

1 enter an order to unseal them, or the documents are unsealed pursuant to
2 Local Rule.

3 *Id.*

4 While the remaining language in Paragraph 6 is *not* inconsistent with the Ninth Circuit’s directives
5 in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) regarding filing confidential
6 documents or utilizing confidential documents at trial, the court issues this order to clarify that the parties
7 must adhere to those directives as set forth below.

8 A party seeking to file a confidential document or utilize a confidential document at trial must
9 comply with the Ninth Circuit’s directives in *Kamakana*, 447 F.3d 1172:

10 Unless a particular court record is one “traditionally kept secret,” a “strong
11 presumption in favor of access” is the starting point. ... A party seeking to
12 seal a judicial record then bears the burden of overcoming this strong
13 presumption by meeting the “compelling reasons” standard. ... that is, the
14 party must “articulate[] compelling reasons supported by specific factual
15 findings,” that outweigh the general history of access and the public policies
16 favoring disclosure

17 In general, “compelling reasons” sufficient to outweigh the public’s
18 interest in disclosure and justify sealing court records exist when such “court
19 files might have become a vehicle for improper purposes,” such as the use
20 of records to gratify private spite, promote public scandal, circulate libelous
21 statements, or release trade secrets. ... The mere fact that the production of
22 records may lead to a litigant’s embarrassment, incrimination, or exposure
23 to further litigation will not, without more, compel the court to seal its
24 records.

25 *Id.* at 1178-79 (citations omitted).

26 To justify the sealing of discovery materials attached to non-dispositive motions, a particularized
27 showing of good cause is required. *Id.* at 1180. To justify the sealing of discovery materials attached to
28 dispositive motions or used at trial, however, a higher threshold is required: a particularized showing that
compelling reasons support secrecy. *Id.* “A ‘good cause’ showing will not, without more, satisfy a
‘compelling reasons’ test.” *Id.* When private discovery materials are attached to a dispositive motion (or
response or reply) or used at trial, such materials become a part of a judicial record, and as such “are public
documents almost by definition, and the public is entitled to access by default.” *Id.*

Accordingly, and for good cause shown,

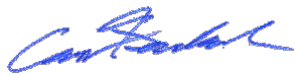
IT IS ORDERED that:

1. Deleted portions of Paragraph 6 of the parties’ Stipulated Protective Order (#23) are **NOT APPROVED.**

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- 2. The parties must comply with the requirements of Local Rule 10-5(b) and the Ninth Circuit’s decision in *Kamakana*, 447 F.3d 1172, with respect to any documents filed under seal or used at trial.
- 3. The parties’ Stipulated Protective Order (#23), as modified and signed by the court, is **APPROVED.**

Dated this 14th day of March, 2013.



CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE

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9 CENTENNIAL IMPORTS, INC. d/b/a
10 CENTENNIAL MAZDA

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

13 PAIGE POOLE) CASE NO. 2:12-cv-00647-MMD-VCF
14)
15 Plaintiff,)
16) **STIPULATED PROTECTIVE ORDER**
17 vs.)
18)
19 CENTENNIAL IMPORTS, INC. d/b/a)
20 CENTENNIAL MAZDA)
21 Defendants.)
22)

23 **STIPULATED PROTECTIVE ORDER**

24 Plaintiff PAIGE POOLE and defendant CENTENNIAL IMPORTS, INC. d/b/a
25 CENTENNIAL MAZDA (hereafter collectively referred to as “the Parties”), by and through
26 their respective counsel of record, hereby stipulate and request the Court issue an Order
27 protecting the confidential nature of certain records and information as may be produced during
28 the course of the above-captioned matter as follows:

The Parties acknowledge that during the course of this action, documents and/or
information considered confidential by at least one of the Parties may be produced, including,
but not limited to: (1) the production of information or documents proprietary or confidential as
to plaintiff PAIGE POOLE and/or defendant CENTENNIAL IMPORTS, INC. d/b/a
CENTENNIAL MAZDA (hereafter referred to as “CENTENNIAL”), including, without
limitation, CENTENNIAL’s corporate business, managers, members, employees, and third-

1 party administrators; (2) similar information of Parties hereto; and (3) other potentially "private"
2 information concerning or belonging to non-parties to the present litigation.

