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18 Attorneys for Plaintiff

19 **UNITED STATES DISTRICT COURT**  
20 **EASTERN DISTRICT OF CALIFORNIA**

21 DELIA WILSON, on Behalf of Herself and  
22 All Others Similarly Situated,

23 Plaintiff,

24 v.

25 CONAIR CORPORATION,

26 Defendant.

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Case No: 1:14-cv-00894-WBS-BAM

CLASS ACTION

STIPULATED ORDER GOVERNING THE  
DESIGNATION AND HANDLING OF  
CONFIDENTIAL MATERIALS

District Judge: William B. Shubb  
Sacramento Ctrm: 5  
Magistrate Judge: Barbara A. McAuliffe  
Fresno Ctrm: 8

Complaint Filed: June 11, 2014



1           2.5     Disclosure or Discovery Material: All items or information, regardless of the  
2 medium or manner in which it is generated, stored, or maintained (including, among other  
3 things, testimony, transcripts, electronically stored information, and tangible or intangible  
4 things), that are produced or generated in disclosures or responses to discovery in this matter.

5           2.6     In-House Counsel: Attorneys who are employees of a Party to this action. In-  
6 House Counsel does not include Outside Counsel of Record or any other outside counsel.

7           2.7     Non-Party: Any natural person, partnership, corporation, association, or other  
8 legal entity not named as a Party to this action.

9           2.8     Outside Counsel of Record: Attorneys who are not employees of a Party to this  
10 action, but are retained to represent or advise a Party to this action and have appeared in this  
11 action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of  
12 that Party.

13          2.9     Party: Any party to this action, including all of its officers, directors,  
14 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
15 staff).

16          2.10    Producing Party: A Party or Non-Party that produces Disclosure or Discovery  
17 Material in this action.

18          2.11    Professional Vendors: Persons or entities that provide litigation support services  
19 (*e.g.*, photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
20 organizing, storing, or retrieving data in any form or medium) and their employees and  
21 subcontractors.

22          2.12    Protected Material: Any Disclosure or Discovery Material that is designated as  
23 “CONFIDENTIAL.”

24          2.13    Receiving Party: A Party that receives Disclosure or Discovery Material from a  
25 Producing Party.

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1           **3.     SCOPE**

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

15           **4.     DURATION**

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

23           **5.     DESIGNATING PROTECTED MATERIAL**

24           5.1     Exercise of Restraint and Care in Designating Material for Protection. Each  
25 Party or Non-Party that designates information or items for protection under this Order must  
26 take care to limit any such designation to specific material that qualifies under the appropriate  
27 standards. To the extent it is practical to do so, the Designating Party must designate for  
28 protection only those parts of material, documents, items, or oral or written communications

1 that qualify – so that other portions of the material, documents, items, or communications for  
2 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
7 Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
8 ordered, Disclosure or Discovery Material that qualifies for protection under this Stipulation  
9 must be clearly so designated before the material is disclosed or produced.

10 Designation in conformity with the Court’s Order on the Parties’ Stipulation requires:

11 (a) for information in documentary form (*e.g.*, paper or electronic documents,  
12 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
13 Producing Party affix the legend “CONFIDENTIAL” (or a substantially similar legend) to  
14 each page that contains Protected Material. If only a portion or portions of the material on a  
15 page qualifies for protection, the Producing Party also must clearly identify the protected  
16 portion(s) (*e.g.*, by making appropriate markings in the margins). Any such stamp or  
17 designation shall not in any manner cover up, overlap upon, obscure or otherwise conceal any  
18 text, picture, drawing, graph or other communication or depiction in the document. To the  
19 extent documents are produced in native format, it shall be sufficient for the Producing Party  
20 to either include the terms “CONFIDENTIAL” in the file name for the document and/or to  
21 include an associated placeholder document bearing the terms “CONFIDENTIAL” (or a  
22 substantially similar legend).

