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

10
11 LORI CASEY,

12 Plaintiff,

13 vs.

14 DNOW, L.P., AND DOES 1-25,
15 INCLUSIVE,

16 Defendants.

Case No. 1:15-cv-01899-DAD-JLT

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER**

(Doc. 23)

1 In order to facilitate the exchange of information and documents which may be
2 confidential, private, or otherwise subject to limitations on disclosure due to federal
3 or state laws, privacy rights, or otherwise, Plaintiff Lori Casey (“Plaintiff”) and
4 Defendant DNOW, L.P. (“Defendant”) (collectively, the “Parties”) stipulate as
5 follows:

6 **1. Definitions.** The Parties stipulate to the following definitions:

7 a. “Proceeding” means the above-entitled proceeding, Case No.
8 1:15-cv-01899-DAD-JLT.

9 b. “Court” means the District Judge Dale A. Drozd and Magistrate
10 Judge Jennifer L. Thurston, or any other judge to which this Proceeding may be
11 assigned, including Court staff participating in such proceedings.

12 c. “Confidential Materials” means any Documents, Testimony or
13 Information as defined below designated as “Confidential” under the provisions of
14 this Stipulation and Protective Order.

15 d. “Designating Party” means the Party that designates Materials as
16 “Confidential.”

17 e. “Disclose,” “Disclosed,” or “Disclosure” means to reveal,
18 divulge, give, or make available Materials, or any part thereof, or any information
19 contained therein.

20 f. “Documents” is synonymous in meaning and scope with the
21 definition of “documents” under Federal Rule of Civil Procedure 34(a).

22 g. “Information” means the content of Documents or Testimony.

23 h. “Testimony” means all depositions, declarations, or other
24 testimony taken or used in this Proceeding.

25 **2. No Waiver of Discovery Rights and Privileges.** The entry of this
26 Stipulation and Protective Order does not alter, waive, modify, or abridge any right,
27 privilege, or protection otherwise available to any Party with respect to discovery,
28 including any Party’s right to assert the attorney-client privilege, the attorney work

1 product doctrine, or other privileges, or any Party’s right to contest any such
2 assertion.

3 **3. Designating Documents, Testimony, or Information as**
4 **“Confidential.”** Any Documents, Testimony, or Information to be designated as
5 “Confidential” must be clearly so designated before the Document, Testimony, or
6 Information is Disclosed or produced.

7 a. Documents. For Documents (apart from transcripts of depositions
8 or other pretrial or trial proceedings), the Designating Party must affix the legend
9 “Confidential” on each page of any Document containing such designated
10 Confidential Material. The “Confidential” designation should not obscure or interfere
11 with the legibility of the designated Information.

12 b. Testimony. For Testimony given in depositions the Designating
13 Party may either:

14 i. identify on the record, before the close of the deposition,
15 all “Confidential” Testimony, by specifying all portions of the
16 Testimony that qualify as “Confidential;” or

17 ii. designate the entirety of the Testimony at the deposition as
18 “Confidential” (before the deposition is concluded) with the right to
19 identify more specific portions of the Testimony as to which protection
20 is sought within 30 days following receipt of the deposition transcript. In
21 circumstances where portions of the deposition Testimony are
22 designated for protection, the transcript pages containing “Confidential”
23 Information may be separately bound by the court reporter, who must
24 affix to the top of each page the legend “Confidential,” as instructed by
25 the Designating Party.

26 c. Information. For Information produced in some form other than
27 Documents, and for any other tangible items, including, without limitation, compact
28 discs or DVDs, the Designating Party must affix in a prominent place on the exterior

1 of the container or containers in which the information or item is stored the legend
2 “Confidential.” If only portions of the Information or item warrant protection, the
3 Designating Party, to the extent practicable, must identify the “Confidential”
4 portions.

5 **4. Inadvertent Production of Confidential Material.** The inadvertent
6 production by any of the undersigned Parties or non-Parties to the Proceedings of any
7 Confidential Material during discovery in this Proceeding without a “Confidential”
8 designation, does not waive any claim that the item is “Confidential.”

9 a. Notice. If any Confidential Material is inadvertently produced
10 without such designation, the Party that inadvertently produced the document must
11 give written notice of the inadvertent production within 20 days of discovery of the
12 inadvertent production, together with a further copy of the subject Document,
13 Testimony, or Information designated as “Confidential” (the “Inadvertent Production
14 Notice”).

15 b. Receiving Party’s Obligations. After receiving the Inadvertent
16 Production Notice, the Party that received the inadvertently produced Document,
17 Testimony, or Information must promptly destroy it and all copies thereof, or return it
18 together with all copies of same to the producing Party’s counsel at the producing
19 Party’s expense. Should the receiving Party choose to destroy the inadvertently
20 produced Document, Testimony, or Information, the receiving Party must notify the
21 producing Party in writing of such destruction within 10 days of receipt of written
22 notice of the inadvertent production. If this provision conflicts with any applicable
23 law or rule regarding waiver of confidentiality through the inadvertent production of
24 Documents, Testimony, or Information, such law will govern.