3 **Therefore, the following is hereby stipulated by and between all parties:**

4 1. If any person or entity, whether or not a party to the instant action, produces answers
5 to interrogatories, or documents or other things which it considers constitutes Confidential
6 Information as defined above; or

7 2. There is deposition testimony which a person or entity, whether or not a party to the
8 instant action, believes contains Confidential Information; or

9 3. Third parties produce information which they assert is confidential, the following
10 procedure shall govern pursuant to F.R.C.P. 26 (c) et. seq.:

11 A. Any documents (and the contents thereof), things or information falling
12 within the definitions set forth in Paragraph I immediately following that
13 are produced may be designated and marked, in whole or in part,
14 "Confidential" by the party producing the documents or information at the
15 time the documents are delivered to or made available for inspection by
16 any party.

17 I. "Confidential Information" is defined herein as (a) employment
18 records of any employees or former employees of any party; (b)
19 confidential notes, memoranda, and statements regarding non-party
20 employees; (c) confidential information concerning the discipline
21 and/or termination of non-party employees and former employees;
22 (d) the production of information or documents proprietary to,
23 including by way of example and not limitation, tax records,
24 financial statements, the identity of customers and suppliers; and
25 (e) other private information of non-parties to the present
26 litigation; (f) financial records and business records of any person
27 or entity; and (g) every aspect of all proprietary business
28 information.

B. If a party produces to another party items that contain Confidential
Information as defined above, that party may designate one or more
documents, or a portion of a document, as "Confidential" before
producing that document to the other party. Such designation shall be
made by marking, stamping or typing the word "**Confidential**" on the
document at the time it is produced to the receiving party's counsel.

C. Any party may designate deposition testimony as "Confidential" by orally
making such a designation on the record either at the commencement of
the deposition, at the time the testimony is given, and/or before the end of

1 that day's questioning. Following such designation, the court reporter
2 shall mark "Confidential" on the transcript or the portion thereof
3 containing the "Confidential" testimony.

- 4 D. In addition, documents or items produced by one party may be designated
5 "Confidential" by the other party by marking the document, in whole or in
6 part, "Confidential" in the same manner and by then forwarding a copy of
7 the marked document back to the producing party.
- 8 E. If the documents or items at issue have been numbered by the producing
9 party, the party seeking the designation may also designate by number
10 each document it believes should be "Confidential".
- 11 F. If the receiving party has no objection to the "Confidential" designation,
12 the receiving party may either expressly notify the producing party or
13 allow the ten calendar-day objection period (set forth below) to lapse.
14 Where there has been no written objection made, once a document or item
15 has been produced and designated as provided herein to the receiving
16 party, the document or item shall be treated as "Confidential",
17 respectively, pursuant to this Stipulated Protective Order, until further
18 order of the Court.

19 4. The following protocol shall apply in the event of an objection to a designation of
20 "Confidential":

- 21 A. If there is an objection to the "Confidential" designation, the party so
22 objecting must notify the other party in writing of both the objection and
23 the grounds for the objection within ten calendar days from the date the
24 designation was made or the document(s)/item(s) received, whichever is
25 later, and the procedure in Subparagraph B, *infra*, shall apply.
- 26 B. If the parties do not agree that the documents, information or testimony
27 should be treated as confidential, the parties shall attempt to resolve the
28 issue by meeting and conferring. If a resolution does not occur, either
party may file a motion with the Court to resolve the dispute. Such
motion must be filed within 30 calendar days of receipt of the written
objection to the designation. If an objection has been raised, the
documents, testimony and/or information at issue shall be governed by
Paragraphs 3 A through F, inclusive, of this Stipulated Protective Order,
and treated and regarded as "Confidential" from the date of disclosure
and/or production until the dispute is resolved informally by the parties or
a final order is issued by the court resolving the dispute. In the event of
such motion, the parties having entered into this Stipulation and the
existence of the Court's Order entered thereon shall not affect the burden
of proof on any such motion, nor impose any burdens upon any party that
would not exist had this Stipulated Protective Order not been entered.