23 A Party or Non-Party that makes original documents or materials available for  
24 inspection need not designate them for protection until after the inspecting Party has indicated  
25 which material it would like copied and produced. After the inspecting Party has identified the  
26 documents it wants copied and produced, the Producing Party must determine which  
27 documents, or portions thereof, qualify for protection under this Stipulation and Proposed  
28 Order. Then, before producing the specified documents, the Producing Party must affix the

1 appropriate legend (“CONFIDENTIAL”) to each page that contains Protected Material. If  
2 only a portion or portions of the material on a page qualifies for protection, the Producing  
3 Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings  
4 in the margins) and must specify, for each portion, the level of protection being asserted. To  
5 the extent documents are produced in native format, it shall be sufficient for the Producing  
6 Party to either include the term “CONFIDENTIAL” in the file name for the document and/or  
7 to include an associated placeholder document bearing the term “CONFIDENTIAL” (or a  
8 substantially similar legend).

9 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
10 that the Designating Party identify on the record, before the close of the deposition, hearing, or  
11 other proceeding, all protected testimony and specify the level of protection being asserted.  
12 Alternatively, the Designating Party may identify the specific portions of the testimony as to  
13 which protection is sought within 30 (thirty) days following receipt of the reporter’s transcript  
14 of the deposition, hearing, or other proceeding (or longer if agreed to by the Parties). Only  
15 those portions of the testimony that are appropriately designated for protection within the 30  
16 (thirty) days (or longer if agreed to by the Parties) shall be covered by the provisions of this  
17 Stipulation and Proposed Order. A Designating Party may specify, at the deposition or within  
18 30 (thirty) days of receipt of the reporter’s transcript (or longer if agreed to by the Parties), that  
19 the entire transcript shall be treated as “CONFIDENTIAL” to the extent such a designation is  
20 consistent with the other terms of this Stipulation. The use of a document as an exhibit at a  
21 deposition shall not in any way affect its designation as “CONFIDENTIAL.”

22 Transcripts containing Protected Material shall have an obvious legend on the title  
23 page that the transcript contains Protected Material, and the title page shall be followed by a  
24 list of all pages (including line numbers as appropriate) that have been designated as Protected  
25 Material. The Designating Party shall inform the court reporter of these requirements. If the  
26 designation of Protected Material occurs after the deposition transcript has been prepared and  
27 results in an additional cost, the Designating Party shall pay the additional transcript costs.  
28

1 (c) for information produced in some form other than documentary and for any  
2 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
3 container or containers in which the information or item is stored the legend  
4 “CONFIDENTIAL” (or a substantially similar legend). If only a portion or portions of the  
5 information or item warrant protection, the Producing Party, to the extent practicable, shall  
6 identify the protected portion(s).

7 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified  
8 information or items does not, standing alone, waive the Designating Party’s right to secure  
9 protection under this Order for such material. Upon correction of a designation, the Receiving  
10 Party must make reasonable efforts to assure that the material is treated in accordance with the  
11 provisions of this Order.

12 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
14 confidentiality at any time.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
16 process by providing written notice of each designation it is challenging and describing the  
17 basis for each challenge. Upon receipt of the written notice, the Producing Party shall have 10  
18 (ten) days to provide a written response to the Challenging Party explaining the basis and/or  
19 supporting authority for the designation, or an agreement to withdraw the confidential  
20 designation. If the dispute is not resolved, the Parties shall meet and confer within 14  
21 (fourteen) days of the date of the written response served by the Producing Party in an attempt  
22 to resolve the dispute without court intervention.

