Designating Party shall, within twenty (20) days, provide a  
14 written response to the objecting party explaining the basis for the designation as Confidential  
15 Material; otherwise the document(s) or material(s) shall be deemed to be no longer Confidential  
16 without a court order. The parties and any other objecting person(s) shall confer in good faith in an  
17 effort to resolve the objection and any response by the Designating Party. If the objecting party or  
18 person and the Designating Party are unable to resolve the issue, the Designating Party, within  
19 twenty (20) days after serving its written response to the objection notification, may file a motion  
20 with the Court to continue the designation of the document(s) or material(s) as “Confidential  
21 Material.” In deciding such a motion, the Court shall make an independent determination as to  
22 whether or not the document(s) or material(s) are Confidential and are entitled to protection under  
23 applicable law. If the Designating Party does not file a motion seeking to maintain the “Confidential  
24 Designation” within twenty (20) days after serving its written response to the objection to  
25 confidentiality, the document(s) or material(s) at issue shall be deemed to be no longer confidential.

26  
27 13. If any Confidential Material is inadvertently provided to a discovering party without  
28 being marked as confidential in accordance with this Order, the producing party may thereafter  
designate such materials as confidential and the initial failure to so mark the material shall not be

1 deemed a waiver of its confidentiality. Until the material is designated as confidential by the  
2 Designating Party, however, the discovering party shall be entitled to treat the material as non-  
3 confidential.

4  
5 14. If a party inadvertently produces information that it later discovers, or in good faith  
6 later asserts, to be privileged or otherwise protected from disclosure, the production of that  
7 information will not be presumed to constitute a waiver of any applicable privileges or other  
8 protections. In these circumstances, the producing party must immediately notify all parties in  
9 writing of the inadvertent production and the basis for the privilege or other protection from  
10 production, and request in writing the return or confirmed destruction of the privileged or protected  
11 information. Within five (5) days of receiving such notification, and in compliance with the  
12 receiving parties' ethical obligations under the law, all receiving parties who have not already  
13 reviewed such materials or who have reviewed the materials but do not contest the applicability of  
14 the privilege asserted must return or confirm destruction of all such materials, including copies  
15 and/or summaries thereof. However, should a receiving party contest the applicability of a privilege  
16 asserted with respect to an inadvertently produced document which the receiving party has already  
17 reviewed, the receiving party may temporarily retain the document or documents at issue for the sole  
18 purpose of contesting the applicability of the privilege asserted. Within two (2) business days of the  
19 issuance of a court order deeming the contested documents at issue privileged, however, the  
20 receiving party must return or confirm destruction of all such materials, including copies and/or  
21 summaries thereof.

22 15. Within sixty (60) days of final termination of this lawsuit, including all appeals,  
23 (whether by judgment, settlement or otherwise) all materials produced by a party that contain  
24 Confidential Material, including all abstracts and summaries of such material, shall be destroyed or  
25 returned to Counsel for the Designating Party. Such destroyed or returned materials shall not  
26 include the notes or work product of counsel for the parties, expert witnesses or consultants or  
27 investigators or agents thereof. Counsel for each such party shall certify that the provisions of this  
28 paragraph have been satisfied by sending opposing counsel a letter confirming compliance.





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

IT IS SO ORDERED:

Dated: November 19, 2009

/s/ OLIVER W. WANGER  
Honorable Oliver W. Wanger

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**  
**CONFIDENTIALITY AGREEMENT**

I have been designated by [PARTY NAME] as a person who may have access to Confidential Information as that term is defined in the STIPULATION AND [PROPOSED] PROTECTIVE ORDER (“Order”) entered in the matter of *MORA v. HARLEY-DAVIDSON CREDIT CORP.*, United States District Court for the Eastern District of California case number No.: 1:08-CV-01453-OWW-GSA.

I certify that I have read and am fully familiar with the terms of the Order. I agree to be bound by the Order and to fully comply with the Order. I consent to the jurisdiction of the United States District Court for the Eastern District of California for the purposes of any action to enforce the Order.

I declare under penalty of perjury of the State of California that the foregoing is true and correct and that this Confidentiality Agreement was executed on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ in \_\_\_\_\_.

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_