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Attorneys for Defendant
Amazon.com, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

STATE FARM FIRE AND
CASUALTY COMPANY, as subrogee
of Troy Daigneau,

Plaintiff,

v.

CUBE ELECTRONICS CO., LTD.
a/k/a Cube (Shenzhen) Electronics
Tech Co., Ltd.; AMAZON.COM INC.;
BIKE REVOLUTION BIKE SHOP
d/b/a Elite Cycle & Sports; MEGA
SINAI, LLC; and DOES 1 through X,
inclusive,

Defendants.

Case No. 2:17-cv-02109-JCM-GWF

~~(Proposed)~~ Revised Stipulated
Protective Order

(Proposed) Revised Stipulated Protective Order

Plaintiff and defendants Amazon.com, Inc. ("Amazon") and Bike
Revolution Bike Shop d/b/a Elite Cycle & Sports ("Bike Revolution")
(defendants Cube Electronics Co., LTD and Mega Sinai, LLC have not
appeared) contemplate that discovery will involve information and
documents that contain personal medical and financial information, trade

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1 secrets, proprietary or competitively sensitive financial and business
2 information, and other private or confidential information. Plaintiff,
3 Amazon.com, and Bike Revolution hereby stipulate to the following
4 stipulated protective order and request entry of this order to establish
5 procedures to enable the parties to obtain discovery of such information and
6 documents; to protect against public disclosure; and to promptly resolve
7 disputes over confidentiality.

8 **The Court hereby orders:**

9 1. Scope and Application of Protective Order. This Protective
10 Order governs all documents, information, or other material that is
11 designated "Confidential Information" as defined herein, and that is
12 produced in connection with this litigation by any person or entity (the
13 "producing party") to any other person or entity (the "receiving party"),
14 regardless whether the person or entity producing or receiving the
15 Confidential Information is a party.

16 2. Definitions.

17 Confidential Information. "Confidential Information"
18 means any information that is private, confidential, or proprietary, including
19 the following representative but non-exclusive examples:

- 20 • taxes and other financial records
- 21 • accounting or financial statements (not including publicly available
22 financial statements)
- 23 • trade secrets
- 24 • commercial, financial, pricing, budgeting, revenue, profit, or
25 accounting information
- 26 • information about existing and potential customers
- 27 • marketing studies and projections
- 28 • business strategies, decisions, or negotiations

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- 1 • compensation, evaluations, and employment information
- 2 • proprietary information about affiliates, parents, subsidiaries, and
- 3 third-parties with
- 4 • whom the parties have or have had business relationships
- 5 • any other information whose disclosure could cause an invasion of
- 6 privacy or
- 7 • competitive business harm.

8 A protective order is warranted because Confidential Information
9 derives value from not being publicly known, and public disclosure could
10 lead to serious and unwarranted injury.

11 2.2. Documents. The term "documents" includes all
12 information or communications in any written or electronic form, regardless
13 of format, and includes visual depictions such as photographs.

14 3. Designation of Confidential Information.

15 3.1. Good Faith Claims. All claims of confidentiality and
16 objections to those claims must be made under a good faith belief that the
17 information satisfies (or, in the case of objections, does not satisfy) the
18 definition of Confidential Information.

19 3.2. Produced Documents. A party producing documents
20 that it believes constitute or contain Confidential Information shall label the
21 documents with the following legend or something substantially similar to
22 clearly advise of the confidential nature of the contents:

23
24

CONFIDENTIAL: Subject to Protective Order in Case No. 2:17-cv-02109-JCM-GWF in the United States District Court for the District of Nevada
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25
26 The label shall not obliterate or obscure the contents. If a document
27 containing Confidential Information is produced in native format, the file
28 name shall contain the term "Confidential Information" or otherwise clearly

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1 indicate that it contains information subject to this Order. If any person or
2 party makes copies of documents designated as containing Confidential
3 Information, each copy must be marked as containing Confidential
4 Information in the same form as the original document.

5 A party producing documents that are stored on data storage devices
6 shall designate the data storage device as containing Confidential
7 Information, by labeling the data storage device and files as described
8 above. If the receiving party or other persons or entities to whom disclosure
9 is authorized under this order make a copy of any data storage device
10 designated by the producing party as containing Confidential Information,
11 the receiving party or other authorized person shall mark each copy as
12 containing Confidential Information in the same form as the notice on the
13 original data storage device. If the receiving party or other authorized
14 person prints or makes copies of the documents stored on such data storage
15 device, each page must be copied with the label specified in this section.

