

1 Amir Nassihi, SBN 235936
 2 anassihi@shb.com
 3 M. Kevin Underhill, SBN 208211
 4 kunderhill@shb.com
 5 SHOOK, HARDY & BACON L.L.P.
 6 One Montgomery, Suite 2600
 7 San Francisco, CA 94104
 8 Tel: 415.544.1900 | Fax: 415.391.0281

9 Scott D. Kaiser, appearance *pro hac vice*
 10 skaiser@shb.com
 11 SHOOK, HARDY & BACON L.L.P.
 12 2555 Grand Blvd.
 13 Kansas City, MO 64108
 14 Tel: 816.474-6550 | Fax: 816.421.5547

15 Attorneys for Defendant
 16 SHARKNINJA OPERATING LLC

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

19 KRYSTAL WALLACE, individually, and on
 20 behalf of a class of similarly situated
 21 individuals,

22 Plaintiff,

23 v.

24 SHARKNINJA OPERATING LLC, a
 25 Massachusetts limited liability company,

26 Defendant.

Case No. 5:18-cv-05221-BLF

**STIPULATED SHARING AND
 NON-SHARING PROTECTIVE ORDER
 AS MODIFIED BY THE COURT**

27 In order to preserve and maintain the confidentiality of certain confidential, commercial
 28 and/or proprietary documents and information produced or to be produced by SharkNinja Operating
 LLC (“SharkNinja”) or by any party in this action, it is ordered that:

1. Documents or information to be produced or provided by SharkNinja or any party in
 this litigation that contain confidential, commercially sensitive, private personal information and/or
 proprietary information may be designated as confidential by marking or placing the applicable
 notice “Subject to Non-Sharing Protective Order,” “Subject to Protective Order,” or “Confidential,”
 or substantially similar language on media containing the documents, on the document itself, or on a
 copy of the document, in such a way that it does not obscure the text or other content of the
 document.

1 2. As used in this Order, the terms “documents” or “information” mean all written
2 material, electronic data, videotapes and all other tangible items, produced in whatever format (e.g.,
3 hard copy, electronic, digital, etc.) and on whatever media (e.g., hard copy, videotape, computer
4 diskette, CD-ROM, DVD, by secure electronic transmission, hard drive or otherwise).

5 3. Documents or information designated as “Subject to Non-Sharing Protective Order,”
6 “Subject to Protective Order,” or “Confidential” or substantially similar language in accordance with
7 the provisions of this Order (“Protected Documents” or “Protected Information”) shall only be used,
8 shown or disclosed as provided in this Order. However, nothing in this Order shall limit a party’s
9 use or disclosure of his or her own information designated as a Protected Document or Protected
10 Information.

11 4. If a receiving party disagrees with the “Protected” designation of any document or
12 information, the party will notify the producing party by email and identify the challenged
13 document(s) with specificity, including Bates-number(s) where available, and the specific grounds
14 for the objection to the designation. If the parties are unable to resolve the issue of confidentiality
15 regarding the challenged document(s), SharkNinja will thereafter timely apply to the Court to set a
16 hearing for the purpose of establishing that the challenged document(s) or information is/are
17 confidential. Protected Documents will continue to be treated as such pending determination by the
18 Court as to the confidential status.

19 5. Protected Documents and any copies thereof shall be maintained confidential by the
20 persons authorized to receive the documents pursuant to paragraph 6 and shall be used only for
21 prosecuting, defending, or attempting to settle this litigation, subject to the limitations set forth
22 herein.

23 6. Protected Documents shall be disclosed only to “Qualified Persons.” Qualified
24 Persons are limited to:

- 25 a. Counsel of Record for the parties, and the parties;
- 26 b. Paralegals and staff employed by Counsel of Record and involved in the
27 preparation and trial of this action;

- 1 c. A vendor hired by a party to host data and maintain a database of electronic
2 data or perform other work related to the collection, review or production of
3 documents in the case;
- 4 d. Experts and non-attorney consultants retained by the parties for the
5 preparation and/or trial of this case, provided that no disclosure shall be made
6 to any expert or consultant who is employed by a competitor of SharkNinja;
- 7 e. The Court, the Court's staff, witnesses, and the jury in this case; and
- 8 f. With respect to documents designated as "Sharing" or "Subject to Protective
9 Order," attorneys representing Plaintiff(s) and the experts and non-attorney
10 consultants retained by such attorneys, in other cases pending against
11 SharkNinja involving blenders with claims that they are defective, provided
12 no disclosure shall be made to any expert or consultant who is employed by a
13 competitor of SharkNinja.

