

1 *UNITED STATES DISTRICT COURT*  
2 *EASTERN DISTRICT OF CALIFORNIA*

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10 Tsunami Sales & Marketing, Inc.,  
11 Plaintiff,  
12 v.  
13 Johnson Outdoor Products, Inc.,  
14 Defendant.

No. 2:18-cv-520-WBS-CKD

**STIPULATED DISCOVERY  
CONFIDENTIALITY ORDER**

15 Plaintiff Tsunami Sales & Marketing, Inc. (“Plaintiff”) and Defendant, Johnson Outdoor Products,  
16 Inc. (“Defendant” and, with Plaintiff, the “Parties,” each a “Party”), by their respective counsel, and  
17 subject to the approval of the Court, hereby stipulate and agree as follows:  
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19 WHEREAS, the Parties anticipate that during the course of the above-captioned litigation they  
20 may produce or provide documents and information that one or both Parties contend contain personal  
21 information, as well as trade secrets or other confidential or sensitive information subject to protection  
22 from unrestricted disclosure and use by the opposing Party; and

23 WHEREAS, the Parties wish to protect the confidentiality of such documents and  
24 information and to ensure that the Parties can obtain and pursue discovery with the minimum of  
25 delay and expense;  
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27 IT IS HEREBY STIPULATED AND AGREED THAT:  
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1           1.       In connection with discovery and other proceedings in this action, when a Party  
2 produces or provides documents, testimony or things and reasonably believes that such  
3 documents, testimony or things contain confidential information entitled to protection under Rule  
4 26(c)(1)(G) of the Federal Rules of Civil Procedure and Local Civil Rule 141.1, Plaintiff or  
5 Defendant may designate such document as “Confidential” under the terms of this Stipulated  
6 Order.  
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8           2.       Counsel for any Party or a third-party subject to discovery by subpoena may  
9 designate information as “Confidential” in the following manner: (a) as to any document or  
10 information contained in a document, if producing counsel determines, in good faith, that such  
11 designation is necessary to protect trade secrets or other confidential business information or  
12 other protectable information (including but not limited to non-public information relating to  
13 personnel, processes, objectives, strategies, plans, advertising, methodologies, procedures,  
14 operations, type of work, products, services, purchases, identification of customers, customer  
15 information, loan and credit agreements, policies, amount or source of income, costs, profits,  
16 losses, financial information, business forecasts or expenditures of any person, firm, partnership,  
17 corporation, or other organization); (b) as to interrogatory responses or other inquiries, by noting  
18 in the response to the inquiry that the response contains “Confidential Information;” and (c) as to  
19 depositions, if any, by the Parties noting at the deposition or within thirty days of receiving a  
20 transcript of the deposition that the information is Confidential. If such designation is made  
21 during the giving of any testimony, the reporter shall separately transcribe those portions of the  
22 testimony so designated and shall mark the face of the transcript accordingly. Information and  
23 documents designated by a Party as confidential will be labeled “CONFIDENTIAL.”  
24 Confidential information or documents or testimony may be referred to collectively as  
25 “Confidential Information.” Additionally, Defendant may designate certain Confidential  
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1 Information or documents “Confidential – Trade Secret” when such documents contain or  
2 information contains customer information or other trade secret or proprietary information,  
3 including but not limited to information related to pricing, customer data, and business plans.

4           3. Documents that are confidential under this Stipulated Protective Order shall be so  
5 designated by writing, typing, stamping or otherwise affixing the legend “CONFIDENTIAL”  
6 (and such other and further legend as may reasonably be included to specify such confidentiality)  
7 on copies of the document. Stamping the legend “CONFIDENTIAL” on the cover of any multi-  
8 page document, email or text chain shall designate all pages of the document as confidential,  
9 unless otherwise indicated by the producing Party. Confidential documents (including deposition  
10 transcripts) also may be so designated after production by written communication and  
11 reproduction with a “CONFIDENTIAL” legend for purposes of substitution of the original  
12 documentation, and the Parties shall use their best efforts to ensure that no prior disclosure shall  
13 be used or re-disclosed contrary to the terms of this Stipulated Protective Order.  
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15           4. The inadvertent or unintentional disclosure of Confidential Information shall not  
16 be deemed a waiver in whole or in part of a Party’s claim of confidentiality. Any such  
17 inadvertently or unintentionally disclosed Confidential Information shall be designated as  
18 Confidential Information as soon as reasonably possible after the producing Party becomes aware  
19 of the inadvertent or unintentional disclosure, and the producing Party shall provide counsel for  
20 other Parties with a duplicate copy bearing the legend “CONFIDENTIAL,” whereupon the  
21 unmarked copies will be returned or destroyed.  
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23           5. The designation of discovery matter as “CONFIDENTIAL” shall not be construed  
24 as a concession by the designating Party or any non-designating Party that such matter is relevant  
25 or material to any issue in this action.  
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1           6. Confidential Information produced pursuant to this Stipulated Protective Order  
2 may be disclosed or made available only to the Court, counsel for a Party whether in-house or  
3 outside counsel (including the paralegal, clerical, secretarial staff and other employees of such  
4 counsel assigned to and necessary to assist in the litigation), to a trier of fact or law in any other  
5 forum in which the claims asserted in this action may be adjudicated or enforced and the  
6 administrators of that forum, and to “Qualified Persons.” A Qualified Person is a person who  
7 falls into one of the categories set forth below:  
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- 9           (a) a Party to this action;  
10           (b) experts or consultants (together with their clerical staff) retained by such  
11           counsel to assist in the prosecution, defense or settlement of this action;  
12           (c) court reporters employed in this action;  
13           (d) third-party witnesses (as set forth and limited below); and  
14           (e) any other person ordered by the Court or as to whom both Parties in writing  
15           agree.

