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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TODD HALL, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

MARRIOTT INTERNATIONAL, INC.,

Defendant.

Case No.: 3:19-cv-01715-JLS-AHG

**ORDER GRANTING JOINT
MOTION FOR PROTECTIVE
ORDER**

[ECF No. 41]

Before the Court is the parties' Joint Motion for Protective Order. ECF No. 41. Having reviewed the motion and the parties' proposed protective order, good cause appearing, the Court **GRANTS** the motion. The Court enters the following Stipulated Protective Order exactly as submitted by the parties:

1 **1. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential, proprietary,
3 or private information for which special protection from public disclosure and from use for
4 any purpose other than prosecuting this litigation may be warranted. Accordingly, the
5 parties hereby stipulate to and petition the Court to enter this Stipulated Protective Order
6 (“Order”). The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords from public
8 disclosure and use extends only to the limited information or items that are entitled to
9 confidential treatment under the applicable legal principles.

10 “GOOD CAUSE” STATEMENT

11 This action is likely to involve trade secrets and/or proprietary information for which
12 special protection from public disclosure and from use for any purpose other than
13 prosecution of this action is warranted. Such confidential and proprietary materials and
14 information consist of, among other things, confidential business or financial information,
15 information regarding confidential business practices, or other confidential research,
16 development, or commercial information (including information implicating privacy rights
17 of third parties), information otherwise generally unavailable to the public, or which may
18 be privileged or otherwise protected from disclosure under state or federal statutes, court
19 rules, case decisions, or common law. Accordingly, to expedite the flow of information,
20 to facilitate the prompt resolution of disputes over confidentiality of discovery materials,
21 to adequately protect information the parties are entitled to keep confidential, to ensure that
22 the parties are permitted reasonably necessary uses of such material in preparation for and
23 in the conduct of trial, to address their handling at the end of the litigation, and to serve the
24 ends of justice, a protective order for such information is justified in this matter. It is the
25 intent of the parties that information will not be designated as confidential for tactical
26 reasons and that nothing be so designated without a good-faith belief that it has been
27 maintained in a confidential, non-public manner, and there is good cause why it should not
28 be part of the public record of this case.

1 **2. DEFINITIONS**

2 2.1 Action: Hall v. Marriott International, Inc., No. 3:19-cv-01715-JLS-AHG.

3 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
4 information or items under this Order.

5 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
6 is generated, stored or maintained) or items that qualify for protection under Federal Rule
7 of Civil Procedure 26(c), and as specified above in the “Good Cause” Statement.

8 2.4 Counsel: Outside Counsel of Record and/or House Counsel (as well as their
9 respective support staff).

10 2.5 Designating Party: a Party or Non-Party that designates information or items
11 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

12 2.6 Disclosure or Discovery Material: all items or information, regardless of the
13 medium or manner in which it is generated, stored, or maintained (including, among other
14 things, testimony, transcripts, and items), that are produced or generated in disclosures or
15 responses to discovery in this Action.

16 2.7 Expert: a person who has been retained by a Party or its counsel to serve as an
17 expert witness or as a consultant in this Action.

18 2.8 House Counsel: attorneys who are employees of a party to this Action. House
19 Counsel does not include Outside Counsel of Record or any other outside counsel.

20 2.9 Non-Party: any natural person, partnership, corporation, association, or other
21 legal entity not named as a Party to this action.

22 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
23 this Action but are retained to represent or advise a party to this Action and have appeared
24 in this Action on behalf of that party or are affiliated with a law firm which has appeared
25 on behalf of that party, and includes support staff.

26 2.11 Parties: all the parties to this Action.

27 2.12 Party: any party to this Action.

28 2.13 Professional Vendors: persons or entities that provide litigation support

1 services (e.g., photocopying, videotaping, translating, preparing exhibits or
2 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
3 their employees and subcontractors.

4 2.14 Protected Material: any Disclosure or Discovery Material that is designated
5 as “CONFIDENTIAL.”

6 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
7 a Producing Party.

