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 14 HENDRICK CO AUTOMOTIVE, LLC

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

19 WALID OMAR, an individual,

20 Plaintiff,

21 v.

22 HENDRICK CO AUTOMOTIVE, LLC,
 23 dba CONCORD WEST AUTOMOTIVE;
 and DOES 1 to 50 Inclusive,

24 Defendants.

Case No. 3:13-cv-02364-NC

STIPULATED PROTECTIVE ORDER

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STIPULATED PROTECTIVE ORDER

(No. 3:13-cv-02364-NC)

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 disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords from public disclosure and use
8 extends only to the limited information or items that are entitled to confidential treatment under the
9 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that
10 this Stipulated Protective Order does not entitle them to file confidential information under seal;
11 Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the
12 standards that will be applied when a party seeks permission from the court to file material under
13 seal.

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
19 Civil Procedure 26(c) or California law.

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
21 as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or items that it
23 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

24 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
25 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
26 transcripts, and tangible things), that are produced or generated in disclosures or responses to
27 discovery in this matter.

28 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to

1 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
2 consultant in this action.

3 2.7 House Counsel: attorneys who are employees of a party to this action. House
4 Counsel does not include Outside Counsel of Record or any other outside counsel.

5 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
6 entity not named as a Party to this action.

7 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
8 but are retained to represent or advise a party to this action and have appeared in this action on
9 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

10 2.10 Party: any party to this action, including all of its officers, directors, employees,
11 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

12 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
13 Material in this action.

14 2.12 Professional Vendors: persons or entities that provide litigation support services
15 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
16 storing, or retrieving data in any form or medium) and their employees and subcontractors.

17 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
18 “CONFIDENTIAL.”

19 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
20 Producing Party.

21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only Protected Material (as
23 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
24 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
25 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
26 However, the protections conferred by this Stipulation and Order do not cover the following
27 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
28 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of

1 publication not involving a violation of this Order, including becoming part of the public record
2 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
3 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
4 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
5 Protected Material at trial shall be governed by a separate agreement or order.

6 4. DURATION

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

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
15 Non-Party that designates information or items for protection under this Order must take care to
16 limit any such designation to specific material that qualifies under the appropriate standards. The
17 Designating Party must designate for protection only those parts of material, documents, items, or
18 oral or written communications that qualify – so that other portions of the material, documents,
19 items, or communications for which protection is not warranted are not swept unjustifiably within
20 the ambit of this Order.

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

25 If it comes to a Designating Party's attention that information or items that it designated for
26 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
27 that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
2 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
3 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
4 designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

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

11 A Party or Non-Party that makes original documents or materials available for inspection need not
12 designate them for protection until after the inspecting Party has indicated which material it would
13 like copied and produced. During the inspection and before the designation, all of the material made
14 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
15 identified the documents it wants copied and produced, the Producing Party must determine which
16 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
17 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page
18 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
19 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
20 appropriate markings in the margins).

21 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
22 Designating Party identify on the record, before the close of the deposition, hearing, or other
23 proceeding, all protected testimony.

24 (c) for information produced in some form other than documentary and for any other
25 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
26 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a
27 portion or portions of the information or item warrant protection, the Producing Party, to the extent
28 practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the Designating Party's
3 right to secure protection under this Order for such material. Upon timely correction of a
4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
5 accordance with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
10 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
11 confidentiality designation by electing not to mount a challenge promptly after the original
12 designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
14 by providing written notice of each designation it is challenging and describing the basis for each
15 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
16 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
17 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
18 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
19 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
20 Party must explain the basis for its belief that the confidentiality designation was not proper and
21 must give the Designating Party an opportunity to review the designated material, to reconsider the
22 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
23 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
24 has engaged in this meet and confer process first or establishes that the Designating Party is
25 unwilling to participate in the meet and confer process in a timely manner.

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
27 intervention, the Challenging Party shall file and serve a motion challenging the Designating Party's
28 confidentiality designation. Any motion brought pursuant to this provision must be accompanied by

1 a competent declaration affirming that the movant has complied with the meet and confer
2 requirements imposed by the preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the Designating
4 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
5 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
6 All parties shall continue to afford the material in question the level of protection to which it is
7 entitled under the Producing and/or Designating Party's designation until the court rules on the
8 challenge.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
11 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
12 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
13 the categories of persons and under the conditions described in this Order. When the litigation has
14 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
15 DISPOSITION).

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

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
19 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
20 information or item designated "CONFIDENTIAL" only to:

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

24 (b) the officers, directors, and employees (including House Counsel but excluding
25 Outside Counsel of Record) of the Receiving Party to whom disclosure is reasonably necessary for
26 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

27 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
28 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement

1 to Be Bound” (Exhibit A);

2 (d) the court and its personnel;

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

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

12 (g) the author or recipient of a document containing the information or a custodian or
13 other person who otherwise possessed or knew the information.