16           A third-party witness may review Confidential Information only in the presence of a  
17 Party’s attorney and the third-party witness may not copy, retain or record any Confidential  
18 Information. Documents or information marked with the designation “Confidential – Trade  
19 Secret” may be shown to third-party witnesses only upon prior consent of the producing Party and  
20 on the conditions set forth in the preceding sentence and such other conditions as are agreed to by  
21 the Parties or ordered. Any person or entity to whom Confidential Information is disclosed  
22 pursuant to Subparagraphs (d)-(e) above shall, prior to viewing such Confidential Information, be  
23 provided with a copy of this Order and shall execute a Nondisclosure Agreement in the form set  
24 forth in **Attachment A** hereto, such forms to be maintained by counsel for the Party sharing  
25 Confidential Information and undertaking to have such forms executed.  
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27           7. To the extent Confidential – Trade Secret information is made available to any  
28 individual who is a Party to this case, the Confidential – Trade Secret information shall be made

1 available to them by their counsel and all copies retained by their counsel. Such individuals shall  
2 not be permitted to retain their own copies of any documents containing Confidential – Trade  
3 Secret information and shall not be able to access or review Confidential – Trade Secret  
4 information outside of their counsel’s office or presence, except pursuant to another arrangement  
5 agreed to by the Parties (e.g., making the documents available on a secure website or link). Any  
6 such “Confidential-Trade Secret” information shall clearly bear this designation, in the same  
7 fashion as specified in paragraph 3, above. Any third-party, subject to subpoena discovery, may  
8 also designate information produced as “Confidential-Trade Secret” subject to the restrictions of  
9 this paragraph.  
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11 8. On the request of any Party, any person who is not a Qualified Person shall be  
12 excluded from any deposition during the period in which Confidential Information is used,  
13 referred to or discussed.  
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15 9. The restrictions set forth in this Stipulated Protective Order shall not:

- 16 (a) apply to any documents or information that a Party can show was possessed,  
17 obtained or developed by it other than through discovery in this action  
18 except to the extent that such documents or information were obtained by  
19 employees or former employees of the disclosing Party or any of its  
20 subsidiaries during such individual’s employment at the disclosing Party or  
21 its subsidiary or that such information belonged to the disclosing Party or its  
22 subsidiary and was taken without the express written permission of the  
23 disclosing Party;
- 24 (b) apply to any information which lawfully is or becomes public knowledge,  
25 not in violation of this Stipulated Protective Order;
- 26 (c) operate as an admission by the recipient that any of the information contains  
27 or reflects confidential information;
- 28 (d) prejudice in any way the right of any Party or non-party to object on any  
basis to the production of the information it considers not subject to  
discovery;
- (e) prejudice in any way the right of any Party or non-party to seek a  
determination from the Court as to whether particular information shall be  
produced;
- (f) prevent the Parties from entering into a written agreement to alter or waive  
the provisions or protections provided herein, generally or with respect to

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any information;

- (g) limit in any way the use to which information may be put by the producing Party for purposes of this litigation;
- (h) prejudice in any way the right of any Party or non-party to seek such additional or other protection as that Party or non-party may deem appropriate with regard to the confidentiality of the information, including the right to seek a “Counsel’s Eyes Only” designation;
- (i) be construed to require any Party to produce information that it considers privileged or otherwise not subject to discovery; or
- (j) be deemed a waiver of any objections a Party otherwise would have to producing or otherwise disclosing the information or a waiver of any third-party’s claim to a right of privacy.

10. This Stipulated Protective Order shall be without prejudice to the right of any Party at any time after information is designated as Confidential Information to file a motion with the Court, upon not less than ten (10) days’ notice to the other Party: (i) to challenge the designation of any particular document or information as confidential or whether its use should be restricted, provided such Party has first made a good-faith attempt to resolve such question with the designating Party; or (ii) seek a separate protective order as to any particular document or information, including restrictions differing from those as specified herein. The Order shall not be deemed to prejudice the Parties in any way in any future application for modifications of this Order. Any information or documents designated as Confidential Information that are subject to a motion pursuant to this paragraph shall be treated as Confidential Information in accordance with the terms of this Stipulated Protective Order until such time as the court rules otherwise.