8 **3. SCOPE**

9 The protections conferred by this Order cover not only Protected Material, but also
10 (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,
11 summaries, or compilations of Protected Material; and (3) any testimony, conversations,
12 or presentations by Parties or their Counsel that constitute Protected Material.

13 Any use of Protected Material at trial shall be governed by a separate agreement or
14 order. This Order does not govern the use of Protected Material at trial.

15 **4. DURATION**

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

23 **5. DESIGNATING PROTECTED MATERIAL**

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
25 Designating Party must take care to limit any designations to specific material that qualifies
26 under the appropriate standards. The Designating Party must designate for protection only
27 those parts of material, documents, items, or oral or written communications that qualify
28 so that other portions of the material, documents, items, or communications for which

1 protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
12 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
13 must be clearly so designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

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

21 A Party or Non-Party that makes original documents or materials available for
22 inspection need not designate them for protection until after the inspecting Party has
23 indicated which material it would like copied and produced. During the inspection and
24 before the designation, all of the material made available for inspection shall be deemed
25 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
26 copied and produced, the Party or Non-Party whose documents were inspected must
27 determine which documents, or portions thereof, if any, qualify for protection under this
28 Order. Then, before producing the specified documents, the Designating Party must, if

1 applicable, affix the "CONFIDENTIAL" legend to each page that contains Protected
2 Material. If only a portion or portions of the material on a page qualifies for protection, the
3 Designating Party also must clearly identify the protected portion(s) (e.g., by making
4 appropriate markings in the margins).

5 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
6 the Designating Party identify all protected testimony within thirty (30) days of receipt of
7 the deposition, pretrial, or trial transcript. The Parties agree that, until the Designating Party
8 identifies which portions, if any, of testimony are "CONFIDENTIAL," the Parties shall
9 treat all of the testimony as "CONFIDENTIAL."

10 (c) for information produced in some form other than documentary and for any
11 other tangible items, that the Designating Party affix in a prominent place on the exterior
12 of the container or containers in which the information or item is stored the legend
13 "CONFIDENTIAL." If only a portion or portions of the information or item warrant
14 protection, the Designating Party, to the extent practicable, shall identify the protected
15 portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
17 to designate qualified information or items does not, standing alone, waive the Designating
18 Party's right to secure protection under this Order for such material. Upon timely correction
19 of a designation, the Receiving Party must make reasonable efforts to assure that the
20 material is treated in accordance with the provisions of this Order.

21 To that end, an inadvertent failure to designate privileged or otherwise protected
22 information or items does not, standing alone, waive the relevant privilege or other
23 protection. Upon correction, the Receiving Party must make reasonable efforts to assure
24 that all privileged material and work product is returned or destroyed immediately. Upon
25 correction, the Receiving Party must make reasonable efforts to assure the all material
26 otherwise protected is treated accordingly.

27 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

28 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation

1 of confidentiality at any time. Unless a prompt challenge to a Designating Party's
2 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
3 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party
4 or Non-Party does not waive its right to challenge a confidentiality designation by electing
5 not to mount a challenge promptly after the original designation is disclosed.

6 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
7 process by providing written notice of each designation it is challenging and describing the
8 specific basis for each challenge, i.e., the specific reason(s) why the Challenging Party
9 contends that certain Protected Material allegedly is not protected under this Order. To
10 avoid ambiguity as to whether a challenge has been made, the written notice must recite
11 that the challenge to confidentiality is being made in accordance with this specific
12 paragraph of the Order. The Challenging Party and Designating Party shall attempt to
13 resolve each challenge in good faith and must begin the process by conferring directly (in
14 voice-to-voice dialogue; other forms of communication are not sufficient) within 10 days
15 of the date of service of notice. In conferring, the Challenging Party must explain the basis
16 for its belief that the confidentiality designation for each challenged item of Protected
17 Material was not proper and must give the Designating Party an opportunity to review the
18 designated material, to reconsider the circumstances, and, if no change in designation is
19 offered, to explain the basis for the chosen designation. A Challenging Party may proceed
20 to the next stage of the challenge process only if it has engaged in this meet-and-confer
21 process first or establishes that the Designating Party is unwilling to participate in the meet-
22 and-confer process in a timely manner.