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
24 intervention, the Challenging Party shall file and serve a motion to challenge confidentiality, if  
25 there is good cause for doing so, including a challenge to the designation of a deposition  
26 transcript or any portions thereof, pursuant to Local Rule 251(a) and Magistrate Judge  
27 McAuliffe’s standing orders (or the standing orders of whichever Magistrate is assigned to this  
28 matter) with at least 21 (twenty-one) days’ notice. Each such motion must be accompanied by

1 a competent declaration affirming that the movant has complied with the meet and confer  
2 requirements imposed in the preceding paragraph. Alternative to a written motion, the Parties  
3 may agree to have the dispute resolved by Magistrate Judge McAuliffe’s “Informal Telephonic  
4 Conferences re Discovery Disputes” process. In addition, the Designating Party may file a  
5 motion to retain a confidentiality designation at any time if there is good cause for doing so,  
6 including retention of the designation of a deposition transcript or any portions thereof. Any  
7 motion brought pursuant to this provision must be accompanied by a competent declaration  
8 affirming that the movant has complied with the meet and confer requirements imposed by the  
9 preceding paragraph and provide at least 21 (twenty-one) days’ notice.

10 The burden of persuasion in any such challenge proceeding shall be on the Designating  
11 Party. Frivolous challenges and those made for an improper purpose (*e.g.*, to harass or impose  
12 unnecessary expenses and burdens on other Parties) may expose the Challenging Party to  
13 sanctions. All Parties shall continue to afford the material in question under the Producing  
14 Party’s designation until the court rules on the challenge.

15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
17 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
18 prosecuting, defending, or attempting to settle this litigation (including any related appeals).  
19 Such Protected Material may be disclosed only to the categories of persons and under the  
20 conditions described in this Order. When the litigation has been terminated, a Receiving Party  
21 must comply with the provisions of section 12 below (FINAL DISPOSITION).

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

25 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
26 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
27 disclose any information or item designated “CONFIDENTIAL” only to:  
28

1 (a) the Parties and the Receiving Party’s Outside Counsel of Record in this  
2 action, as well as employees, support personnel, independent contractors and investigators  
3 operating under the supervision of the Receiving Party’s Outside Counsel of Record to whom  
4 it is reasonably necessary to disclose the information for this litigation;

5 (b) the officers, directors, and employees (including In-House Counsel) of the  
6 Receiving Party to whom disclosure is reasonably necessary for this litigation;

7 (c) experts and consultants, including associated personnel of the Receiving  
8 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (d) the court and its personnel;

11 (e) professional jury or trial consultants who have signed the “Acknowledgment  
12 and Agreement to Be Bound” (Exhibit A);

13 (f) professional vendors to whom disclosure is reasonably necessary for this  
14 litigation;

15 (g) during their depositions, witnesses in the action to whom disclosure is  
16 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
17 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.  
18 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected  
19 Material must be separately bound by the court reporter and may not be disclosed to anyone  
20 except as permitted under this Stipulated Protective Order; and

21 (h) the author or recipient of a document containing the information or a  
22 custodian or other person who otherwise possessed or reasonably knew of the information.

23 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
24 **IN OTHER LITIGATION**

25 If a Party is served with a subpoena or a court order issued in other litigation that  
26 compels disclosure of any information or items designated in this action as  
27 “CONFIDENTIAL” that Party must:  
28

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

3 (b) promptly notify in writing the Party who caused the subpoena or order to issue in  
4 the other litigation that some or all of the material covered by the subpoena or order is subject  
5 to this Protective Order. Such notification shall include a copy of this Stipulated Protective  
6 Order; and

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

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

17 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
18 **PRODUCED IN THIS LITIGATION**

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

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

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1           1. promptly notify in writing the Requesting Party and the Non-Party that some  
2 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

3           2. if not confidential, promptly provide the Requesting Party with a copy of the  
4 agreement between the Producing Party and the Non-Party that purportedly obligates the  
5 Producing Party to not produce the Non-Party's confidential information;

6           3. promptly provide the Non-Party with a copy of the Stipulated Protective  
7 Order in this litigation, the relevant discovery request(s), and a reasonably specific description  
8 of the information requested; and

9           4. make the information requested available for inspection by the Non-Party.