25 **5. Objecting to “Confidential” Designation.** If counsel for a Party
26 receiving Documents, Testimony, or Information designated as “Confidential”
27 objects to this designation, counsel for the receiving Party must advise counsel for the
28 Designating Party in writing of the objection(s), including the specific reasons and

1 support for such objections (the “Designation Objections”). Counsel for the
2 Designating Party will have 14 days from receiving the written Designation
3 Objections to either (a) agree in writing to de-designate Documents, Testimony, or
4 Information pursuant to the Designation Objections and/or (b) file a motion with the
5 Court seeking to uphold any or all designations on Documents, Testimony, or
6 Information addressed by the Designation Objections (the “Designation Motion”).
7 Pending a resolution of the Designation Motion by the Court, any existing
8 designations on the Documents, Testimony or Information at issue in such Motion
9 will remain in place. The Designating Party will have the burden on any Designation
10 Motion of establishing the applicability of its “Confidential” designation.

11 **6. Access to Confidential Materials.** Only the following persons may
12 view Confidential Materials:

- 13 a. The Parties;
- 14 b. The Parties’ counsel, including their partners, associates,
15 paralegals, assistants, staff, employees, contractors, and outside copying services who
16 are working on this Proceeding and to whom it is necessary that the Confidential
17 Materials be Disclosed for purposes of this Proceeding;
- 18 c. Expert witness or consultants consulted by the Parties or their
19 counsel in connection with the Proceeding;
- 20 d. any person who authored, received, saw, or otherwise previously
21 knew the contents of the Confidential Material;
- 22 e. court reporters in this Proceeding (whether at depositions,
23 hearings, or any other proceeding);
- 24 f. mediator or approved settlement officer; and
- 25 g. the Court.

26 **7. Certification Required of Experts Before Viewing Confidential**
27 **Materials.** Before Confidential Materials are disclosed to any expert witnesses or
28 consultants, the disclosing Party’s counsel must provide a copy of this Stipulation

1 and Protective Order to such person, explain its terms to such person, and require
2 them to sign the form attached as Exhibit A.

3 **8. Use of Confidential Materials.** Confidential Materials may only be
4 used by the persons receiving them and only for the purposes of preparing for,
5 conducting, participating in, or prosecuting or defending the Proceeding, and not for
6 any other purpose.

7 **9. Relief from this Stipulation and Protective Order.** Any Party to the
8 Proceeding (or other person subject to the terms of this Stipulation and Protective
9 Order) may ask the Court, after appropriate notice to the other Parties to the
10 Proceeding, to modify or grant relief from, any provision of this Stipulation and
11 Protective Order.

12 **10. Third-Party Designation of Documents, Testimony, or Information**
13 **as “Confidential.”** Any Documents, Testimony, or Information that may be
14 produced by a non-Party witness in discovery in the Proceeding pursuant to subpoena
15 or otherwise may be designated by such non-Party as “Confidential” under the terms
16 of this Stipulation and Protective Order. This designation will have the same force
17 and effect, and create the same duties and obligations, as if made by one of the
18 Parties. This designation will also function as a consent by the producing Party to the
19 authority of the Court in the Proceeding to resolve any motion or other application
20 made by any person or Party regarding the designation.

21 **11. Subpoena of Confidential Materials.** If any person subject to this
22 Stipulation and Protective Order who has custody of any Confidential Materials
23 receives a subpoena or other process from any government or other person or entity
24 demanding production of Confidential Materials, the recipient of the subpoena must
25 promptly notify counsel for the Designating Party by email, attaching a copy of the
26 subpoena. Upon receiving this notice, the Designating Party may, in its sole
27 discretion and at its own cost, move to quash or limit the subpoena, otherwise oppose
28 production of the Confidential Materials, and/or seek to obtain confidential treatment

1 of such Confidential Materials from the subpoenaing person or entity to the fullest
2 extent available under law. The recipient of the subpoena may not produce any
3 Confidential Materials in response to the subpoena before the date specified for
4 production in the subpoena.

5 **12. Notice of Disclosure of Confidential Materials.** If any non-
6 Designating Party becomes aware that any person, including the non-Designating
7 Party, their employees, witnesses, consultants, or vendors, has disclosed Confidential
8 Materials other than in the manner authorized by this Stipulation and Protective
9 Order, the non-Designating Party must immediately notify the Designating Party and
10 cooperate to the fullest extent possible in remedying such disclosure. The non-
11 Designating Party providing notice and/or remedying the disclosure of Confidential
12 Materials will not preclude the Designating Party from pursuing any remedies
13 available under applicable law or procedural rules, including the imposition of
14 sanctions against the non-Designating Party.

