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 17 d/b/a Sherwin-Williams Automotive Finishes

18 UNITED STATES DISTRICT COURT
 19 EASTERN DISTRICT OF CALIFORNIA

20 THE SHERWIN-WILLIAMS
 21 COMPANY, d/b/a SHERWIN-
 22 WILLIAMS AUTOMOTIVE FINISHES,
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 24 Plaintiff,
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 26 vs.
 27 COURTESY OLDSMOBILE-
 28 CADILLAC, INC. AND BEN WELLS,
 Defendants.

Case No.: 1:15-CV-01137---MJS

PROTECTIVE ORDER

This matter comes before the Court upon the consent of the parties in accordance with L.R. 141.1 and L.R. 143 to provide protection to and to prevent disclosures of certain information and documents which are deemed to contain confidential and/or highly confidential/proprietary information by one or more of the parties consisting

1 generally of trade secrets, financial and business planning information, or other highly
2 confidential research, development, or commercial information, the disclosure of which
3 could cause the producing party competitive harm. The Court is fully advised in the
4 premises and finds entry of this Order appropriate under the circumstances. Accordingly,

5 IT IS HEREBY ORDERED:

6 **1. Restrictions on Disclosures of Information Designated Confidential.**

7 Until further Order of this Court, no document, or copy thereof (or any contents, portions,
8 summaries, digests, compilations or extracts thereof), produced pursuant to FRCP 26, in
9 response to FRCP 33 Interrogatories, FRCP 34 Requests For Production, or by any non-
10 party in response to a party subpoena, which is designated “Confidential,” shall be
11 disclosed in any way, directly or indirectly, in any form, to anyone other than in
12 connection with this case, and then only to the following persons:

- 13 a. the Court and its staff assigned to this case;
- 14 b. the parties (whether or not dismissed at any time);
- 15 c. outside counsel of record in this case and their respective
16 shareholders, partners, associates, legal assistants, and staff employees
17 who are involved in this case;
- 18 d. general counsel for any of the parties and their respective associates,
19 legal assistants, and any staff employees who are involved in this
20 case;
- 21 e. officers, directors, employees, accountants, and agents of the parties,
22 or affiliated companies, who are assisting or dealing with counsel of
23 record or general counsel;
- 24 f. independent experts, investigators, consultants, and the like, retained
25 by any party in connection with this litigation;
- 26 g. witnesses disclosed and persons to be deposed by any party but only
27 to the extent necessary to prepare such person for their respective and
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1 expected testimony and/or cross-examination in discovery and/or at
2 trial; or

- 3 h. persons deemed by counsel of record, whether or not a party, witness
4 or deponent, necessary to effectively represent their respective
5 client(s) in this litigation.

6 **2. Scope of Protective Order.** This Protective Order:

- 7 a. shall only apply to those specific documents that are designated as
8 Confidential or Highly Confidential/Attorneys' Eyes Only as set forth
9 herein;
- 10 b. shall apply to documents obtained by the parties or their respective
11 counsel from non-parties via subpoena; and
- 12 c. shall not apply to documents obtained by the parties or their
13 respective counsel from sources independent of and not otherwise
14 affiliated with any of the parties to this case.

15 **3. Documents Eligible for Protection.** Documents are eligible for protection
16 under this Protective Order when the documents and information are deemed to contain:

- 17 a. Trade secrets;
- 18 b. Financial and business planning information; or
- 19 c. Research and development information.

20 The above categories of information, if disclosed, would cause the producing party
21 competitive harm. Both trade secrets, including formulas, techniques, and processes, and
22 financial and business planning information require protection pursuant to this Protective
23 Order to safeguard the competitive advantage the producing party has developed and
24 sought to maintain. Research and development information requires protection pursuant
25 to this Protective Order in order to safeguard the producing party's efforts to improve and
26 test its products and systems, leading to a competitive advantage, and to prevent the
27 disclosure of intellectual property.

1 Given the gravity and significance of a producing party's trade secrets, financial
2 and business planning information, and research and development information, this
3 protection should be addressed by court order.

4 **4. Notice of Protective Order.** Any person who is permitted by counsel to
5 view and/or retain a copy of any document covered by this Protective Order shall be
6 provided with a copy of this Protective Order and shall, by receiving a copy of same and
7 viewing and/or retaining such document, agrees to be bound by the terms hereof and shall
8 acknowledge the same in writing.

