

1 Ketan S. Vakil (#191043)
kvakil@swlaw.com
2 Jeffrey M. Singletary (#233528)
jsingletary@swlaw.com
3 Anthony J. Carucci (#301923)
acarucci@swlaw.com
4 SNELL & WILMER L.L.P.
600 Anton Blvd, Suite 1400
5 Costa Mesa, California 92626-7689
Telephone: 714.427.7000
6 Facsimile: 714.427.7799

7 Attorneys for Plaintiff
Prestige Autotech Corporation
8

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 PRESTIGE AUTOTECH
CORPORATION,

13 Plaintiff,

14 v.

15 TIRE & WHEEL MASTER, INC.,
16 dba TIRE & WHEEL MASTER
WHOLESALE DISTRIBUTOR;
17 TIRE & WHEEL MASTER, LLC,
dba TIRE & WHEEL MASTER
18 WHOLESALE DISTRIBUTOR; and
USA WHEEL & TIRE OUTLET,
19 INC.,

20 Defendants.
21

Case No. 2:16-CV-01367-MCE-CKD

**Stipulation for Protective Order;
Order**

Trial Date: No Date Set
Initial Complaint Filed: June 20, 2016

22 IT IS HEREBY STIPULATED and agreed by and between counsel for the
23 parties that, upon the Court's approval, the terms and conditions of a Stipulated
24 Protective Order should be entered as follows:

25 1. The Stipulated Protective Order entered by the Court (the "Court's
26 Order") shall be applicable to and govern all depositions, documents produced in
27 response to requests for production of documents, answers to interrogatories,
28 responses to requests for admissions, and all other discovery taken pursuant to the

1 Federal Rules of Civil Procedure, as well as all documents produced by either party
2 in response to informal discovery requests, testimony, matters in evidence, and
3 computerized records (collectively, “RECORDS”) which the disclosing party
4 designates as “CONFIDENTIAL MATERIAL” or “RESTRICTED MATERIAL”
5 pursuant to this Stipulation and the Court’s Order, directly or indirectly by or on
6 behalf of any party in connection with this action.

7 2. Pursuant to Local Rule 141.1(c)(1), the types of information eligible
8 for protection include a party’s trade secret, confidential, competitive, or
9 proprietary information pertaining to the party’s business, which the party takes
10 appropriate efforts to keep confidential, or information which the party is otherwise
11 required to keep confidential by agreement or law, including the following:
12 financial information; research, development, and technical information and
13 specifications; customer information; security features of the party’s products or
14 property; and information that, if disclosed, would seriously undermine the party’s
15 ability to investigate the infringement of its products or property.

16 3. Pursuant to Local Rule 141.1(c)(2), there is a need to protect this type
17 of evidence. A party’s trade secret, confidential, competitive, or proprietary
18 information could be abused if its use were not limited to this lawsuit. For example,
19 third party competitors could exploit the following types of confidential
20 information to their advantage were it made public: (1) a party’s financial
21 information; (2) research, development, and technical information and
22 specifications; and (3) customer information. In some cases, disclosure of this type
23 of evidence could breach confidentiality agreements or violate privacy or consumer
24 protection laws. Further, disclosure of information related to the security features of
25 a party’s products or property, or that would seriously undermine the party’s ability
26 to investigate the infringement of its products or property, would facilitate
27 infringement.
28

1 4. Pursuant to Local Rule 141.1(c)(3), the parties seek a Protective Order,
2 as opposed to entering into a private agreement, because the proposed Order
3 provides mechanisms for the resolution of disputes and the handling of designated
4 evidence that involve the Court.

5 5. In designating RECORDS as “CONFIDENTIAL MATERIAL” or
6 “RESTRICTED MATERIAL,” a party shall make such a designation only for
7 RECORDS which that party in good faith believes contain trade secret,
8 confidential, competitive, or proprietary information pertaining to a party’s
9 business, which the party takes appropriate efforts to keep confidential, or
10 information which the party is otherwise required to keep confidential by agreement
11 or law. For a designation of RECORDS as “RESTRICTED MATERIAL,” the party
12 must additionally believe in good faith that the RECORDS must be protected from
13 disclosure to the parties themselves in this litigation and subject to the restricted
14 disclosure provided for below. CONFIDENTIAL MATERIAL and RESTRICTED
15 MATERIAL shall be used solely for the purpose of conducting this litigation and
16 not for any other purpose.

17 6. RECORDS designated as CONFIDENTIAL MATERIAL may be
18 disclosed only to the following persons:

- 19 a. the attorneys working on this action on behalf of any party,
20 including in-house attorneys;
- 21 b. any paralegal assistants, stenographic and clerical employees
22 working under the direct supervision of such counsel;
- 23 c. any parties to this action who are individuals, and the
24 employees, directors or officers of parties to this action who are corporations or
25 partnerships, to the extent necessary to further the interest of the parties in this
26 litigation;
- 27 d. any person not employed by a party who is expressly retained or
28 sought to be retained by any attorney described in paragraph 6(a) to assist in

1 preparation of this action for trial, with disclosure only to the extent necessary to
2 perform such work;

3 e. any witnesses who appear for deposition or trial in this matter,
4 and their counsel of record, during the course of their testimony, upon the witness
5 being advised of the need and agreeing to keep the RECORDS confidential; and

6 f. the Court.