16 3.3. Interrogatory Answers. If a party answering an
17 interrogatory believes that its answer contains Confidential Information, it
18 shall answer in a separate document that is designated as Confidential
19 Information.

20 3.4. Inspections of Documents. If the parties inspect
21 documents rather than produce copies, no designation of Confidential
22 Information needs to be made before the inspection. The party making
23 documents available for inspection may designate categories of documents
24 that contain Confidential Information, and the information contained in
25 those documents shall be considered Confidential Information under this
26 Order. If the inspecting party selects documents to be copied, the producing
27 party shall designate Confidential Information when the copies are
28 produced.

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1 3.5. Deposition Transcripts. No person except those
2 permitted access to Confidential Information by this Order can attend
3 depositions when Confidential Information is disclosed. Within 30 days
4 after receiving a deposition transcript, a party may inform the other
5 parties if the transcript or portions of it are designated as Confidential
6 Information. If a party indicates at a deposition that the Confidential
7 Information has been disclosed in the deposition, the transcript in its
8 entirety shall be treated as Confidential Information for the 30 days. All
9 persons and parties in possession of a copy of a designated deposition
10 transcript shall appropriately mark it as containing Confidential
11 Information.

12 3.6. Multipage Documents. A party may designate all
13 pages of an integrated, multipage document, including a deposition
14 transcript and interrogatory answers, as Confidential Information by placing
15 the label specified in subparagraph 3.2 on the first page of the document.
16 If a party wishes to designate only certain portions of an integrated,
17 multipage document as Confidential Information, it should designate such
18 portions immediately below the label on the first page of the document and
19 place the labels specified in subparagraph 3.2 on each page of the document
20 containing Confidential Information.

21 4. Designations by Another Party.

22 4.1. Notification of Designation. If a party other than the
23 producing party believes that a producing party has produced a document
24 that contains or constitutes Confidential Information of the non-producing
25 party, the non-producing party may designate the document as Confidential
26 Information by notifying all parties in writing within 30 days of service of
27 the document.
28

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1 4.2. Return of Documents. Whenever a party other than
2 the producing party designates a document as Confidential Information
3 under subparagraph 4.1, each party receiving the document shall either add
4 the Confidential Information designation or substitute a copy of the
5 document bearing such designation for each copy of the document
6 produced by the producing party. Each party shall destroy all undesignated
7 copies of the document or return those copies to the producing party, at the
8 direction of the producing party.

9 5. Objections to Designations.

10 5.1. Notice of Objection. Any party objecting to a
11 designation of Confidential Information, including objections to portions of
12 designations of multipage documents, shall notify the designating party and
13 all other parties of the objection in writing within 30 days of receiving the
14 designation or, if a document is first produced fewer than 30 days before
15 trial, within half of the time remaining before trial. This notice must identify
16 each document that the objecting party in good faith believes should not be
17 designated as Confidential Information and provide a brief statement of the
18 grounds for such belief.

19 5.2. Conference Regarding Objection. The parties with an
20 interest in resolution of the objection shall confer within 10 days after such
21 objection to attempt to resolve their differences, unless the parties agree to a
22 longer time. If the parties cannot resolve their differences, the objecting
23 party shall have 14 days after the conference to file a motion to remove the
24 Confidential Information designation.

25 5.3 Burden of Proof. To the extent that any Confidential
26 Information is challenged before the Court, the producing party will bear
27 the burden of demonstrating why the information in contention was
28 properly designated.

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5.4. Treatment after Objection Is Raised. All documents, information and other materials initially designated as Confidential Information shall be treated as Confidential Information in accordance with this Order unless and until the Court rules otherwise. If the Court rules that a Confidential Information designation should not be maintained as to a particular document, the producing party shall, upon written request by a party, provide that party a copy of that document without the Confidential Information designation.

6. Custody. All Confidential Information and all copies, extracts, and summaries thereof, shall be retained by the receiving party in the custody of counsel of record, or by persons to whom disclosure is authorized under subparagraph 7.1.