9 **5. Designation as Highly Confidential/Attorneys' Eyes Only.** In addition to
10 the protections afforded Confidential Information or Material under this Order, a
11 producing party may designate any Confidential Information or Material which it further
12 reasonably believes constitutes a trade secret or other highly confidential research,
13 development, or commercial information, the disclosure of which to the other party or
14 public could cause the producing party competitive harm, as "Highly
15 Confidential/Attorneys' Eyes Only" by visibly designating such documents or by
16 otherwise so designating sections of deposition transcripts or answers to interrogatories
17 that contain such "Highly Confidential/Attorneys' Eyes Only." Materials designated as
18 "Highly Confidential/Attorney's Eyes Only" (or "Attorneys' Eyes Only") may be
19 disclosed only to counsel and general counsel for the parties (including staff as described
20 in paragraph 1(c) and (d)), the Court and its staff assigned to this case, experts as defined
21 in paragraph 1(f) who have signed the Confidentiality Undertaking of paragraph 10, court
22 reporters required to transcribe designated testimony and experts as defined in paragraph
23 1(f) who have signed the Confidentiality Undertaking of paragraph 10. Any further
24 disclosure of such information to others shall occur only by agreement of the parties in
25 writing or court order.

26 **6. Voluminous Documents.** In the case of voluminous documents, the
27 producing parties may designate documents as "Confidential" or "Highly
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1 Confidential/Attorneys' Eyes Only" by identifying ranges of numbered documents that
2 are either "Confidential" or "Highly Confidential/Attorneys' Eyes Only."

3 **7. Conclusion of Litigation.** At the conclusion and final disposition of this
4 litigation, either party shall have the right to request in writing that all such documents
5 covered by this Protective Order either be returned to that party who shall have produced
6 the same or destroyed provided such written request shall be made within forty-five (45)
7 days following such conclusion and final disposition; otherwise, the right to a return or
8 destruction of such document shall be deemed waived.

9 **8. Order of Exclusion.** If the Parties cannot resolve a dispute regarding the
10 inclusion of a document or other evidence within the coverage of this Protective Order or
11 the classification proposed for said document or evidence without court intervention, the
12 Designating Party shall be authorized to seek a Telephonic Discovery Dispute
13 Conference (TDDC) with the Court pursuant to the Judge's rules within 14 days of the
14 parties agreeing that the meet and confer process will not resolve their dispute. If the
15 Designating Party does not seek a TDDC within such timeframe, the designation shall be
16 waived. The Court in its sole discretion may award monetary sanctions in favor of the
17 prevailing party upon challenge made pursuant to this Paragraph. Instances in which
18 sanctions are appropriate include, but are not limited to, designations made without a
19 good faith basis, designations made for an improper purpose such as to harass or impede
20 a party's ability to view the evidence being used against it, designations made in violation
21 of prior TDDC rulings, frivolous challenges, and those made for an improper purpose
22 (e.g., to harass or impose unnecessary expenses and burdens on other parties). Unless the
23 Designating Party has waived the confidentiality designation by failing to seek a
24 Telephonic Discovery Dispute Conference with the Court as described above, all parties
25 shall continue to afford the material in question the level of protection to which it is
26 entitled under the Producing Party's designation until the court rules on the challenge.

27 **9. Non-Waiver of Privileges.** Notwithstanding any other provision in this
28 order to the contrary, the inadvertent or unintentional disclosure by any party of

1 confidential information or information subject to the attorney client privilege, work
2 product privilege or any other privilege or protection provided by law, either by way of
3 document production or deposition testimony or exhibit thereto, regardless of whether the
4 information was so designated at the time of disclosure, shall not be deemed a waiver in
5 whole or in part of the party's claim of confidentiality or privilege, either as to the
6 specific information disclosed or as to any other information relating thereto on the same
7 or related subject matter. Upon notice of any inadvertent or unintentional disclosure, the
8 receiving party shall return said documents and things and all copies immediately, and
9 shall not use any privileged documents or information in connection with this litigation.
10 This Protective Order shall be interpreted to provide the maximum protection allowed by
11 Federal Rule of Evidence 502(d). Nothing contained herein is intended to or shall serve
12 to limit a party's right to conduct a review of documents, ESI, or information (including
13 metadata) for relevance, responsiveness, and/or segregation of privileged and/or
14 protected information before production.

15 **10. Violation of Order.** Any violation of this Order by anyone having
16 knowledge thereof may subject that person or entity to imposition of an appropriate
17 sanction, in the discretion of the Court, as within or authorized by any statute, rule, or
18 inherent power of the Court, or as otherwise provided by law.