14 7. The receiving party must make reasonable efforts to ensure the individuals described
15 in paragraphs 6(b), 6(c), 6(d) and 6(f) above are Qualified Persons.

16 8. Before receiving access to any Protected Document or the information contained
17 therein, each person described in paragraphs 6(b), 6(c), 6(d) and 6(f) above shall execute a "Written
18 Assurance" in the form contained in Exhibit A, attached hereto. The receiving party shall retain
19 each such executed Written Assurance and shall keep a list identifying (a) all persons described in
20 paragraphs 6(b), 6(c), 6(d) and 6(f) above to whom Protected Documents have been disclosed, and
21 (b) all Protected Documents disclosed to such persons. Each such executed Written Assurance and
22 list shall be submitted to counsel for SharkNinja at the termination of this litigation or upon Order of
23 the Court requiring production, whichever comes first. However, for consulting experts who were
24 not designated as testifying experts, the receiving party may redact the name, address, and signature
25 of the consultant before disclosing the executed Exhibit A and document list for that person. To the
26 extent the "Qualified Persons" described in paragraph 6(d) and 6(f) above include privileged non-
27 testifying expert consultants, the receiving party shall retain each such executed Exhibit A and shall
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1 keep a list identifying (a) all such non-testifying expert consultants described in paragraphs 6(d) and
2 6(f) above to whom Protected Documents have been disclosed, and (b) all Protected Documents
3 disclosed to such persons. In the event that SharkNinja (or the producing party) seeks to compel the
4 production of each unredacted and executed Exhibit A for good cause, the receiving party shall
5 submit each unredacted and executed Exhibit A and list to the Court for *in camera* inspection.
6 Persons described in paragraph 6(b) shall be covered under the signature of Counsel of Record.

7 9. As the Protected Documents may only be distributed to Qualified Persons, Qualified
8 Persons may not post Protected Documents on any website or internet accessible document
9 repository, excepting a vendor hosted review platform for the sole purpose of reviewing the
10 information for the subject case and not for any other purpose, and shall not under any circumstance
11 sell, offer for sale, advertise, or publicize either the Protected Documents and the Confidential
12 information contained therein or the fact that such persons have obtained SharkNinja's (or the
13 producing party's) Protected Documents and confidential information.

14 10. To the extent that Protected Documents or information obtained therefrom are used in
15 the taking of depositions (including exhibits) or other pretrial testimony and/or used as exhibits at
16 trial, such documents or information shall remain subject to the provisions of this Order, along with
17 the transcript pages of the deposition testimony and/or trial testimony dealing with, referring to or
18 referencing the Protected Documents or information. Designation of the portion of the transcript
19 (including exhibits) which contains references to Protected Documents or information shall be made
20 (i) by a statement to such effect on the record during the proceeding in which the testimony is
21 received, or (ii) by written notice served on counsel of record in this Litigation within thirty (30)
22 business days after the receipt of the draft or final transcript (whichever is received earlier) of such
23 proceeding (as used herein, the term "draft transcript" does not include an ASCII or rough
24 transcript). However, before such thirty (30) day period expires, all testimony, exhibits and
25 transcripts of depositions or other testimony shall be treated as Protected Documents. All portions of
26 transcripts not designed as Confidential within the time frame provided herein shall be deemed not
27 confidential.

1 11. If any party disagrees with the designation of all or part of a deposition transcript
2 designated as “Protected” pursuant to Paragraph 10 above, such party must notify the designating
3 party in a written letter and identify the testimony (by line and page designation) and the specific
4 grounds for the objection to the designation. If the parties are unable to resolve the issue of
5 confidentiality regarding the challenged deposition testimony, the designating party will thereafter
6 timely apply to the Court to set a hearing for the purpose of establishing that the challenged
7 deposition testimony is confidential. The designated deposition testimony at issue, and any related
8 exhibits, will continue to be treated as a Protected Document, in accord with its respective
9 designation, pending determination by the Court as to the confidential status.

