

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

ROBERT M. LIEBER, ESQ. (SBN: 039976)
MARGOLIS & TISMAN LLP
601 Montgomery Street, Suite 2030,
San Francisco, California 94111
Telephone (415) 986-2144
Facsimile: (415) 986-4461
rlieber@winlaw.com

Attorneys for Defendant & Counterclaimant
GT USA, INC.

DONALD F. DRUMMOND, ESQ. (SBN: 052986)
DRUMMOND & ASSOCIATES
201 Mission Street, Suite 1330
San Francisco, CA 94105
Telephone (415) 433-2261
Facsimile: (415) 438-9818
bulldogdrum@drummondlaw.net

Attorneys for Plaintiff & Counterdefendant
CHRISTINA TRUJILLO

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CHRISTINA TRUJILLO,

Plaintiff,

v.

GT USA, INC.,

Defendant.

Case No. CV 09-05179 MMC

**STIPULATION FOR PROTECTIVE
ORDER; AND ORDER THEREON**

Action Filed: November 2, 2009
Trial Date: February 22, 2011

GT USA, INC.,

Counterclaimant,

v.

CHRISTINA TRUJILLO,

Counterdefendant.

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

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery, and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 “Confidential” Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under Federal Rule of Civil Procedure 26(c).

2.4 “Highly Confidential - Attorneys’ Eyes Only” Information or Items: extremely sensitive “Confidential Information or Items,” whose disclosure to another Party or non-party would create a substantial risk of serious injury that could not be avoided by less restrictive means.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

1 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
2 Material in this Action.

3 2.7 Designating Party: a Party or non-party that designates information or items
4 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
5 Confidential - Attorneys’ Eyes Only.”

6 2.8 Protected Material: any Disclosure or Discovery Material that is designated
7 as “Confidential” or as “Highly Confidential - Attorneys’ Eyes Only.”

8 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
9 retained to represent or advise a Party in this action.

10 2.10 House Counsel: attorneys who are employees of a Party.

11 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
12 their support staffs).

13 2.12 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
15 witness or as a consultant in this action and who is not a past or a current employee of a Party or of
16 a competitor of a Party’s and who, at the time of retention, is not anticipated to become an
17 employee of a Party or a competitor of a Party’s. This definition includes a professional jury or trial
18 consultant retained in connection with this litigation.

19 2.13 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying, videotaping; translating; preparing exhibits or demonstrations;
21 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
22 subcontractors.

23 **3. SCOPE**

24 The protections conferred by this Stipulation and Order cover not only Protected Material
25 (as defined above), but also any information contained in, copied or extracted therefrom, as well as
26 all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
27 presentations by parties or counsel to or in court or in other settings that might reveal Protected
28 Material.

1 **4. DURATION**

2 Even after the termination of this litigation, the confidentiality obligations imposed by this
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
4 otherwise directs.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each

7 Party or non-party that designates information or items for protection under this Order must take
8 care to limit any such designation to specific material that qualifies under the appropriate standards.
9 A Designating Party must take care to designate for protection only those parts of material,
10 documents, items, or oral or written communications that qualify – so that other portions of the
11 material, documents, items, or communications for which protection is not warranted are not swept
12 unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
14 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
15 encumber or retard the case development process, or to impose unnecessary expenses and burdens
16 on other parties), expose the Designating Party to Sanctions.

17 If it comes to a Party’s or a non-party’s attention that information or items that it designated
18 for protection do not qualify for protection at all, or do not qualify for the level of protection
19 initially asserted, that Party or non-party must promptly notify all other parties that it is withdrawing
20 the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this

22 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
23 material that qualifies for protection under this Order must be clearly so designated before the
24 material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) For information in documentary form (apart from transcripts of
27 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” at the top of

1 each page that contains protected material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
3 by making appropriate markings in the margins) and must specify, for each portion, the level of
4 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
5 ATTORNEYS’ EYES ONLY”).

6 A Party or non-party that makes original documents or materials
7 available for inspection need not designate them for protection until after the inspecting Party has
8 indicated which material it would like copied and produced. During the inspection and before the
9 designation, all of the material made available for inspection shall be deemed “HIGHLY
10 CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
11 documents it wants copied and produced, the Producing Party must determine which documents, or
12 portions thereof, qualify for protection under this Order, then, before producing the specified
13 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
14 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”) at the top of each page that contains
15 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
16 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
17 markings in the margins) and must specify, for each portion, the level of protection being asserted
18 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”).