19 **11. Undertaking.** All persons specified in paragraph 1(f) through (h) to whom
20 disclosure of Confidential Information or Highly Confidential/Attorneys' Eyes Only
21 material is made shall be given a copy of this Protective Order and shall sign the
22 Undertaking Regarding Confidentiality form attached hereto as Exhibit 1 indicating that
23 they have read this Protective Order and agree to be bound by its terms.

24 **12. Disclosure of Confidential Material at Deposition.** During any deposition
25 in which Confidential or Highly Confidential/Attorney's Eyes Only Information is
26 discussed, counsel attending the deposition must make a good-faith effort to designate, on
27 the record, the portions of the transcript that will contain Confidential or Highly
28 Confidential/Attorney's Eyes Only Information. The portions of any deposition transcript

1 that counsel for any party has designated on the record at the deposition as
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/ATTORNEY’S EYES ONLY,”
3 and any such information marked as a deposition exhibit shall be treated as Confidential
4 or Highly Confidential/Attorney’s Eyes Only Information and placed in a separately
5 bound volume. For deposition testimony not designated on the record during the
6 deposition, portions of the transcript may be designated “CONFIDENTIAL” or
7 “HIGHLY CONFIDENTIAL/ATTORNEY’S EYES ONLY” if, within fourteen (14)
8 days of the transcript’s delivery to the Parties’ counsel of record, counsel designates in
9 writing, by page, any portion of the transcript as Confidential or Highly
10 Confidential/Attorney’s Eyes Only Information. **In the time after the deposition but**
11 **before the expiration of this fourteen (14) day period, the entirety of all deposition**
12 **transcripts must be treated as if they contained Highly Confidential/Attorney’s Eyes**
13 **Only Information.**

14 **13. Exclusion of Persons from Deposition.** If any Confidential or Highly
15 Confidential/Attorney’s Eyes Only Information or Material is summarized, discussed or
16 quoted at any deposition, all persons other than those to whom disclosure is permitted
17 hereunder may be excluded from such portion of the deposition at the request of the
18 Producing Party.

19 **14. Privilege Logs.** No party shall be obligated to log privileged or otherwise
20 protected communications received after the filing date of the Complaint in this action.

21 **15. Filing Under Seal.** Subject to public policy, and further court order, nothing
22 shall be filed under seal, and the Court shall not be required to take any action, without
23 separate prior order by the Judge before whom the hearing or proceeding will take place,
24 after application by the affected party with appropriate notice to opposing counsel. If the
25 Court grants a party permission to file an item under seal, a duplicate disclosing all non-
26 confidential information, if any, shall be filed and made part of the public record. The
27 item may be redacted to eliminate confidential material from the document. The
28 document shall be titled to show that it corresponds to an item filed under seal, e.g.,

1 “Redacted Copy of Sealed Declaration of John Smith in Support of Motion for Summary
2 Judgment.” The sealed and redacted documents shall be filed simultaneously.

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4 **ORDER**

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6 Good cause appearing, the proposed Protective Order, above, in Case No. 1:15-cv-
7 1137-MJS, is hereby approved and adopted as the Order of the Court.

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10 IT IS SO ORDERED.

11 Dated: May 25, 2016

12 /s/ Michael J. Seng
13 UNITED STATES MAGISTRATE JUDGE
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Exhibit “1”

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA

4 THE SHERWIN-WILLIAMS
5 COMPANY, d/b/a SHERWIN-
6 WILLIAMS AUTOMOTIVE FINISHES,

7 Plaintiff,

8 vs.

9 COURTESY OLDSMOBILE-
10 CADILLAC, INC. AND BEN WELLS,

11 Defendants.

Case No.: 1:15-CV-01137---MJS

**UNDERTAKING REGARDING
CONFIDENTIALITY**

12 The undersigned individual hereby certifies that he/she has read the foregoing
13 Protective Order, understands the terms thereof, and agrees to be bound thereby
14 personally if receiving Confidential Information or Highly Confidential/Attorney's Eyes
15 Only in the course of the above-captioned litigation.

16 The undersigned acknowledges that breach of the Protective Order shall be
17 actionable by any aggrieved party to the Action that is the subject of the foregoing
18 Protective Order, and that such breach shall subject the undersigned to any and all
19 applicable legal and equitable remedies for enforcement for the Protective Order and/or
20 relief, including damages, for its breach.

21 Promptly upon termination of this action, I will return all Confidential Information
22 or Highly Confidential/Attorney's Eyes Only which came into my possession, and all
23 documents or things which I have prepared relating thereto, to counsel for the party
24 supplying such Information to me.

25 I hereby submit to the jurisdiction of this Court for the purpose of enforcement of
26 the Protective Order in this action.

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28 Date: _____

Name: _____