10 12. All documents that are filed with the Court that contain any portion of any Protected
11 Document or information taken from any Protected Document shall be filed under seal by following
12 the protocols for sealed filings in this Court. If a party believes that documents designated as
13 Protected Documents cannot or should not be sealed, pursuant to the protocols and rules in this
14 Court, then the party wishing to file the materials shall particularly identify the documents or
15 information that it wishes to file to the producing party, in writing. The parties will then meet and
16 confer, in a good faith effort to resolve the dispute. Failing agreement, the party wishing to file the
17 materials must request a ruling from the Court on whether the Protected Documents in question must
18 be submitted under seal. The producing party shall have the burden of justifying that the materials
19 must be submitted under seal. Absent written permission from the producing party or a court Order
20 denying a motion to seal, a receiving party may not file in the public record any Protected
21 Documents.

22 13. To the extent SharkNinja (or the producing party) is requested to produce documents
23 it has determined should not be subject to the sharing provision of this protective order in paragraph
24 6(f), SharkNinja (or the producing party) will designate such documents as “Non-Sharing.”
25 Documents designated as “Non-Sharing” shall not be shared under paragraph 6(f).

26 14. With respect to Protected Documents designated as “Non-Sharing,” within one
27 hundred and twenty (120) days after the conclusion of this case, counsel for the parties who received
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1 Protected Documents, including any documents that any such party disclosed to any person
2 described in paragraph 6(b) or (c) above, shall either (a) return to SharkNinja (or the producing
3 party) the Protected Documents; or (b) securely destroy the Protected Documents and certify such
4 destruction to SharkNinja (or the producing party) within one hundred and fifty (150) days after the
5 conclusion of this case.

6 15. With respect to documents designated as “Sharing” or “Subject to Protective Order,”
7 Counsel for the parties shall not be required to return the Protected Documents to SharkNinja after
8 the conclusion of this case and may retain the documents pursuant to the terms of this Order.

9 16. Inadvertent or unintentional production of documents or information containing
10 confidential information that should have been designated as Protected Document(s) shall not be
11 deemed a waiver in whole or in part of the party's claims of confidentiality.

12 17. The parties may disclose and produce responsive documents to each other in this
13 litigation, and seek to do so without risking waiver of any attorney-client privilege, work product or
14 other applicable privilege or protection. As such, the parties will adhere to the following procedures
15 with regard to the production of privileged or protected material, should that occur:

16 a. The production of documents (including both paper documents and
17 electronically stored information or “ESI”) subject to protection by the
18 attorney-client and/or work product doctrine or by another legal privilege
19 protecting information from discovery, shall not constitute a waiver of any
20 privilege or other protection, provided that the producing party notifies the
21 receiving party, in writing, of the production after its discovery of the same.

22 b. If the producing party notifies the receiving party after discovery that
23 privileged materials (hereinafter referred to as the “Identified Materials”) have
24 been produced, the Identified Materials and all copies of those materials shall
25 be returned to the producing party or destroyed or deleted, on request of the
26 producing party. The producing party will provide a privilege log providing
27 information upon request or if required by the Federal Rules of Civil
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1 Procedure and applicable case law to the receiving party at the time the
2 producing party provides the receiving party notice of the Identified Materials.
3 If the receiving party has any notes or other work product reflecting the
4 contents of the Identified Materials, the receiving party will not review or use
5 those materials unless a court later designates the Identified Materials as not
6 privileged or protected.

7 c. The Identified Materials shall be deleted from any systems used to house the
8 documents, including document review databases, e-rooms and any other
9 location that stores the documents. The receiving party may make no use of
10 the Identified Materials during any aspect of this matter or any other matter,
11 including in depositions or at trial, unless the documents have been designated
12 by a court as not privileged or protected.

13 d. The contents of the Identified Materials shall not be disclosed to anyone who
14 was not already aware of the contents of them before the notice was made.
15 The receiving party must take reasonable steps to retrieve the Identified
16 Materials if the receiving party disclosed the Identified Materials before being
17 notified.

18 e. If any receiving party is in receipt of a document from a producing party
19 which the receiving party has reason to believe is privileged, the receiving
20 party shall in good faith take reasonable steps to promptly notify the
21 producing party of the production of that document so that the producing
22 party may make a determination of whether it wishes to have the documents
23 returned or destroyed pursuant to this Stipulation and Order.