23 6.3 Judicial Intervention. If the Challenging Party and Designating Party cannot
24 resolve a challenge without court intervention, the Challenging Party may seek court
25 intervention. The burden of persuasion in any such challenge proceeding shall be on the
26 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
27 harass or impose unnecessary expenses and burdens on other parties) may expose the
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1 Challenging Party to sanctions. Unless the Designating Party has expressly waived the
2 confidentiality designation, the Parties shall continue to afford the Protected Material in
3 question the level of protection to which it is entitled under the Designating Party's
4 designation until the court rules on the challenge. Each such motion must be accompanied
5 by a competent declaration affirming that the movant has complied with the meet-and-
6 confer requirements imposed in the preceding paragraph.

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

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is
9 disclosed or produced by another Party or Non-Party in connection with this Action only
10 for prosecuting, defending, or attempting to settle this Action. Such Protected Material
11 may be disclosed only to the categories of persons and under the conditions described in
12 this Order. When the Action has been terminated, a Receiving Party must comply with the
13 provisions of section 13 below (FINAL DISPOSITION).

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

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
18 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party
19 may disclose Protected Material only to:

- 20 (a) a Party;
- 21 (b) the Receiving Party's Outside Counsel of Record in this action, as well as
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to
23 disclose the information for this Action;
- 24 (c) the officers, directors, and employees (including House Counsel) of the
25 Receiving Party to whom disclosure is reasonably necessary for this Action;
- 26 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure
27 is reasonably necessary for this litigation and who have signed the "Acknowledgment and
28 Agreement to Be Bound" (Exhibit A);

1 (e) the court and its personnel;

2 (f) court reporters and their staff,

3 (g) professional jury or trial consultants, mock jurors, and Professional Vendors
4 to whom disclosure is reasonably necessary for this Action and who have signed the
5 "Acknowledgment and Agreement to Be Bound" form attached hereto as Exhibit A;

6 (h) the author or recipient of a document constituting or containing the Protected
7 Material or a custodian or other person who otherwise possessed or knew the information
8 constituting Protected Material;

9 (i) deponents and their attorneys to whom disclosure during a deposition in this
10 Action is reasonably necessary, provided that: (1) the deponent and its attorney each first
11 sign the "Acknowledgment and Agreement to Be Bound" form attached hereto as Exhibit
12 A; and (2) the deponent and its attorney is not permitted to keep any Protected Material,
13 unless otherwise agreed by the Designating Party or ordered by the court. Pages of
14 transcribed deposition testimony or exhibits to depositions that reveal Protected Material
15 may be separately bound by the court reporter and may not be disclosed to anyone except
16 as permitted under this Stipulated Protective Order;

17 (j) any mediator or settlement officer, and their supporting personnel, mutually
18 agreed upon by the Parties; and

19 (k) any other person as to whom the parties in writing agree.

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

22 If a Party is served with a subpoena or a court order issued in other litigation that
23 compels disclosure of any Protected Material, that Party must:

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

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

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

3 If the Designating Party timely seeks a protective order, the Party served with the
4 subpoena or court order shall not produce any Protected Material before a determination
5 by the court from which the subpoena or order issued, unless the Party has obtained the
6 Designating Party's permission. The Designating Party shall bear the burden and expense
7 of seeking protection in that court of its confidential material – and nothing in these
8 provisions should be construed as authorizing or encouraging a Receiving Party in this
9 action to disobey a lawful directive from another court.

10 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
11 **PRODUCED IN THIS LITIGATION**

12 (a) The terms of this Order are applicable to information produced by a Non-Party
13 in this action and designated as "CONFIDENTIAL." Such information produced by Non-
14 Parties in connection with this Action is protected by the remedies and relief provided by
15 this Order. Nothing in these provisions should be construed as prohibiting a Non-Party
16 from seeking additional protections.