14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
15 LITIGATION

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

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

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

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

26 If the Designating Party timely seeks a protective order, the Party served with the subpoena
27 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
28 before a determination by the court from which the subpoena or order issued, unless the Party has

1 obtained the Designating Party's permission. The Designating Party shall bear the burden and
2 expense of seeking protection in that court of its confidential material – and nothing in these
3 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
4 disobey a lawful directive from another court.

5 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
6 LITIGATION

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

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

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

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

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

21 (c) If the Non-Party fails to object or seek a protective order from this court within 14
22 days of receiving the notice and accompanying information, the Receiving Party may produce the
23 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
24 seeks a protective order, the Receiving Party shall not produce any information in its possession or
25 control that is subject to the confidentiality agreement with the Non-Party before a determination by
26 the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
27 seeking protection in this court of its Protected Material.

28 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

8 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
9 MATERIAL

10 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
11 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
12 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

13 The Parties agree on the following procedures, in addition to the express requirements
14 of Rule 26(b)(5)(B), to assert claims of privilege or of work-product after production and ask that the
15 Court approve the same by entry of this Stipulated Protective Order:

16 (1) The inadvertent disclosure or production of any information or
17 document that is protected by the attorney-client privilege or work-product protection
18 will not be deemed to waive a Party’s claim to its privileged or protected nature or to
19 estop that Party or the privilege holder from designating the information or document
20 as attorney-client privileged or subject to the work product doctrine at a later date.

21 (2) In the event that the Receiving Party discovers that it has received
22 what it reasonably believes may be attorney-client privileged or work-product
23 protected information or documents, it will bring that fact to the attention of the
24 Producing Party immediately.

25 (3) Upon the request of the Producing Party, the Receiving Party will
26 return the information or documents to the producing party within five (5) business
27 days, including any copies that the Receiving Party may have made, regardless of
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1 whether the Receiving Party agrees with the claim of privilege and/or work-product
2 protection.

3 (4) Upon the request of the Producing Party, the Receiving Party will
4 promptly disclose the names of any individuals who have read or have had access to
5 the attorney-client privilege or work-product-protected document(s).

6 (5) No such inadvertently produced attorney-client privilege or work-
7 product-protected document may be used in evidence against the Producing Party,
8 unless ordered otherwise by the court after a hearing on a properly noticed motion.

9 This order shall be governed by Federal Rule of Evidence 502(d) and 502(e) and is entered
10 pursuant to Federal Rule of Civil Procedure 26(c)(1).

11 12. MISCELLANEOUS

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
13 its modification by the court in the future.

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

19 12.3 Filing Protected Material. Without written permission from the Designating Party or
20 a court order secured after appropriate notice to all interested persons, as specified above, a Party
21 may not file in the public record in this action any Protected Material. A Party that has not obtained
22 permission or a court order and who wishes to file any Protected Material must comply with Civil
23 Local Rule 79-5 and General Order 62. Protected Material may only be filed under seal pursuant to
24 a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil
25 Local Rule 79-5 and General Order 62, a sealing order will issue only upon a request establishing
26 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
27 protection under the law. If a Receiving Party's request to file Protected Material under seal
28 pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving

1 Party may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless
2 otherwise instructed by the court.

3 13. FINAL DISPOSITION

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

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1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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3 Dated: July 24, 2013

/s/ Jacqueline C. Fagerlin
Jacqueline C. Fagerlin
CARDOZA LAW OFFICES, INC.
Attorneys for Plaintiff
Walid Omar

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8 Dated: July 25, 2013

/s/ Philip A. Simpkins
Anne-Marie Waggoner
Philip A. Simpkins
LITTLER MENDELSON, P.C.
Attorneys for Defendant
HENDRICK CO AUTOMOTIVE, LLC

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12 Filer's Attestation (Civil Local Rule 5.1):

13 I hereby attest that I have on file all holographic signatures corresponding to any signatures
14 indicated by a conformed signature (/S/) within this e-filed document.

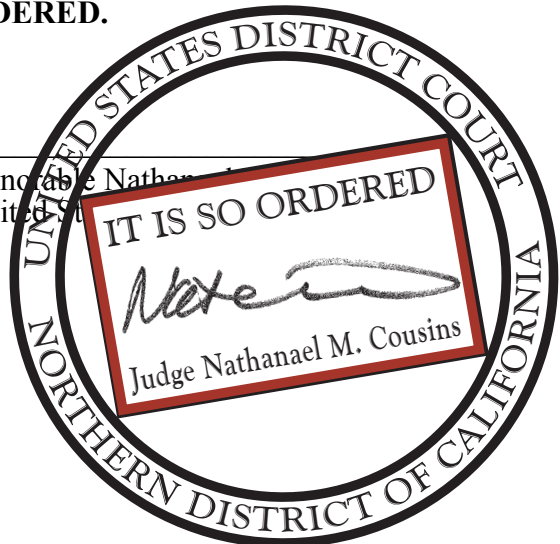
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17 Dated: July 25, 2013

/s/ Philip A. Simpkins
Philip A. Simpkins

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19 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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21 DATED: July 26, 2013

Honorable Nathanael M. Cousins
United States District Court



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