19 (b) For testimony given in deposition or in other pretrial or trial
20 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record,
21 before the close of the deposition, hearing, or other proceeding, all protected testimony, and further
22 specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL - ATTORNEYS’
23 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is
24 entitled to protection, and when it appears that substantial portions of the testimony may qualify for
25 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
26 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify
27 the specific portions of the testimony as to which protection is sought and to specify the level of
28 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’

1 EYES ONLY”). Only those portions of the testimony that are appropriately designated for
2 protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

3 Transcript pages containing Protected Material must be separately bound by
4 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
5 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-
6 party offering or sponsoring the witness or presenting the testimony.

7 (c) For information produced in some form other than documentary, and
8 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
9 the container or containers in which the information or item is stored the legend
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” If only
11 portions of the information or item warrant protection, the Producing Party, to the extent
12 practicable, shall identify the protected portions, specifying whether they qualify as “Confidential”
13 Or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
15 to designate qualified information or items as “Confidential” or “Highly Confidential - Attorneys’
16 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under
17 this Order for such material. If material is appropriately designated as “Confidential” or “Highly
18 Confidential - Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,
19 on timely notification of the designation, must make reasonable efforts to assure that the material is
20 treated in accordance with the provisions of this Order.

21 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

22 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
23 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
24 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
25 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
26 after the original designation is disclosed.

27 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
28 Party’s confidentiality designation must do so in good faith and must begin the process by

1 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
2 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
3 for its belief that the confidentiality designation was not proper and must give the Designating Party
4 an opportunity to review the designated material, to reconsider the circumstances, and, if no change
5 in designation is offered, to explain the basis for the chosen designation. A challenging Party may
6 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
7 process first or establishes that the Designating Party is unwilling to participate in the meet and
8 confer process.

9 6.3 Judicial Intervention. A Party that elects to press a challenge to a
10 confidentiality designation after considering the justification offered by the Designating Party may
11 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
12 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
13 Each such motion must be accompanied by a competent declaration that affirms that the movant has
14 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
15 forth with specificity the justification for the confidentiality designation that was given by the
16 Designating Party in the meet and confer dialogue.

17 The burden of persuasion in any such challenge proceeding shall be on the Designating
18 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
19 question the level of protection to which it is entitled under the Producing Party's designation.

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

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is
22 disclosed or produced by another Party or by a non-party in connection with this case only for
23 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
24 disclosed only to the categories of persons and under the conditions described in this Order. When
25 the litigation has been terminated, a Receiving Party must comply with the provisions of section 11,
26 below (FINAL DISPOSITION).

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

4 7.2 Disclosure of ‘CONFIDENTIAL’ Information or Items. Unless otherwise
5 ordered by the Court or permitted in writing by the Designating Party, any information or item
6 designated CONFIDENTIAL may be disclosed only to:

7 (a) The Receiving Party and the Receiving Party’s Outside Counsel of
8 record in this action, as well as employees of said Counsel to whom it is reasonably necessary to
9 disclose the information for this litigation and who have signed the “Agreement to Be Bound by
10 Protective Order” that is attached hereto as Exhibit A;

11 (b) The officers, directors, and employees (including House Counsel) of
12 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
13 signed the “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A;

14 (c) Experts (as defined in this Order) of the Receiving Party to whom
15 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
16 Bound by Protective Order” that is attached hereto as Exhibit A;

17 (d) The Court and its personnel;

18 (e) Court reporters, their staffs, and professional vendors to whom
19 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
20 Bound by Protective Order” that is attached hereto as Exhibit A;

21 (f) During their depositions, witnesses in the action to whom disclosure
22 is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order”
23 that is attached hereto as Exhibit A. Pages of transcribed deposition testimony or exhibits to
24 depositions that reveal Protected Material must be stamped confidential by the court reporter, or by
25 the parties in the event that the contents are designated “CONFIDENTIAL” after the transcript is
26 prepared. The confidential portions of any such transcript may not be disclosed to anyone except as
27 permitted under this Stipulated Protective Order.

28 (g) The author of the document or the original source of the information.

1 7.3 Disclosure of “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”
2 Information or Items. Unless otherwise ordered by the Court or permitted in writing by the
3 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
4 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” only to:

5 (a) The Receiving Party’s Outside Counsel of record in this action, as
6 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
7 for this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is
8 attached hereto as Exhibit A;

9 (b) House Counsel of a Receiving Party to whom disclosure is reasonably
10 necessary for this litigation and who has signed the “Agreement to Be Bound by Protective Order”
11 that is attached hereto as Exhibit A;

12 (c) Experts (as defined in this Order) to whom disclosure is reasonably
13 necessary for this litigation, who have signed the “Agreement to Be Bound by Protective Order”
14 that is attached hereto as Exhibit A.

15 (d) The Court and its personnel;

16 (e) Court reporters, their staffs, and professional vendors to whom
17 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
18 Bound by Protective Order” that is attached hereto as Exhibit A; and

19 (f) The author of the document or the original source of the information.