7. Handling of Confidential Information Before Trial.

7.1. Authorized Disclosures. Confidential Information shall be disclosed by the receiving party only to the following persons:

- a. Counsel for the parties, including their associates, clerks, paralegals, and secretarial personnel;
- b. Qualified persons taking testimony in this litigation involving such Confidential Information, and necessary stenographic, videotape and clerical personnel;
- c. Deposition and trial witnesses;
- d. Experts and their staff who are consulted by counsel for a party in this litigation;
- e. Parties and their employees and insurers with a discernible need to know;
- f. In-house counsel and paralegals;
- g. Vendors employed by counsel for copying, scanning, and handling

1 of documents and data; and

2 h. The Court hearing this litigation and the Court's staff, subject to the
3 Court's processes for filing materials under seal.

4 Such disclosures are authorized only to the extent necessary to
5 investigate, prosecute, or defend the litigation.

6 7.2. Acknowledgement of Protective Order. Confidential
7 Information may not be disclosed to persons under subparagraphs 7.1(c) or
8 7.1(d) until the receiving party has obtained a written acknowledgment from
9 such person, in the form in Appendix A , that he or she has received a copy
10 of this Order and has agreed to be bound by it. A party who discloses
11 Confidential Information in accordance with subparagraphs 7.1(c) or 7.1(d)
12 shall retain the written acknowledgment from each person receiving
13 Confidential Information, shall maintain a list of all persons to whom a
14 receiving party has disclosed Confidential Information, and shall furnish the
15 written acknowledgements and disclosure list to the Court for in camera
16 review upon its request. Furnishing the written acknowledgements and
17 disclosure list to the Court shall not constitute a waiver of the attorney work
18 product or attorney-client privilege.

19 7.3. Disclosure to Competitors. Before disclosing
20 Confidential Information to any authorized person who is a competitor (or
21 an employee of a competitor) of the designating party, the party wishing to
22 make such disclosure shall give at least 14 days notice in writing to the
23 designating party, stating the names and addresses of the person(s) to
24 whom the disclosure will be made, and identifying with particularity the
25 documents to be disclosed. If, within the 14-day period, a motion is filed
26 objecting to the proposed disclosure, disclosure is not authorized until the
27 Court orders otherwise. For purposes of this Order, "competitor" means any
28 person or entity that operates any online or physical marketplace or retail
business with more than 1,000 employees.

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1 7.4. Unauthorized Disclosures. All persons receiving
2 Confidential Information under the terms of this Order agree to the
3 jurisdiction of this Court for all matters arising from the improper disclosure
4 or use of such Confidential Information. If Confidential Information is
5 disclosed to any person other than in the manner authorized by this Order,
6 the party or person responsible for the disclosure, and any other party or
7 person who is subject to this Order and learns of such disclosure, shall
8 immediately bring such disclosure to the attention of the designating party.
9 Without prejudice to other rights and remedies of the designating party, the
10 responsible party or person shall make every effort to retrieve the
11 Confidential Information and to prevent further disclosure.

12 7.5. Court Filings. Should a receiving party wish to file
13 Confidential Information with the Court, the party wishing to make such
14 filing shall give at least 14 days' notice in writing to the designating party.
15 The designating party shall have the opportunity to propose redactions to
16 the Confidential Information so that it may be filed on the public docket or
17 to file a motion to allow the Confidential Information to be filed under seal.
18 No Confidential Information may be filed with the Court until any such
19 motion has been ruled upon.

20 7.6. Burden of Proof. In the event a party determines that
21 a document that has been designated as confidential must be filed with the
22 Court, that party shall file a motion to seal. The parties also agree that any
23 motion to seal will address the applicable standard and explain why that
24 standard has been met as outlined in *Kamakana v. City and County of*
25 *Honolulu*, 447 F.3d 1172 (9th Cir. 2006). The parties further agree that any
26 documents filed under seal shall be filed in accordance with the Court's
27 electronic filing procedures. *See* LR IA 10-5. In the event that the sole
28 ground for a motion to seal is that the opposing party (or non-party) has

