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9 *CR England, Inc.*

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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE DISTRICT OF NEVADA**

10 RANDALL EUGENE ANDERSON,

11 Plaintiff,

12 v.

13 WARREN G. FENTON, an individual, CR  
14 ENGLAND, INC., a business incorporated  
15 in the State of Utah and DOES 3-100,

16 Defendants,

Case No.: 3:17-cv-00486-RCJ-WGC

**STIPULATED CONFIDENTIALITY**  
**AGREEMENT AND DISCOVERY**  
**CONFIDENTIALITY ORDER**

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18 Plaintiff Randall Eugene Anderson (“Plaintiff”) by and through his counsel, and  
19 Defendants Warren G. Fenton and C.R. England, Inc. (“Defendants”) by and through their  
20 counsel (Plaintiff and Defendants collectively referred to as the “Parties”), acknowledge that  
21 the discovery in the above-captioned matter is likely to involve the disclosure of confidential  
22 information and, therefore, the Parties hereby stipulate and agree as follows:

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24 1. Any party to this litigation and any third-party shall have the right to designate as  
25 “Confidential” and subject to this Stipulated Confidentiality Agreement and Discovery  
26 Confidentiality Order and any information, document, or thing, or portion of any document or  
27 thing: (a) that contains trade secrets, competitively sensitive technical, marketing, financial,  
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1 sales or other confidential business information, or (b) that contains private or confidential  
2 personal information, or (c) that contains information received in confidence from third parties,  
3 or (d) which the producing party otherwise believes in good faith to be entitled to protection  
4 under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure. Any party to this litigation or  
5 any third party covered by this Stipulated Confidentiality Agreement and Discovery  
6 Confidentiality Order, who produces or discloses any Confidential material, including without  
7 limitation any information, document, thing, interrogatory answer, admission, pleading, or  
8 testimony, shall mark the same with the foregoing or similar legend: “CONFIDENTIAL” or  
9 “CONFIDENTIAL – SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER”  
10 (hereinafter “Confidential”).  
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13 2. Any party to this litigation and any third-party shall have the right to designate as  
14 “Attorneys’ Eyes Only” and subject to this Stipulated Confidentiality Agreement and Discovery  
15 Confidentiality Order any information, document, or thing, or portion of any document or thing  
16 that contains highly sensitive business or personal information, the disclosure of which is highly  
17 likely to cause significant harm to an individual or to the business or competitive position of the  
18 designating party. Any party to this litigation or any third party who is covered by this Stipulated  
19 Confidentiality Agreement and Discovery Confidentiality Order, who produces or discloses any  
20 Attorneys’ Eyes Only material, including without limitation any information, document, thing,  
21 interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing  
22 or similar legend: “ATTORNEYS’ EYES ONLY” or “ATTORNEYS’ EYES ONLY –  
23 SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER” (hereinafter “Attorneys’ Eyes  
24 Only”).  
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27 3. All Confidential material shall be used by the receiving party solely for purposes  
28 of the prosecution or defense of this action, shall not be used by the receiving party for any

1 business, commercial, competitive, personal or other purpose, and shall not be disclosed by the  
2 receiving party to anyone other than those set forth in Paragraph 4, unless and until the  
3 restrictions herein are removed either by written agreement of counsel for the parties, or by  
4 Order of the Court. It is, however, understood that counsel for a party may give advice and  
5 opinions to his or her client solely relating to the above-captioned action based on his or her  
6 evaluation of Confidential material, provided that such advice and opinions shall not reveal the  
7 content of such Confidential material except by prior written agreement of counsel for the  
8 parties, or by Order of the Court.  
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10 4. Confidential material and the contents of Confidential material may be disclosed  
11 only to the following individuals under the following conditions:  
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13 (a) Outside counsel (herein defined as any attorney at the parties' outside law  
14 firms) and relevant in-house counsel for the parties;

15 (b) Outside experts or consultants retained by outside counsel for purposes of  
16 this action, provided they have signed a non-disclosure agreement in the form attached  
17 hereto as Exhibit A.  
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19 (c) Secretarial, paralegal, clerical, duplicating and data processing personnel  
20 of the foregoing;

21 (d) The Court and court personnel;

22 (e) Any deponent may be shown or examined on any information, document  
23 or thing designated Confidential if it appears that the witness authored or received a copy  
24 of it, was involved in the subject matter described therein or is employed by the party who  
25 produced the information, document or thing, or if the producing party consents to such  
26 disclosure;  
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(f) Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials; and

(g) The parties. In the case of parties that are corporations or other business entities, “party” shall mean executives who are required to participate in decisions with reference to this lawsuit.

