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11 Attorneys for Defendant
12 CSK AUTO, INC.

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**

16 OSMIN MELGAR, individually and on
17 behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 CSK AUTO, INC., an Arizona
21 Corporation, and DOES 1-100,

22 Defendants.

Case No. C 13-03769 (EMC)

**STIPULATION AND PROTECTIVE
ORDER**

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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, Plaintiffs OSMIN MELGAR and Defendant CSK AUTO, INC. k/n/a/ O'Reilly
6 Auto Enterprises, LLC. (individually each a "Party," collectively the "Parties") hereby stipulate to
7 and petition the court to enter the following Stipulated Protective Order.

8 The Parties acknowledge that this Order does not confer blanket protections on all
9 disclosures or responses to discovery and that the protection it affords from public disclosure and
10 use extends only to the limited information or items designated as "CONFIDENTIAL" under this
11 agreement, and which are entitled to confidential treatment under applicable legal principles.

12 The Parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
13 Protective Order does not entitle them to file confidential information under seal; Civil Local Rule
14 79-5 sets forth the procedures that must be followed and the standards that will be applied when a
15 Party seeks permission from the court to file material under seal.

16 **2. DEFINITIONS**

17 2.1 Challenging Party: a Party that challenges the designation of information or items
18 under this Order.

19 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
20 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
21 of Civil Procedure 26(c), including, without limitation, documents containing proprietary
22 information, trade secret information, private personal information, and/or financial information.

23 2.3 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel (as
24 well as their support staff).

25 2.4 Designating Party: a Party or Non-Party that designates information or items that it
26 produces in discovery as "CONFIDENTIAL."

27 2.5 Disclosure or Discovery Material: all items or information, regardless of the
28 medium or manner in which it is generated, stored, or maintained (including, among other things,

1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
2 responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who has been retained by a Party or its counsel to serve as an expert witness or
5 consultant in this action, as well as any non-retained experts.

6 2.7 In-House Counsel: attorneys who are employees of a party to this action. In-House
7 Counsel does not include Outside Counsel of Record or any other outside counsel.

8 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
9 entity not named as a Party to this action.

10 2.9 Outside Counsel of Record: attorneys who are not employees of a Party to this
11 action but are retained to represent or advise said Party and have appeared in this action on
12 behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

13 2.10 Party: any Party to this action, including all of its officers, directors, employees,
14 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

15 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
16 Material in this action.

17 2.12 Professional Vendors: persons or entities that provide litigation support services
18 (e.g., photocopying, videotaping, translating, preparing exhibits/demonstrations, and organizing,
19 storing, or retrieving data in any form/medium) and their employees and subcontractors.

20 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
21 “CONFIDENTIAL.”

22 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
23 Producing Party.

24 **3. SCOPE**

25 The protections conferred by this Stipulation and Order cover not only Protected Material
26 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
27 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
28 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

1 However, the protections conferred by this Stipulation and Order do not cover the following
2 information: (a) any information that is in the public domain at the time of disclosure to a
3 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
4 result of publication not involving a violation of this Order, including becoming part of the public
5 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
6 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
7 the information lawfully and under no obligation of confidentiality to the Designating Party.

8 Any use of Protected Material at trial shall be governed by a separate agreement or order.

9 **4. DURATION**

10 Even after final disposition of this litigation, the confidentiality obligations imposed by
11 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
12 order otherwise directs.

13 “Final disposition” shall be deemed to be the later of (1) dismissal of all claims and
14 defenses in this action, with or without prejudice; and (2) final judgment herein after the
15 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
16 including the time limits for filing any motions or applications for extension of time pursuant to
17 applicable law.

18 **5. DESIGNATING PROTECTED MATERIAL**

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

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

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

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
7 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
8 Disclosure or Discovery Material that qualifies for protection under this Order shall be clearly so
9 designated before the material is disclosed or produced. However, failure to designate materials
10 Confidential at the time of production does not constitute a waiver to later designate materials as
11 protected under this agreement.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic documents,
14 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
15 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a
16 portion or portions of the material on a page qualifies for protection, the Producing Party also
17 must clearly identify the protected portion(s) (e.g., by marking in the margins).

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

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

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

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items does not, standing alone, waive the Designating Party’s
11 right to secure protection under this Order for such material. Upon timely correction of a
12 designation, the Receiving Party must make reasonable efforts to assure that the material is
13 treated in accordance with the provisions of this Order.

14 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

15 6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality at
16 any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is
17 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
18 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
19 confidentiality designation by electing not to mount a challenge promptly after the original
20 designation is disclosed.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
22 process by providing written notice of each designation it is challenging and describing the basis
23 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
24 notice must recite that the challenge to confidentiality is being made in accordance with this
25 specific paragraph of the Protective Order.

26 The Parties shall attempt to resolve each challenge in good faith and must begin the
27 process by conferring directly (in voice to voice dialogue; other forms of communication are not
28 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party

1 must explain the basis for its belief that the confidentiality designation was not proper and must
2 give the Designating Party an opportunity to review the designated material, to reconsider the
3 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
4 designation. A Challenging Party may proceed to the next stage of the challenge process only if
5 it has engaged in this meet and confer process first or establishes that the Designating Party is
6 unwilling to participate in the meet and confer process in a timely manner.