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1 designated a document as subject to protection pursuant to this stipulated
2 protective order, the movant must notify the opposing party (or non-party)
3 as outlined in Section 7.5 above. The designating party must then make a
4 good faith determination if the relevant standard for sealing has been met.
5 To the extent the designating party does not believe the relevant standard
6 for sealing can be met, it shall indicate that the document may be filed
7 publicly no later than seven days after receiving notice of the intended
8 filing. To the extent the designating party believes that the relevant
9 standard can be met, it shall provide a declaration supporting that assertion
10 no later than seven days after receiving notice of the intended filing. If the
11 designating party fails to provide such a declaration in support of a motion
12 to seal, the filing party shall file a motion to seal so indicating and the Court
13 may order the document filed in the public record.¹

14 8. Care in Storage. All persons having Confidential
15 Information shall exercise reasonable care to protect against inadvertent
16 disclosure, disclosure to unauthorized persons, and theft or hacking.

17 9. Handling during Trial. Confidential Information
18 that is subject to this Order may be marked and used as trial exhibits by any
19 party, subject to terms and conditions imposed by the Court.

20 10. No Implied Waivers. The entry of this Order shall
21 not be interpreted as a waiver of the right to object to the furnishing of
22 information or documents in response to discovery requests or to object to a
23 requested inspection of documents or facilities. Nor is production of any
24

25
26 ¹In the event of an emergency motion, the above procedures shall not
27 apply. Instead, the movant shall file a motion to seal and the designating
28 party shall file a declaration in support of that motion to seal within three
days of its filing. If the designating party fails to timely file such a
declaration, the Court may order the document filed in the public record.

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1 document or information under this Order an admission that it is admissible
2 in evidence.

3 11. Inadvertent Failure to Designate as Confidential. The
4 inadvertent failure to designate any information as Confidential does not
5 waive a party's claim of confidentiality. In the event of disclosure of such
6 information, the information shall be designated as Confidential
7 Information by the party as soon as reasonably possible after learning of the
8 disclosure and such information shall thereafter be treated as Confidential
9 Information subject to this Order. No liability shall attach to any party's use
10 or disclosure of such information from the time of receipt until the party
11 properly designates it as Confidential Information.

12 12. Inadvertent Disclosure of Privileged Documents or
13 Information. If a party inadvertently produces a document or information
14 that it could have withheld, in whole or in part, under a legitimate claim of
15 privilege, the inadvertent production shall not waive any privilege or
16 result in a subject matter waiver. A party who determines that it may have
17 received potentially privileged documents or information shall immediately
18 notify the producing party. A producing party may demand return of any
19 inadvertently produced document or information, and the receiving party
20 shall immediately return them (and any copies thereof) and delete all
21 electronic versions and all notes or other work product reflecting the
22 contents of such material. Alternatively, the receiving party may seek in
23 camera review within 10 days to obtain a court ruling on privilege, and the
24 parties shall not use such documents or information until the court rules.

25 13. Parties' Own Documents. This Order does not
26 restrict the parties in their use or disclosure of their own documents and
27 information.
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14. Motion to Compel Production of Confidential Information. If any third party moves to compel production of Confidential Information, the party subject to such motion shall immediately notify the parties who originally produced or designated the Confidential Information to allow them an opportunity to oppose the motion. In addition, if a party is ordered to produce Confidential Information covered by this Order, notice and, if available, a copy of the order compelling disclosure, shall immediately be given to the parties who originally produced or designated such Confidential Information. Nothing in this Order requires the party who is ordered to produce such Confidential Information to challenge or appeal such an order.

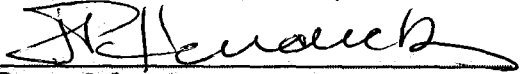
15. No Effect on Other Rights. This Order does not abrogate or affect any pre-existing contractual, statutory, or other legal obligations or rights of any party with respect to Confidential Information.

16. Handling upon Conclusion of Litigation. All parties, counsel, and persons to whom disclosure was made shall return all Confidential Information to the designating party within 90 days of the conclusion of litigation. Counsel shall certify in writing that all such Confidential Information has been returned. Counsel for each party also shall contact each person to whom that party has provided a copy of any Confidential Information and request the documents be returned. In lieu of returning Confidential Information, the person or party possessing it may destroy it and certify such destruction in writing.

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LISA A. TAYLOR

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Attorney for Plaintiff

ORDER

IT IS SO ORDERED.

George Foley Jr.
United States Magistrate Judge
Dated: 3/20/2018

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Submitted by:

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Dated: 12/28, 2017.

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