7 7. RECORDS designated as “RESTRICTED MATERIAL” may be
8 disclosed only to the following persons:

9 a. the attorneys working on this action on behalf of any party,
10 including in-house litigation attorneys;

11 b. any paralegal assistants, stenographic and clerical employees
12 working under the direct supervision of such counsel, with disclosure only to the
13 extent necessary to perform their work in connection with this matter;

14 c. any person not employed by a party who is expressly retained or
15 sought to be retained by any attorney described in paragraph 7(a) to assist in
16 preparation of this action for trial, with disclosure only to the extent necessary to
17 perform such work;

18 d. any witnesses who appear for deposition or trial in this matter,
19 and their counsel of record, during the course of their testimony, upon the witness
20 being advised of the need and agreeing to keep the RECORDS confidential; and

21 e. the Court.

22 8. Notwithstanding any other provisions of the Court’s Order, Microsoft
23 may use and disclose CONFIDENTIAL MATERIAL or RESTRICTED
24 MATERIAL in order to investigate and/or prosecute criminal or civil actions
25 involving copyright or trademark infringement against parties or entities other than
26 the defendants in this matter and may provide CONFIDENTIAL MATERIAL or
27 RESTRICTED MATERIAL to law enforcement officials upon such officials’
28 request.

1 9. The persons described in paragraphs 6(d) and 7(c) shall have access to
2 the CONFIDENTIAL MATERIAL or RESTRICTED MATERIAL once they have
3 been made aware of the provisions of the Court’s Order and have manifested their
4 assent to be bound thereby by signing a copy of the annexed
5 “ACKNOWLEDGMENT.” Upon request, a list shall be prepared by counsel for the
6 parties hereto of the names of all such persons to whom CONFIDENTIAL
7 MATERIAL or RESTRICTED MATERIAL is disclosed, or to whom the
8 information contained therein is disclosed, and such list shall be available for
9 inspection by the Court and opposing counsel. The other persons described in
10 paragraphs 6 and 7 shall have access to the CONFIDENTIAL MATERIAL and
11 RESTRICTED MATERIAL pursuant to the terms of the Court’s Order without
12 signing a copy of the annexed “ACKNOWLEDGEMENT.” Upon request, similar
13 but separate lists shall also be prepared with respect to CONFIDENTIAL
14 MATERIAL or RESTRICTED MATERIAL provided by third parties. The persons
15 receiving CONFIDENTIAL MATERIAL or RESTRICTED MATERIAL are
16 enjoined from disclosing it to any other person, except in conformance with the
17 Court’s Order. This Stipulation will not require the disclosure of experts other than
18 by Local Rule, Federal Rule of Civil Procedure, and/or Court Order.

19 10. Each individual who receives any CONFIDENTIAL MATERIAL or
20 RESTRICTED MATERIAL hereby agrees to subject himself/herself to the
21 jurisdiction of this Court for the purpose of any proceedings relating to the
22 performance under, compliance with or violation of the Court’s Order.

23 11. The recipient of any CONFIDENTIAL MATERIAL or RESTRICTED
24 MATERIAL that is provided under the Court’s Order shall maintain such
25 RECORDS in a secure and safe area and shall exercise the same standard of due
26 and proper care with respect to the storage, custody, use and/or dissemination of
27 such RECORDS as is exercised by the recipient with respect to its own proprietary
28 information.

1 12. Parties shall designate CONFIDENTIAL MATERIAL or
2 RESTRICTED MATERIAL as follows:

3 a. In the case of RECORDS produced pursuant to Rules 26 and 34
4 of the Federal Rules of Civil Procedure, interrogatory answers, responses to
5 requests for admissions, and the information contained therein, designation shall be
6 made by placing the following legend on any such RECORD prior to production:
7 “CONFIDENTIAL MATERIAL” or “RESTRICTED MATERIAL.” In the event
8 that a party was unable to stamp or otherwise designate a RECORD as
9 CONFIDENTIAL MATERIAL or RESTRICTED MATERIAL at the time of its
10 production, that party may, within twenty-one (21) days of becoming able to
11 designate such RECORD, so stamp or otherwise designate the RECORD. In the
12 event that a party inadvertently fails to stamp or otherwise designate a RECORD as
13 CONFIDENTIAL MATERIAL or RESTRICTED MATERIAL at the time of its
14 production, that party may, after discovery of such error, so stamp or otherwise
15 designate the RECORD.

16 b. In the case of depositions, designation of the portion of the
17 transcript (including exhibits) which contains CONFIDENTIAL MATERIAL or
18 RESTRICTED MATERIAL shall be made by a statement to such effect on the
19 record in the course of the deposition or, upon review of such transcript by counsel
20 for the party to whose CONFIDENTIAL MATERIAL or RESTRICTED
21 MATERIAL the deponent has had access, said counsel shall designate within
22 twenty-one (21) days after counsel’s receipt of the transcript.