15 **13. Filing of Confidential Materials.** The Parties SHALL comply with
16 Local Rule 141 if they wish to seek permission to file documents under seal. ~~agree to~~
17 ~~comply with the applicable rules of procedure and/or judge's rules or standing order~~
18 ~~regarding the filing of Confidential Materials. If no such rules exist or apply, the~~
19 ~~Parties agree to meet and confer regarding the appropriate procedure for filing~~
20 ~~confidential materials before filing such materials.~~

21 **14. Use of Confidential Materials at Trial.** The Parties agree to comply
22 with the applicable rules of procedure and/or judge's rules or standing order
23 regarding the use of Confidential Materials at trial. If no such rules exist or apply, the
24 Parties agree to meet and confer regarding the appropriate procedure for using
25 Confidential Materials at trial before using such materials at trial.

26 **15. Stipulation and Protective Order Remain Binding after Proceeding**
27 **Ends.** This Stipulation and Protective Order will continue to be binding after the
28 conclusion of this Proceeding and all subsequent proceedings arising from this

1 Proceeding, except that a Party may seek the written permission of the Designating
2 Party or may move the Court for relief from the provisions of this Stipulation and
3 Protective Order. If permitted by applicable law, the Court will retain jurisdiction to
4 enforce, modify, or reconsider this Stipulation and Protective Order, even after the
5 Proceeding ends.

6 **16. Destruction or Return of Confidential Materials after Proceeding**
7 **Ends.** Upon written request made within 30 days after this Proceeding ends, the
8 Parties will have 30 days to either (a) promptly return to counsel for each Designating
9 Party all Confidential Materials and all copies thereof (except that counsel for each
10 Party may maintain in its files, in continuing compliance with the terms of this
11 Stipulation and Protective Order, all work product, and one copy of each pleading
12 filed with the Court and one copy of each deposition together with the exhibits
13 marked at the deposition), (b) agree with counsel for the Designating Party upon
14 appropriate methods and certification of destruction or other disposition of such
15 Confidential Materials, or (c) as to any Documents, Testimony or other Information
16 not addressed by parts (a) and (b) of this paragraph, file a motion seeking a Court
17 order regarding proper preservation of such Materials. If permitted by law, the Court
18 will retain jurisdiction to review and rule upon the motion referred to in part (c) of
19 this paragraph.

20 **17. Confidential Materials Produced Before Filing of this Stipulation**
21 **and Protective Order.** Defendant's counsel will promptly file this Stipulation and
22 Protective Order once it is signed by all Parties. However, the Parties agree to be
23 bound by the terms of this Stipulation and Protective Order with regard to any
24 Confidential Materials produced before such filing.

25 **18. Agreement to Be Bound Pending Court Approval of this Stipulation**
26 **and Protective Order.** The Parties and all signatories to the Certification attached as
27 Exhibit A agree to be bound by this Stipulation and Protective Order pending its
28 approval and entry by the Court. If the Court modifies this Stipulation and Protective

1 Order, or if the Court enters a different protective order, the Parties agree to be bound
2 by this Stipulation and Protective Order until either event occurs.

3 **19. Entire Agreement.** This Stipulation and Protective Order represents the
4 entire agreement between the Parties with respect to the designation, handling, and
5 use of Confidential Materials.

6 **20. Counterparts.** This Stipulation and Protective Order may be executed
7 in counterparts.

8
9 DATED: August 9, 2016

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

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11
12 By: /s/ Natalie R. Alameddine
13 Christian Keeney
Natalie Alameddine

14 Attorney for Defendant
15 DNOW, L.P.

16
17 DATED: August 9, 2016

CALLAHAN, THOMPSON, SHERMAN
& CAUDILL, LLP

18
19
20 By: /s/ Suren N. Weerasuriya
21 (as authorized on 08/09/16
Kathleen M. Hartman
Suren N. Weerasuriya

22 Attorney for Plaintiff
23 LORI CASEY
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ORDER

Good cause appearing therefor, the Court approves this Stipulation and Protective Order, as modified by the Court in paragraph 13.

IT IS SO ORDERED.

Dated: August 9, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

CERTIFICATION RE CONFIDENTIAL MATERIALS

I certify and understand that:

1. I have received and reviewed a copy of the Stipulation and Protective Order entered in this Proceeding. I agree to be bound by its terms.

2. I understand and agree that any Confidential Materials provided to me in this Proceeding are subject to the terms and conditions of the Stipulation and Protective Order.

3. I agree not to disclose any Confidential Materials provided to me in this Proceeding to any person or entity unless I am expressly authorized to do so under the terms and conditions of the Stipulation and Protective Order, and only in the manner provided by the Stipulation and Protective Order.

4. I understand and agree that Confidential Materials may only be used for the purposes of this Proceeding and not for any other purpose.

5. I understand and agree that throughout my participating in this Proceeding that I must store Confidential Materials in a secure manner. I further understand and agree that when my participation in this Proceeding ends, I must return all Confidential Materials to counsel who provided me with such Confidential Materials or confirm in writing that I have destroyed all Confidential Materials that I received.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this ____ day of, _____20__, at _____.

DATED: _____

BY:

Signature

Title and Company Name