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

21 1. promptly notify in writing the requesting party and the Non-Party that
22 some or all of the information requested is subject to a confidentiality agreement with a
23 Non-Party;

24 2. promptly provide the Non-Party with a copy of this Order, the relevant
25 discovery request(s), and a reasonably specific description of the information requested;

26 3. meet and confer with the requesting party to consider whether the Party
27 can produce the Disclosure or Discovery Material containing a Non-Party's confidential
28 information without disclosing the confidential information; and

1 4. make the information requested available for inspection by the Non-
2 Party.

3 (c) If the Non-Party fails to object or seek a protective order from this court within
4 21 days of receiving the notice and accompanying information, the Receiving Party may
5 produce the Non-Party's confidential information responsive to the discovery request. If
6 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
7 information in its possession or control that is subject to the confidentiality agreement with
8 the Non-Party before a determination by the court. Absent a court order to the contrary, the
9 Non-Party shall bear the burden and expense of seeking protection in this court of its
10 Protected Material.

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

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

19 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
20 **PROTECTED MATERIAL**

21 When a producing party gives notice to receiving parties that certain inadvertently
22 produced material is subject to a claim of privilege or other protection, the obligations of
23 the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
24 This provision is not intended to modify whatever procedure may be established in an e-
25 discovery order that provides for production without prior privilege review. Pursuant to
26 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
27 effect of disclosure of a communication or information covered by the attorney-client
28 privilege or work-product protection, the parties may incorporate their agreement in this

1 Order.

2 **12. MISCELLANEOUS**

3 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
4 to seek its modification by the court in the future.

5 12.2 Right to Assert Other Objections. By stipulating to the entry of this Order, no
6 Party waives any right it otherwise would have to object to disclosing or producing any
7 information or item on any ground not addressed in this Order. Similarly, no Party waives
8 any right to object on any ground to use in evidence of any of the material covered by this
9 Order.

10 12.3 Filing Protected Material. No document shall be filed under seal unless
11 counsel secures a court order allowing the filing of a document or portion thereof under
12 seal pursuant to Local Rule 79.2. An application to file a document under seal shall be
13 served on opposing counsel, and on the person or entity that has custody and control of the
14 document, if different from opposing counsel. If opposing counsel, or the person or entity
15 who has custody and control of the document, wishes to oppose the application, they must
16 contact the chambers of the judge who will rule on the application to notify the court that
17 an opposition to the application will be filed. Nothing in this paragraph 12.3 is intended to
18 impose requirements which are in addition to or more onerous than those imposed by the
19 Federal Rules of Civil Procedure and the Local Rules.

20 12.4 The Court may modify this Order sua sponte in the interests of justice or for
21 public-policy reasons.

22 **13. FINAL DISPOSITION**

23 This Order shall survive the final termination of this Action, to the extent that the
24 information contained in the Protected Material is not or does not become known to the
25 public, and the Court shall retain jurisdiction to resolve any dispute concerning the use of
26 Protected Material disclosed hereunder. Upon termination of this Action, the Parties'
27 counsel shall assemble and return to each other all documents, material and deposition
28 transcripts designated as confidential and all copies of same, or shall certify the destruction

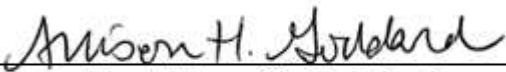
1 thereof.

2 **14. VIOLATIONS**

3 Any violation of this Order may be punished by any and all appropriate measures
4 including, without limitation, contempt proceedings and/or monetary sanctions.

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6 **IT IS SO ORDERED.**

7 Dated: November 19, 2020

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Honorable Allison H. Goddard
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury that I
6 have read in its entirety and understand the Stipulated Protective Order that was issued by
7 the United States District Court for the Southern District of California on [_____] in
8 the case of Hall v. Marriott International, Inc., Case No. 3:19-cv-01715-JLS-AHG. I agree
9 to comply with and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
12 manner any information or item that is subject to this Stipulated Protective Order to any
13 person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Southern District of California for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this
17 action.

18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 [printed name]

22 Signature: _____

23 [signature]

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