1 5. A document or testimony, or portion, summary, or abstract thereof, that is to be
2 treated "Confidential" pursuant to this Stipulated Protective Order shall not be disclosed to any
3 persons other than the parties, counsel of record for the parties, attorneys, legal assistants and
4 clerical personnel employed by them, and other persons to whom disclosure is necessary for the
5 purposes of this litigation. (This allows disclosure to the officers, directors, employees or former
6 employees of the parties, persons requested by counsel for any party to furnish technical or
7 expert service or to give expert testimony with regard to the subject matter of the document(s),
8 item(s) or expert testimony for the trial of this action). However, each such person to whom a
9 party makes such disclosure shall read this Stipulated Protective Order and acknowledge in
10 writing that he/she is fully familiar with the terms hereof and agrees to comply with, and be
11 bound by, this Stipulated Protective Order until modified by either further order of the Court or
12 agreement of all the affected parties.

13 6. Any "Confidential" documents, testimony, or information to be filed with this Court
14 or any pleadings or memorandum purporting to reproduce or paraphrase all or any portion of
15 such confidential material may not be filed without first obtaining leave of court.

16 Notwithstanding any agreement among the parties, the party seeking to file a paper under seal
17 bears the burden of overcoming the presumption in favor of public access to papers filed in
18 court. ~~Upon being given leave of court, the confidential data shall be filed in a sealed envelope~~
19 ~~or other appropriately sealed container on which shall be recorded the title of this action, the~~
20 ~~word "Confidential" and a statement substantially in the following form:~~

21 ~~"This envelope or container filed in this case by _____~~
22 ~~is not to be opened, or the contents thereof revealed, except by prior~~
23 ~~order of the court."~~

24 NOTE: If the document is filed electronically, the appropriate protocol for that
25 purpose will be utilized.

26 If application for leave of court to file any document(s) under seal is denied, then the
27 party who sought leave will be relieved, in that instance only, and only as to such documents for
28 which leave of court was denied, from complying with this stipulation in relation to that filing.

///

1 7. Any documents, testimony, and/or information that has been rendered “Confidential”
2 under the parties’ Stipulated Protective Order is to be used only in the above-captioned action,
3 and may not be used in any other action or for any other purpose unless the party seeking to
4 make such use has acquired the documents, testimony, and/or information from a source
5 independent of the above-captioned action.

6 8. Within 45 calendar days of the entry of the final order concluding this judicial
7 proceeding, all “Confidential” documents or things; any copies, summaries, and abstracts
8 thereof; or notes relating thereto, shall be returned to the producing party, except as otherwise
9 ordered by the Court or stipulated in writing by the parties. Counsel of record shall obtain return
10 of such information, things, and/or documents from any person to whom that counsel has made
11 available the documents or information produced by the other party designated as
12 “Confidential”. Notwithstanding any other language contained in this Order, each party’s
13 counsel of record shall be allowed to retain for its files a copy of all pleadings, motions, exhibits,
14 or other papers filed and/or lodged with the Court, and of all documents designated by both
15 parties or any non-party as “Confidential” and/or summaries or abstracts thereof (including but
16 not limited to documents of any type prepared by a party and/or counsel that are subject to the
17 attorney-client privilege and/or the attorney work-product doctrine. **All such documents and
18 information retained by counsel of record must be maintained in a confidential manner
19 and used only in accordance with this Order.**

20 9. This Stipulated Protective Order may be amended without prior leave of the Court by
21 the agreement of counsel for the parties in the form of a stipulation and order that shall be filed
22 in this case. Nothing herein shall be construed so as to prevent any party from seeking relief
23 from this Order at any time.

24 10. To the extent that the identity of any employee (including independent contractors),
25 customer or supplier of any party or any non-party is disclosed or identified in any data produced
26 in this case and such data is designed as confidential as provided above, no party (including
27 counsel and experts) to this case shall make contact with such employee (including independent
28 contractors), customer or supplier without the prior specific consent of the party who produced

1 the data in which such person or entity has been identified.

2 11. The parties reserve their rights to assert the confidentiality of documents and
3 information produced irrespective of their production pursuant to this Stipulated Protective
4 Order.

5 DATED: March 13, 2013

DATED: March 8, 2013

7 **McKAY LAW FIRM, CHTD.**

**LAW OFFICES OF MICHAEL P.
BALABAN**

8
9
10 By: 

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18 CENTENNIAL MAZDA

Attorneys for Plaintiff
PAIGE POOLE

19 **ORDER**

20 IT IS SO ORDERED.

21 DATED this 14th day of March, 2013

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Honorable Cam Ferenbach
United States Magistrate Judge