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

18           **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
20 Protected Material to any person or in any circumstance not authorized under this Stipulated  
21 Protective Order, the Receiving Party must immediately: (a) notify in writing the Designating  
22 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies  
23 of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures  
24 were made of all the terms of this Order, and (d) request such person or persons to execute the  
25 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

26           **11. MISCELLANEOUS**

27           11.1 Right to Further Relief. Nothing in this Order abridges the right of any person  
28 to seek its modification by the court in the future.

1           11.2   Right to Assert Other Objections. By stipulating to the entry of this Protective  
2 Order no Party waives any right it otherwise would have to object to disclosing or producing  
3 any information or item on any ground not addressed in this Stipulated Protective Order.  
4 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
5 material covered by this Protective Order.

6           11.3   Filing Protected Material. Without written permission from the Designating  
7 Party or a court order secured after appropriate notice to all interested persons, a Party may not  
8 file in the public record in this action any Protected Material. A Party that seeks to file under  
9 seal any Protected Material must comply with Civil Local Rule 141. Protected Material may  
10 only be filed under seal pursuant to a court order authorizing the sealing of the specific  
11 Protected Material at issue. If a Receiving Party's request to file Protected Material under seal  
12 pursuant to Civil Local Rule 141 is denied by the court, then the Receiving Party may file the  
13 Protected Material in the public record pursuant to Civil Local Rule 141 unless otherwise  
14 instructed by the court.

15           **12.    FINAL DISPOSITION**

16           After the final disposition of this action, as defined in paragraph 4, upon the request of  
17 the Producing Party each Receiving Party must within 60 (sixty) days return all Protected  
18 Material to the Producing Party or destroy such material. As used in this subdivision, “all  
19 Protected Material” includes all copies, abstracts, compilations, summaries, and any other  
20 format reproducing or capturing any of the Protected Material. Whether the Protected Material  
21 is returned or destroyed, the Receiving Party must submit a written certification to the  
22 Producing Party (and, if not the same person or entity, to the Designating Party) that affirms  
23 that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any  
24 other format reproducing or capturing any of the Protected Material. Notwithstanding this  
25 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,  
26 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial  
27 exhibits, expert reports, attorney work product, and consultant and expert work product, and  
28 all other documents filed with the court, even if such materials contain Protected Material.

1 Any such archival copies that contain or constitute Protected Material remain subject to this  
2 Protective Order as set forth in Section 4 (DURATION).

3 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

4  
5 Dated: January 12, 2015

BLOOD HURST & O'REARDON, LLP

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7 By: s/ Leslie E. Hurst  
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15 *Attorneys for Plaintiff*

16  
17 Dated: January 12, 2015

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], have read and understand the Stipulated  
Protective Order that was issued by the United States District Court for the Eastern District of  
California on \_\_\_\_\_ [insert date] in the case of *Wilson v. Conair Corporation*,  
Case No. 1:14-cv-00894-WBS-BAM. I agree to comply with and to be bound by all the terms  
of this Stipulated Protective Order. In compliance with this Order, I will not disclose in any  
manner any information or item that is subject to this Stipulated Protective Order to any person  
or entity except in strict compliance with the provisions of this Order.

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

I declare under penalty of perjury under the laws of the United States of America that  
the foregoing is true and correct. Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at  
\_\_\_\_\_ [insert city and state where sworn and signed].

Signature: \_\_\_\_\_

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**ECF CERTIFICATION**

The filing attorney attests that she has obtained concurrence regarding the filing of this document from the signatories to this document.

Dated: January 12, 2015

BLOOD HURST & O'REARDON, LLP

By: s/ Leslie E. Hurst  
LESLIE E. HURST

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 12, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 12, 2015.

*s/ Leslie E. Hurst*  
\_\_\_\_\_  
LESLIE E. HURST

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**ORDER**

Having reviewed the above Stipulated Order Governing the Designation and Handling of Confidential Materials, IT IS HEREBY ORDERED that the Court finds that good cause exists for the entry of this Order. Accordingly, the Court ADOPTS the stipulation in its entirety. (Doc. 27).

IT IS SO ORDERED.

Dated: January 15, 2015

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE