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Attorneys for Plaintiff
GENERAL CHARLES E.
"CHUCK" YEAGER (RET.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GENERAL CHARLES E. "CHUCK"
YEAGER (RET.)

Plaintiff,

v.

AVIAT AIRCRAFT, INC., a Wyoming
Corporation, and **STUART HORN**, an
Individual residing in the State of
New York,

Defendants.

Case No.: 2:10-cv-02055 JAM EFB

**STIPULATION FOR ENTRY OF
PROTECTIVE ORDER AND
PROTECTIVE ORDER**

Judge: Hon. John A. Mendez

1 Plaintiff, General Charles E. "Chuck" Yeager (Ret.), ("Yeager"), by his attorneys, Foster,
2 Swift, Collins & Smith, P.C. and the Law Offices of Joanna R. Mendoza, and Defendants, by their
3 attorneys Wilson, Elser, Moskowitz, Edelman & Dicker LLP, hereby stipulate and agree to entry of a
4 Protective Order in conformity with this Stipulation, as follows:

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6 **1. Protected Material**

7 The parties contemplate disclosing information during the course of discovery which is
8 confidential, otherwise privileged or proprietary, which information should not be disclosed outside
9 the parameters of this case. At the discretion of counsel, documents including photographs etc.,
10 information, or parts thereof which are produced, may be designated as "confidential and proprietary"
11 by stamping each page, or on the first page of a collection or packet of pages produced as one
12 document, with a stamp bearing the phrase "**Confidential Subject to Protective Order.**" When the
13 first page of a multi-page document is stamped, each and every page contained within such document
14 shall be deemed proprietary and confidential. All claims of confidentiality shall be made in good
15 faith by the party asserting the claim. Confidential documents and information shall include, without
16 limitation, photographs, financial information, private and personal information, trade secrets,
17 formulae, patterns, devices or compilations of information which are used in a party's business that
18 gives one an opportunity to obtain an advantage over competitors who do not know or use it and
19 information that is not known outside the owner's business or generally made available to the public,
20 and/or any other documents or information which the producing party in good faith deems to be
21 confidential or subject to protection from dissemination.
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25 **2. Use Of Protected Material**

26 Documents or information designated confidential pursuant to Paragraph 1 shall be used only
27 for purposes of asserting claims or defenses and for the prosecution of claims or defenses arising
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1 from this matter and shall be shown only to the parties' attorneys, the attorneys' staff including
2 associates, clerks, paraprofessionals, secretarial personnel and clerical personnel; qualified persons
3 taking testimony or statements involving such information including necessary stenographic and
4 videotape personnel; the parties; the parties' experts, consultants and investigators; representatives of
5 the insurer of any party; and actual or proposed witnesses necessary for purposes of asserting claims
6 or defenses and for the prosecution of claims or defenses arising from this matter who have a need to
7 review the documents or information. It is expressly acknowledged by the parties to this Stipulation
8 that documents or information designated confidential pursuant to Paragraph 1 shall not be disclosed
9 to any media, journalist, internet website, governmental or non-governmental entity or any other
10 person except as expressly authorized above, or as may be required under legal compulsion. Any
11 disclosure made under legal compulsion may be made only after a minimum of 15 days notice to all
12 other parties of the intent to disclose so as to allow any other party the opportunity to object to the
13 disclosure. A copy of this Stipulation shall be provided to any person to whom any information or
14 documents protected under this Stipulation are shown and the party making the disclosure shall
15 ensure that the receiving person is aware of and understands its contents.

19 **3. Knowing or Intentional Disclosure**

20 In the event that a party to this Stipulation, attorney for a party, or any person to whom
21 information or documents subject to this Stipulation have been disclosed, knowingly and
22 intentionally discloses such information or documents to any person or entity other than as provided
23 herein, the person making such disclosure shall be precluded from introducing or using the disclosed
24 information or documents for any purpose in the litigation and shall immediately notify the other
25 parties' counsel herein of such disclosure and will undertake reasonable efforts to remediate the
26 effects of the disclosure and shall be liable for all provable damages caused by the disclosure and all
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1 sums, including attorneys fees and costs, reasonably expended by the party asserting the
2 confidentiality in enforcing this stipulation, recovery of the information and documents
3 improvidently disclosed and for prevention of further disclosure.