7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
8 court intervention, the Challenging Party shall file and serve a motion challenging a
9 confidentiality designation within 28 days of the Designating Party's notice that it will not de-
10 designated challenged materials, unless otherwise agreed upon by the Parties and confirmed in
11 writing. Each such motion must be accompanied by a competent declaration affirming that the
12 movant has complied with the meet and confer requirements imposed by the preceding paragraph.
13 Failure by the Challenging Party to make such a motion within 28 days, or any other agreed upon
14 time period, shall waive any challenge as to each challenged designation.

15 The burden of persuasion in any such challenge proceeding shall be on the Challenging
16 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
17 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
18 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
19 file a motion to retain confidentiality as described above, all Parties shall continue to afford the
20 material in question the level of protection to which it is entitled under the Producing Party's
21 designation until the court rules on the challenge.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
24 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
25 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
26 to the categories of persons and under the conditions described in this Order. When the litigation
27 has been terminated, a Receiving Party must comply with the provisions of section 13 below
28 (FINAL DISPOSITION).

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

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
4 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
5 information or item designated “CONFIDENTIAL” only to:

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

9 (b) the officers, directors, and employees (including House Counsel) of the
10 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
11 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

15 (d) the Court and its personnel;

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

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

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

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1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
2 **OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order in other litigation that compels
4 disclosure of any information or items designated herein as “CONFIDENTIAL,” that Party must:

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

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

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

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

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

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

27 (b) In the event that a Party is required, by a valid discovery request, to
28 produce a Non-Party’s confidential information in its possession, and the Party is subject to an

1 agreement with the Non-Party not to produce the Non-Party's confidential information, then the
2 Party shall:

3 (1) promptly notify in writing the Requesting Party and the Non-Party
4 that the information requested is subject to a confidentiality agreement with a Non-Party;

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

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

10 (c) If the Non-Party fails to object or seek a protective order from this court
11 within 14 days of receiving the notice and accompanying information, the Receiving Party may
12 produce the Non-Party's confidential information responsive to the discovery request. If the
13 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
14 in its possession or control that is subject to the confidentiality agreement with the Non-Party
15 before a determination by the court.¹ Absent a court order to the contrary, the Non-Party shall
16 bear the burden and expense of seeking protection in this court of its Protected Material.

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

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

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28 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a
Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

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2 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
3 **PROTECTED MATERIAL**

4 When a Producing Party gives notice to Receiving Parties that certain inadvertently
5 produced material is subject to a claim of privilege or other protection, the obligations of the
6 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
7 provision is not intended to modify whatever procedure may be established in an e-discovery
8 order that provides for production without prior privilege review. Pursuant to Federal Rule of
9 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
10 communication or information covered by the attorney-client privilege or work product
11 protection, the parties may incorporate their agreement in the stipulated protective order
12 submitted to the court.

13 **12. MISCELLANEOUS**

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
15 seek its modification by the court in the future.

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

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

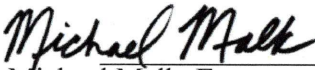
1 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the
2 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e)
3 unless otherwise instructed by the court.

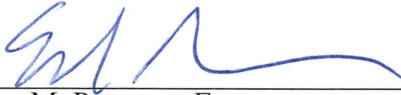
4 **13. FINAL DISPOSITION**

5 Within 60 days after the Designating Party’s written request, each Receiving Party must
6 return all Protected Material to the Producing Party or destroy such material. As used in this
7 subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and
8 any other format reproducing or capturing any of the Protected Material. Whether the Protected
9 Material is returned or destroyed, the Receiving Party must submit a written certification to the
10 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day
11 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
12 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
13 abstracts, compilations, summaries or any other format reproducing or capturing any of the
14 Protected Material.

15 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
16 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
17 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
18 consultant and expert work product, even if such materials contain Protected Material. Any such
19 archival copies that contain or constitute Protected Material remain subject to this Protective
20 Order as set forth in Section 4 (DURATION).

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

23 DATED: 9/3/14 _____ 
Michael Malk, Esq.
Attorney for Plaintiff Osmin Melgar

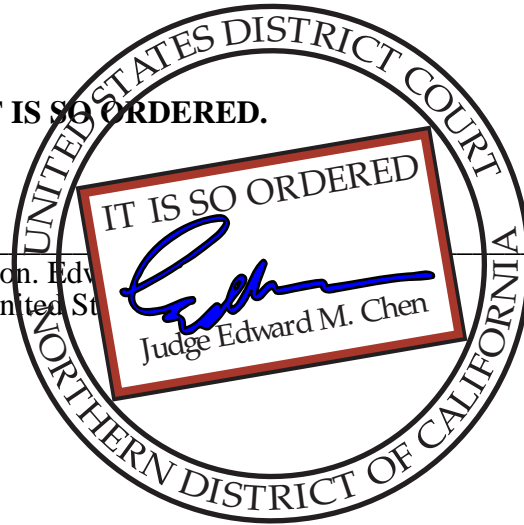
25 DATED: 9/4/14 _____ 
James M. Peterson, Esq.
Edwin M. Boniske, Esq.
Attorney for Defendant CSK Auto, Inc.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 9/8/14

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____
[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 Northern
District of California on _____ in the case of *Osmin Melgar v. CSK Auto, Inc.*, Case No.
C- 13-03769 (EMC). 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
Northern 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.

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____