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16 UNITED STATES DISTRICT COURT

17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18 SCOTT JOHNSON,

19 Plaintiffs,

20 vs.

21 CAMDEN BOND, LLC, a California Limited
Liability Company, ALL CLEAR POOL &
22 SPA, INC., a California Corporation, and DOES
1 through 10,

24 Defendants.

) Case No.: 2:16-CV-00022-JAM-CKD

) **STIPULATED PROTECTIVE ORDER**

) Judge: Hon. John A. Mendez

) Action Filed: January 5, 2016

) Trial Date: August 28, 2017

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1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords from public disclosure
8 and use extends only to the limited information or items that are entitled to confidential treatment
9 under the applicable legal principles. The parties further acknowledge, as set forth in Section
10 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential
11 information under seal; Civil Local Rule 141 sets forth the procedures that must be followed and
12 the standards that will be applied when a party seeks permission from the court to file material
13 under seal.

14 1.1 Good Cause Statement: The parties may produce, in this ADA access lawsuit
15 alleging architectural barriers at the subject property, architectural plans, construction records,
16 medical records, financial information and other confidential or private materials. The parties
17 therefore seek this protective order to safeguard Plaintiff’s privacy, and to ensure the
18 confidentiality of Defendant’s business and financial records which, if disclosed, would confer an
19 unfair advantage on Defendants’ competitors.

20 **2. DEFINITIONS**

21 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
22 information or items under this Order.

23 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
24 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
25 of Civil Procedure 26(c).

26 2.3 Counsel: Outside Counsel of Record and House Counsel (as well as their support
27 staff).

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1 2.4 Designating Party: a Party or Non-Party that designates information or items that
2 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

7 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
8 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
9 consultant in this action.

10 2.7 House Counsel: attorneys who are employees of a party to this action. House
11 Counsel does not include Outside Counsel of Record or any other outside counsel.

12 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
13 entity not named as a Party to this action.

14 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
15 action but are retained to represent or advise a party to this action and have appeared in this action
16 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

17 2.10 Party: any party to this action, including all of its officers, directors, employees,
18 consultants, retained experts, and House Counsel and Outside Counsel of Record (and their
19 support staffs).

20 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
21 Material in this action.

22 2.12 Professional Vendors: persons or entities that provide litigation support services
23 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
24 organizing, storing, or retrieving data in any form or medium) and their employees and
25 subcontractors.

26 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
27 “CONFIDENTIAL.”

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1 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
2 Producing Party.

3 **3. SCOPE**

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

16 **4. DURATION**

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

24 **5. DESIGNATING PROTECTED MATERIAL**

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
26 or Non-Party that designates information or items for protection under this Order must take care
27 to limit any such designation to specific material that is privileged, protectable as a trade secret,
28 or otherwise entitled to protection under the law. The Designating Party must designate for

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

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
5 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
6 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
7 designated before the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents, but
10 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
11 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a
12 portion or portions of the material on a page qualifies for protection, the Producing Party also
13 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
14 margins).

15 A Party or Non-Party that makes original documents or materials available for inspection
16 need not designate them for protection until after the inspecting Party has indicated which
17 material it would like copied and produced. During the inspection and before the designation, all
18 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the
19 inspecting Party has identified the documents it wants copied and produced, the Producing Party
20 must determine which documents, or portions thereof, qualify for protection under this Order.
21 Then, before producing the specified documents, the Producing Party must affix the
22 “CONFIDENTIAL” legend to each page that contains Protected Material.

23 (b) for testimony given in deposition, that the Designating Party identify within 20 days
24 of receipt of the certified deposition transcript all protected testimony.

25 (c) for testimony given in any pretrial or trial proceedings, that the Designating Party
26 identify on the record, before the close of the hearing or other proceeding all protected testimony.

27 (d) for information produced in some form other than documentary and for any other
28 tangible items, that the Producing Party affix in a prominent place on the exterior of the container

1 or containers in which the information or item is stored the legend “CONFIDENTIAL.”

2 5.3 Inadvertent Failures to Designate. If timely corrected upon discovery, an
3 inadvertent failure to designate qualified information or items does not, standing alone, waive the
4 Designating Party’s right to secure protection under this Order for such material. Upon timely
5 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
6 material is treated in accordance with the provisions of this Order.

7 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
9 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
10 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
11 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
12 challenge a confidentiality designation by electing not to mount a challenge promptly after the
13 original designation is disclosed.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
15 process by providing written notice of each designation it is challenging and describing the basis
16 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
17 notice must recite that the challenge to confidentiality is being made in accordance with this
18 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
19 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
20 forms of communication are not sufficient) within 14 days of the date of service of notice. In
21 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
22 designation was not proper and must give the Designating Party an opportunity to review the
23 designated material, to reconsider the circumstances, and, if no change in designation is offered,
24 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
25 stage of the challenge process only if it has engaged in this meet and confer process first or
26 establishes that the Designating Party is unwilling to participate in the meet and confer process in
27 a timely manner.