4 It is further stipulated that, upon application of an aggrieved party to a court of competent
5 jurisdiction, the Court may immediately issue a Temporary Restraining Order or similar procedure to
6 enjoin further disclosure or dissemination of the disclosed material until such time as the Court
7 resolves any dispute over the claim for protection of the material.
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9 **4. Unintentional Disclosure**

10 In the event that a party to this Stipulation, attorney for a party, or any person to whom
11 information or documents subject to this Stipulation have been disclosed, unintentionally discloses
12 such information or documents to any person or entity other than as provided herein, the person
13 making such disclosure shall immediately upon discovery of same, notify each of the other parties'
14 counsel of such disclosure and undertake reasonable efforts to remediate the effects of the disclosure
15 and shall be liable to the party asserting the confidentiality thereof for all provable damages caused
16 by the disclosure and all sums, including attorneys fees and costs, reasonably expended by the party
17 asserting the confidentiality in enforcing this stipulation, recovery of the information and documents
18 improvidently disclosed and for prevention of further disclosure.
19

20 It is further stipulated that, upon application of an aggrieved party to a court of competent
21 jurisdiction, the Court may immediately issue a Temporary Restraining Order or similar procedure to
22 enjoin further disclosure or dissemination of the disclosed material until such time as the Court
23 resolves any dispute over the claim for protection of the material.
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25 **5. Disputed Designation**

26 If a party believes that a document or information designated or sought to be designated
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1 confidential by the producing party does not warrant such designation, it shall first make a good faith
2 effort to resolve such dispute with opposing counsel. In the event that such dispute cannot be
3 resolved by the parties, the document or information shall be treated as confidential under this
4 stipulation until such time as a Court of competent jurisdiction makes an Order that the information
5 or document(s) at issue are not entitled to protection as confidential, private, proprietary or otherwise
6 privileged. The party claiming the designation of confidentiality is appropriate shall have the burden
7 of proof on that issue.
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9 **6. Use of Protected Material**

10 At the time of giving or taking a sworn statement, statement under oath, deposition or other
11 recorded statement of any kind, or within 30 days after receipt of the transcript or recording thereof, a
12 party may designate as confidential specific portions of the transcript or recording which contain
13 confidential matters. This designation shall be in writing and served upon counsel for all parties to
14 this stipulation. Transcripts and recordings will be treated as confidential for this 30 day period. Any
15 portions of a transcript designated confidential shall thereafter be treated as confidential in
16 accordance with this stipulation. In the event materials affected by this agreement are filed with any
17 Court in pretrial proceedings, counsel shall file under seal only those specific portions of briefs,
18 applications and other filings which contain confidential data. Documents or information
19 unintentionally produced without a designation of confidentiality may also be retroactively
20 designated as such and shall be so treated from the date written notice of such designation is provided
21 to the receiving party.
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24 **7. Return or Disposition of Protected Material**

25 All confidential documents and materials containing the confidential designation produced by
26 a party to this agreement, and all copies thereof, shall be returned to the producing party or destroyed
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1 within 120 days after any settlement, dismissal or judgment becomes final, whichever is later,
2 including any and all appeals, absent Order of a court of competent jurisdiction to the contrary or if
3 used as evidence at trial. Counsel shall verify the complete destruction or return to the producing
4 party of all such confidential information and confidential documents by executing and mailing to
5 counsel for the producing party a declaration to such effect. Counsel are not required to return or
6 destroy attorney work product materials that contain confidential information and/or excerpts from
7 confidential documents. The provisions of this Stipulation restricting the use and communication of
8 such confidential information shall continue to be binding after the conclusion of the claims or any
9 litigation.
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11 **8. No Prejudice to Additional Protection**
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13 Nothing in this Stipulation for Entry of Protective Order, and no action taken pursuant to it,
14 shall be deemed to preclude any party from seeking and obtaining, on an appropriate showing, any
15 additional protection with respect to the discoverability or confidentiality of documents or other
16 information, or prejudice the right of any party to contest the alleged relevance, admissibility, or
17 discoverability of documents or information that may be subject to this Stipulation.
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19 **9. Use of Protected Material at Trial**
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21 This Stipulation is made for the purpose of settlement discussions, investigation, and potential
22 pre-trial discovery purposes only. The parties agree that, in the event documents designated as
23 confidential pursuant to Paragraph 1 under this Stipulation are to be used at trial and made part of a
24 “public record,” the confidential nature of such documents will be revoked, and the burden will rest
25 with the party seeking further protection of the information or material to place such information or
26 material under seal or otherwise protect the same from public disclosure.
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1 **10. Use of This Stipulation**

2 This Stipulation shall not be used in any proceeding as evidence that the parties agree to its
3 justification or necessity. This Stipulation is merely a vehicle to facilitate the ongoing exchange of
4 information.
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7 DATED: January ____, 2011

FOSTER, SWIFT, COLLINS & SMITH, P.C.

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9 By: _____

10 Peter R. Tolley
11 Counsel for Plaintiff GENERAL CHARLES E.
"CHUCK" YEAGER (RET.)

12 DATED: January ____, 2011

WILSON, ELSER, MOSKOWITZ, EDELMAN
& DICKER LLP

13
14 By: _____

15 Clark A. Lammers
16 Counsel for Defendants AVIAT AIRCRAFT,
INC. and STUART HORN

17 **ORDER**

18 IT IS SO ORDERED.

19 IT IS ALSO ORDERED that any materials stamped "Confidential Subject to Protective
20 Order" shall be filed with the Court under seal pursuant to Local Court Rule.
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22 Date: February 2, 2011

23 /s/ John A. Mendez
24 Hon. John A. Mendez
25 U.S. District Judge
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