11. Material designated by the parties as "Confidential" or “Confidential-Trade Secret” shall not presumptively be subject to redaction or being filed under seal with the Court, unless said material meets the requirements of Fed.R.Civ.P. 5.2(a). Any party wishing to file any document, in either redacted form or under seal, shall comply with the procedures outlined in Local Civil Rules 140 and 141.

1           12. All documents produced in this proceeding shall be used by the Party to whom  
2 such documents are produced solely for purposes of the litigation or resolution of the claims  
3 asserted in this action, any trial and appeal of this action and the enforcement of any award  
4 thereon and for no other purpose. The Confidential Information produced by one Party will not  
5 be used by the other Party for any business purpose, including to aid in future solicitation of  
6 customers or any other competitive activity on behalf of any competitor of the disclosing Party.  
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8           13. This Stipulated Protective Order is entered solely for the purpose of facilitating the  
9 exchange of documents and information between the Parties to this action without involving the  
10 Court unnecessarily in the process. Nothing in this Order nor the production of any information  
11 or document under the terms of this Order nor any proceedings pursuant to this Order shall be  
12 deemed to have the effect of an admission or waiver by any Party.  
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14           14. This Stipulated Protective Order shall survive the final termination of this action,  
15 and the Court shall retain jurisdiction to enforce, construe or modify its terms. Within thirty (30)  
16 days following final disposition of this action, at the election of the producing Party, counsel for  
17 the Parties shall assemble and return to each other all Confidential Information, including all  
18 copies of same, or shall certify the destruction thereof, except counsel shall be permitted to retain,  
19 on a "Counsel's Eyes Only" basis, for their respective files (i) copies of all papers and documents  
20 filed with the Court and (ii) their work product, such as pleadings, correspondence, and  
21 memoranda, which contain or refer to confidential discovery matter, provided that all such  
22 confidential discovery matter and work product shall remain subject to this Stipulated Protective  
23 Order.  
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25           15. If Confidential Information is at any time subpoenaed or demanded by any person  
26 or entity not a party to this Stipulated Protective Order from a person bound by this Stipulated  
27 Protective Order, the person to whom the subpoena or demand is directed shall use his, her, or its  
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1 best efforts not to disclose such material without first giving the producing Party written notice  
2 of, and a reasonable opportunity to oppose the subpoena or demand. Nothing in this Stipulated  
3 Protective Order shall (a) preclude any Party from issuing or serving in any other action or  
4 proceeding any subpoena or demand for documents or information that may have been designated  
5 as Confidential Information in this proceeding; (b) affect the rights of the responding Party to  
6 object to such production; or (c) otherwise limit or affect the rights of any person or party to seek  
7 or oppose discovery in any other proceeding.  
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1 IT IS SO STIPULATED, this 25th day of May, 2018.

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19 **IT IS SO ORDERED.**

20 Dated: May 31, 2018

21 CAROLYN K. DELANEY  
22 UNITED STATES MAGISTRATE JUDGE

1 **NONDISCLOSURE AGREEMENT**

2 I hereby attest to my understanding that documents and/or information designated  
3 "Confidential" may be provided to me pursuant to the terms, conditions and restrictions of a  
4 Stipulated Protective Order entered in the case of *Tsunami Sales & Marketing, Inc. v. Johnson*  
5 *Outdoors, Inc.*, United States District Court for the Eastern District of California , Civil Action  
6 No. 2:18-cv-520 WBS/CKD on \_\_\_\_\_, 2018, that I have been given a copy of the  
7 Order, and have had its meaning and effect explained to me by the attorneys providing me with  
8 such information and documents, and that I hereby agree to be bound by its terms.

9 I further agree that I shall not disclose to others, except in accordance with the Order, such  
10 information or documents, and that such information or documents shall be used only for the  
11 purpose of the *Tsunami Sales & Marketing, Inc. v. Johnson Outdoors, Inc.* legal proceeding in  
12 which the documents were produced.

13 I further agree and attest to my understanding that my obligation to honor the  
14 confidentiality of such documents or information will continue even after the termination of this  
15 legal proceeding.

16 I further agree and attest to my understanding that, in the event that I fail to abide by the  
17 terms of the Order, I may be subject to sanctions, including sanctions by way of contempt of  
18 court. I agree to subject myself to the jurisdiction of the United States District Court for the  
19 Eastern District of California, for the purpose of contempt or other proceedings in the event of  
20 any violation of the Order.

21 By: \_\_\_\_\_  
22 Name (Printed):  
23 Title:

24 DATED: \_\_\_\_\_