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1 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
2 intervention, the Challenging Party shall file and serve, upon a showing of good cause, a motion
3 to remove confidentiality within 21 days of the parties engaging in the meet and confer process.
4 Each such motion must be accompanied by a competent declaration affirming that the movant has
5 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by
6 the Challenging Party to make such a motion including the required declaration within 21 days
7 shall automatically waive the right to challenge such designation.

8 The burden of persuasion in any such challenge proceeding shall be on the Designating
9 Party. All parties shall continue to afford the material in question the level of protection to which
10 it is entitled under the Producing Party’s designation until the court rules on the challenge.

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

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
13 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
14 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
15 to the categories of persons and under the conditions described in this Order. When the litigation
16 has been terminated, a Receiving Party must comply with the provisions of section 13 below
17 (FINAL DISPOSITION).

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

20 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
21 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
22 disclose any information or item designated “CONFIDENTIAL” only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
24 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information
25 for this litigation;

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

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1 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
2 reasonably necessary for this litigation and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
6 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

14 (g) an individual who authored or has personal knowledge of the information and who
15 has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

16 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
17 **IN OTHER LITIGATION**

18 If a Party is served with a subpoena or a court order issued in other litigation that compels
19 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
20 must:

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

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

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

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

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

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

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

18 (1) promptly notify in writing the Requesting Party and the Non-Party that
19 some or all of the information requested is subject to a confidentiality agreement with a Non-
20 Party;

21 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
22 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
23 the information requested; and

24 (3) make the information requested available for inspection by the Non-Party.

25 (c) If the Non-Party fails to object or seek a protective order from this court within 14
26 days of receiving the notice and accompanying information, the Receiving Party may produce the
27 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely
28 seeks a protective order, the Receiving Party shall not produce any information in its possession

1 or control that is subject to the confidentiality agreement with the Non-Party before a
2 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
3 burden and expense of seeking protection in this court of its Protected Material.

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

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
6 Material to any person or in any circumstance not authorized under this Stipulated Protective
7 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
8 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
9 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
10 made of all the terms of this Order, and (d) request such person or persons to execute the
11 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

12 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
13 **PROTECTED MATERIAL**

14 When a Producing Party gives notice to Receiving Parties that certain inadvertently
15 produced material is subject to a claim of privilege or other protection, the obligations of the
16 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B) including that
17 the Receiving Party (1) must promptly return, sequester or destroy the specified information and
18 any copies it has; (2) must not use or disclose the information until the claim is resolved; and
19 (3) must take reasonable steps to retrieve the information if the Receiving Party disclosed it
20 before being notified.

21 **12. MISCELLANEOUS**

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
23 seek its modification by the court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
25 Order no Party waives any right it otherwise would have to object to disclosing or producing any
26 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
27 no Party waives any right to object on any ground to use in evidence of any of the material
28 covered by this Protective Order.

1 12.3 Filing Protected Material. Without written permission from the Designating Party
2 or a court order secured after appropriate notice to all interested persons, a Party may not file in
3 the public record in this action any Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 141.1. Protected Material may only be
5 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material
6 at issue. Pursuant to Civil Local Rule 141, a sealing order will issue only upon a request
7 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
8 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
9 Material under seal pursuant to Civil Local Rule 141(e)(1) is denied by the court, then the
10 Receiving Party may file the information in the public record, unless otherwise instructed by the
11 court.

12 **13. FINAL DISPOSITION**

13 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
14 Receiving Party must return all Protected Material to the Producing Party or destroy such
15 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
16 compilations, summaries, and any other format reproducing or capturing any of the Protected
17 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
18 submit a written certification to the Producing Party (and, if not the same person or entity, to the
19 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
20 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
21 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
22 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
23 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
24 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
25 product, and consultant and expert work product, even if such materials contain Protected
26 Material. Any such archival copies that contain or constitute Protected Material remain subject to
27 this Protective Order as set forth in Section 4 (DURATION).

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: January 5, 2017

CENTER FOR DISABILITY ACCESS

By: /s/ Sara Gunderson
SARA GUNDERSON, ESQ.
Attorney for Plaintiff

DATED: January 3, 2017

KROGH & DECKER, LLP

By: /s/ Sean M. Stowers
SEAN M. STOWERS
Attorney for Defendants CAMDEN BOND,
LLC and ALL CLEAR POOL & SPA, INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: January 11, 2017

Carolyn K. Delaney
CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on [date] in the case of *SCOTT JOHNSON v. CAMDEN BOND, LLC and ALL CLEAR POOL & SPA, INC.*, Case No. 2:16-CV-00022-GEB-CKD. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that 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.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____