23 c. Transcripts of depositions will not be filed with the Court unless
24 it is necessary to do so for purposes of trial, motions for summary judgment, or
25 other matters, and when filed, the parties shall comply with paragraph 14 below.

26 13. A party shall not be obligated to challenge the propriety of a
27 CONFIDENTIAL MATERIAL or RESTRICTED MATERIAL designation at the
28 time made, and failure to do so shall not preclude a subsequent challenge thereto. In

1 the event that any party to this litigation disagrees at any stage of these proceedings
2 with such designation, such party shall provide to the producing party written
3 notice of its disagreement with the designation. The parties shall first try to dispose
4 of such dispute in good faith on an informal basis. If the dispute cannot be resolved,
5 the party challenging the designation may request appropriate relief from the Court.

6 14. In the event that any CONFIDENTIAL MATERIAL or
7 RESTRICTED MATERIAL is to be used in any court proceedings in connection
8 with this litigation, the parties shall request an Order from the Court seeking to seal
9 the documents pursuant to Local Rule 141. If any CONFIDENTIAL MATERIAL
10 or RESTRICTED MATERIAL is used in any court proceedings in connection with
11 this litigation it shall not lose its CONFIDENTIAL MATERIAL or RESTRICTED
12 MATERIAL status through such use, and the parties shall take all steps reasonably
13 required to protect its confidentiality during such use.

14 15. Nothing in the Court's Order shall preclude any party to the lawsuit,
15 their attorneys or any other person from disclosing or using, in any manner or for
16 any purpose, any RECORDS not obtained in this lawsuit, if such RECORDS are
17 lawfully obtained from a third party, even though the same RECORDS may have
18 been produced in discovery in this lawsuit and designated as CONFIDENTIAL
19 MATERIAL or RESTRICTED MATERIAL.

20 16. Nothing in the Court's Order shall preclude any party to the lawsuit or
21 their attorneys (a) from showing RECORDS designated as CONFIDENTIAL
22 MATERIAL or RESTRICTED MATERIAL to an individual who either prepared
23 or reviewed the RECORDS prior to the filing of this action, or (b) from disclosing
24 or using, in any manner or for any purpose, RECORDS from the party's own files
25 which the party itself has designated as CONFIDENTIAL MATERIAL or
26 RESTRICTED MATERIAL.

27 17. Within sixty (60) days of the termination of litigation between the
28 parties, all CONFIDENTIAL MATERIAL and RESTRICTED MATERIAL, and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

all copies thereof, except such copies which have been filed with the Court, utilized in accordance with the Court’s Order, or which are and will continue to be maintained in a secure place pursuant to the continuing obligations of the Court’s Order, shall be returned to the party which produced it or shall be destroyed.

18. Except as specifically provided herein, the terms, conditions and limitations of the Court’s Order shall survive the termination of this action at the option of the designating party.

19. The Court’s Order is without prejudice to the right of any party to seek relief from the Court, upon good cause shown, from any of the provisions contained in paragraphs 1 through 18, inclusive hereof.

Dated: January 31, 2017

SNELL & WILMER L.L.P.

By: /s/ Jeffrey M. Singletary
Ketan S. Vakil
Jeffrey M. Singletary
Anthony J. Carucci

Attorneys for Plaintiff
Prestige Autotech Corporation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: January 31, 2017

FERNALD LAW GROUP

By: /s/Brandon Fernald
Brandon Fernald

BRADFORD, LTD.

By: /s/Aaron P. Bradford
Aaron P. Bradford

Attorneys for Defendants Tire & Wheel
Master, Inc. d/b/a Tire & Wheel Master
Wholesale Distributor; Tire & Wheel
Master Wholesale Distributor; and USA
Wheel & Tire Outlet, Inc.

ORDER

IT IS SO ORDERED.

Dated: February 1, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

ACKNOWLEDGEMENT

1
2 The undersigned hereby acknowledges that he/she has read the Protective
3 Order which was entered by the Court on _____, 2017, Prestige
4 Autotech Corporation v. Tire & Wheel Master, Inc., dba Tire & Wheel Master
5 Wholesale Distributor, et al., United States District Court, Eastern District of
6 California, Case No. 2:16-CV-01367-MCE-CKD, that he/she is one of the persons
7 contemplated in paragraphs 6 or 7 thereof as authorized to receive disclosures of
8 RECORDS designed CONFIDENTIAL MATERIAL or RESTRICTED
9 MATERIAL by any of the parties or by third parties, and that he/she fully
10 understand and agrees to abide by the obligations and conditions of the Protective
11 Order. The undersigned further consents to be subject to the jurisdiction of the
12 United States District Court for the Eastern District of California for the purposes
13 of any proceedings relating to the performance under, compliance with, or violation
14 of the above-described Protective Order.

15 Date: _____, 2017 _____
16
17
18
19
20
21
22
23
24
25
26
27
28