20 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
21 **OTHER LITIGATION.**

22 If a Receiving Party is served with a subpoena or an order issued in other litigation that
23 would compel disclosure of any information or items designed in this action as “CONFIDENTIAL”
24 or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” the Receiving Party must so
25 notify the Designating Party, in writing (by email or fax) immediately and in no event more than
26 three court days after receiving the subpoena or order. Such notification must include a copy of the
27 subpoena or court order.

28 The Receiving Party also must immediately inform in writing the Party who caused
the subpoena or order to issue in the other litigation that some or all the material covered by the
subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must

1 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
2 caused the subpoena or order to issue.

3 The purpose of imposing these duties is to alert the interested parties to the existence
4 of this Protective Order and to afford the Designating Party in this case an opportunity to try to
5 protect its confidentiality interests in the court from which the subpoena or order issued. The
6 Designating party shall bear the burdens and the expenses of seeking protection in that court of its
7 confidential material – and nothing in these provisions should be construed as authorizing or
8 encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

17 **10. FILING PROTECTED MATERIAL**

18 All parties filing any protected material with the court must comply with Civil Local Rule
19 79-5.

20 **11. FINAL DISPOSITION**

21 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60) days
22 after the final termination of this action, each Receiving Party must return all Protected Material to
23 the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,
24 abstracts, compilations, summaries, notes or any other form of reproducing or capturing any of the
25 Protected Material. With permission in writing from the Designating party, the Receiving Party
26 may destroy some or all of the Protected Material in a manner agreed in writing instead of returning
27 it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a
28 written certification to the Producing Party (and, if not the same person or entity, to the Designating

1 Party) by the sixty (60) day deadline that identifies (by category, where appropriate) all the
2 Protected Material that was returned or destroyed and that affirms that the Receiving party has not
3 retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing
4 any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
5 archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or
6 attorney work product, even if such materials contain Protected Material. Any such archival copies
7 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
8 Section 4 (DURATION), above.

9 **12. MISCELLANEOUS**

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to disclosing or
14 producing any information or item on any ground not addressed in this Stipulated Protective Order .
15 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
16 material covered by this Protective Order.

17 Pursuant to General Order 45, the filer of this document attests that concurrence in the filing
18 of this document has been obtained from each of the other signatories.

19 IT IS SO STIPULATED.

20 Dated: September 2, 2010

MARGOLIS & TISMAN LLP

21 By: _____ /s/ Robert M. Lieber
22 ROBERT M. LIEBER
23 Attorneys for Defendant & Counterclaimant
24 GT USA, INC.

25 Dated: September 2, 2010

DRUMMOND & ASSOCIATES

26 By: _____ /s/ Donald F. Drummond
27 DONALD F. DRUMMOND
28 Attorneys for Plaintiff & Counterdefendant
CHRISTINA TRUJILLO

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

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: September 7, 2010



HON. MAXINE M. CHESNEY
United States District Court Judge

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

EXHIBIT A
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHRISTINA TRUJILLO,

Plaintiff,

v.

GT USA, INC.,

Defendant.

Case No. CV 09-05179 MMC

**ACKNOWLEDGEMENT AND
AGREEMENT TO BE BOUND BY
STIPULATED PROTECTIVE ORDER**

Action Filed: November 2, 2009

Trial Date: February 22, 2011

GT USA, INC.,

Counterclaimant,

v.

CHRISTINA TRUJILLO,

Counterdefendant.

**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND BY STIPULATED
PROTECTIVE ORDER**

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, Northern District of California on
_____, 2010 in the case of *Trujillo v. GT USA, Inc.*, United States District Court
Case No. CV 09-05179 MMC. 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



1 not disclose in any manner any information or item that is subject to this Stipulated Protective Order
2 to any person or entity except in strict compliance with the provisions of this Order.

3 I further agree to submit to the jurisdiction of the United States District Court for the
4 purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement
5 proceedings occur after termination of this Action.

6 I hereby appoint _____ [print or type full name] of
7 _____ [print or type full address and telephone number] as
8 my California agent for service of process in connection with this Action and any proceedings
9 related to enforcement of this Stipulated Protective Order.

10 In the event that the Stipulated Protective Order is not entered by the United States District
11 Court, I agree to nevertheless, be bound by the stipulations contained herein as though and on the
12 same terms and conditions as if it had been entered into as an order of the Court and agree that the
13 Parties have a separate and independent contractual obligation to do so.

14 Date: _____

15 City and State where sworn and signed: _____

16 Printed Name: _____

17 Signature: _____

18

19

20

21

22

23

24

25

26

27

28