24 f. The party returning the Identified Materials may move the Court for an order
25 compelling production of some or all of the Identified Material returned or
26 destroyed, but the basis for such motion may not be based on the fact or
27 circumstances of the production.
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1 g. The disclosure of Identified Materials in this action is not a waiver of the
2 attorney-client privilege, work product doctrine or any other asserted privilege
3 in any other federal or state proceeding, pursuant Rule 502(d), Federal Rules
4 of Evidence.

5 18. No provision of this stipulated order shall constitute a concession by any party that
6 any documents are subject to protection by the attorney-client privilege, the work product doctrine
7 or any other potentially applicable privilege or doctrine. No provision of this stipulated order is
8 intended to waive or limit in any way either party's right to contest any privilege claims that may be
9 asserted with respect to any of the documents produced except to the extent set forth herein.

10 19. In the event that a party produces a document without a confidentiality designation as
11 permitted by this Order, the following procedures shall apply:

12 a. The producing party shall, within fourteen (14) days of the discovery of the
13 disclosure, notify the other party in writing. The party receiving such notice
14 shall promptly destroy the document, including any copies it has, or return the
15 document on request of the producing party. Within ten (10) days after such
16 document is returned or its destruction certified, the producing party will
17 produce a new version of any such document that was returned or destroyed,
18 which will contain the appropriate confidentiality designation.

19 b. If the receiving party disputes the producing party's claim of confidentiality,
20 that party may move the Court to challenge the confidential designation in
21 accordance with Paragraph 4 of this Order. If the receiving party elects to file
22 such a motion, the receiving party may retain possession of the document, but
23 shall treat it in accordance with the terms of the Protective Order pending
24 resolution of the motion. If the receiving party's motion is denied, the parties
25 shall promptly comply with Paragraph 18(a) of this Order.
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c. The production of such document does not constitute a waiver of any claim of confidentiality as set forth in this order or any other matter in any other jurisdiction, unless otherwise ordered by the Court.

20. This Protective Order may not be waived, modified, abandoned or terminated, in whole or part, except by an instrument in writing signed by the parties. If any provision of this Protective Order shall be held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby.

21. After termination of this litigation, the provisions of this Order shall continue to be binding.

22. This Protective Order shall be binding upon the parties hereto, upon their attorneys, and upon the parties' and their attorneys' successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons or organizations over which they have control.

Respectfully submitted,
SHOOK, HARDY & BACON L.L.P.

Dated: June 11, 2020

By: /s/ Amir M. Nassihi
AMIR M. NASSIHI
SCOTT KAISER
M. KEVIN UNDERHILL

Attorneys for Defendant
SHARKNINJA OPERATING LLC

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Dated: June 11, 2020

CAPSTONE LAW APC


By: /s/ Trisha Monesi
Trisha Monesi
Tarek H. Zohdy

Attorneys for Plaintiff
KRYSTAL WALLACE

PURSUANT TO STIPULATION, IT IS SO ORDERED:

IT IS SO ORDERED.

Dated: June 22, 2020

By: 
Honorable Susan van Keulen
United States Magistrate Judge

ATTESTATION OF E-FILER

In compliance with Local Rule 5-1(i), the undersigned ECF user whose identification and password are being used to file this document hereby attests that all signatories have concurred in the filing of this document.

Dated: June 11, 2020

/s/ Amir M. Nassihi
AMIR M. NASSIHI

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EXHIBIT A

AFFIDAVIT OF _____, being duly sworn and personally appearing before the undersigned attesting officer, duly authorized by law to administer oaths, deposes and says that the within statements are true and correct:

1.

I have read the Stipulated Sharing and Non-Sharing Protective Order attached hereto, and I understand its terms and meanings.

2.

I agree that my signature below submits me to the jurisdiction of the Northern District of California, in the above captioned case and binds me to the provisions of the Stipulated Sharing and Non-Sharing Protective Order, including to all promises undertaken in the Order, as if originally
Further Affiant sayeth not.

This _____ day of _____ 2020.

BY: _____ AFFIANT.

agreed by me.

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SUBSCRIBED AND SWORN to before me

this _____ day of _____ 2020.

NOTARY PUBLIC

Name: _____

No.: _____

My Commission Expires: _____