5. Confidential material shall be used only by individuals permitted access to it under Paragraph 4. Confidential material, copies thereof, and the information contained therein, shall not be disclosed in any manner to any other individual, until and unless (a) outside counsel for the party asserting confidentiality waives the claim of confidentiality, or (b) the Court orders such disclosure.

6. With respect to any depositions that involve a disclosure of Confidential material of a party to this action, such party shall have until thirty (30) days after receipt of the deposition transcript within which to inform all other parties that portions of the transcript are to be designated Confidential, which period may be extended by agreement of the parties. No such deposition transcript shall be disclosed to any individual other than the individuals described in Paragraph 4(a), (b), (c), (d) and (f) above and the deponent during these thirty (30) days, and no individual attending such a deposition shall disclose the contents of the deposition to any individual other than those described in Paragraph 4(a), (b), (c), (d) and (f) above during said thirty (30) days. Upon being informed that certain portions of a deposition are to be designated as Confidential, all parties shall immediately cause each copy of the transcript in its custody or

1 control to be appropriately marked and limit disclosure of that transcript in accordance with  
2 Paragraphs 3 and 4.

3 7. Material produced and marked as Attorneys' Eyes Only may be disclosed only to  
4 outside counsel for the receiving party and to such other persons as counsel for the producing  
5 party agrees in advance or as Ordered by the Court.  
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7 8. If counsel for a party receiving documents or information designated as  
8 Confidential or Attorneys' Eyes Only hereunder objects to such designation of any or all of  
9 such items, the following procedure shall apply:  
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11 (a) Counsel for the objecting party shall serve on the designating party or third  
12 party a written objection to such designation, which shall describe with particularity the  
13 documents or information in question and shall state the grounds for objection. Counsel  
14 for the designating party or third party shall respond in writing to such objection within  
15 14 days and shall state with particularity the grounds for asserting that the document or  
16 information is Confidential or Attorneys' Eyes Only. If no timely written response is made  
17 to the objection, the challenged designation will be deemed to be void. If the designating  
18 party or nonparty makes a timely response to such objection asserting the propriety of the  
19 designation, counsel shall then confer in good faith in an effort to resolve the dispute.  
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21 (b) If a dispute as to a Confidential or Attorneys' Eyes Only designation of a  
22 document or item of information cannot be resolved by agreement, the proponent of the  
23 designation being challenged shall present the dispute to the Court in accordance with  
24 Local Court Rules, before filing a formal motion for an order regarding the challenged  
25 designation. The document or information that is the subject of the filing shall be treated  
26 as originally designated pending resolution of the dispute.  
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1           9. All requests to seal documents filed with the Court shall comply with  
2 Court Rules.

3           10. If the need arises during trial or at any Hearing before the Court for any party to  
4 disclose Confidential or Attorneys' Eyes Only information, it may do so only after giving notice  
5 to the producing party and as directed by the Court.  
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7           11. To the extent consistent with applicable law, the inadvertent or unintentional  
8 disclosure of Confidential material that should have been designated as such, regardless of  
9 whether the information, document or thing was so designated at the time of disclosure, shall  
10 not be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the  
11 specific information, document or thing disclosed or as to any other material or information  
12 concerning the same or related subject matter. Such inadvertent or unintentional disclosure may  
13 be rectified by notifying in writing counsel for all parties to whom the material was disclosed  
14 that the material should have been designated Confidential within a reasonable time after  
15 disclosure. Such notice shall constitute a designation of the information, document or thing as  
16 Confidential under this Agreement and the Discovery Confidentiality Order.  
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19           12. When the inadvertent or mistaken disclosure of any information, document or  
20 thing protected by privilege or work-product immunity is discovered by the producing party  
21 and brought to the attention of the receiving party, the receiving party's treatment of such  
22 material shall be in accordance with Federal Rule of Civil Procedure 26(b)(5)(B). Such  
23 inadvertent or mistaken disclosure of such information, document or thing shall not by itself  
24 constitute a waiver by the producing party of any claims of privilege or work-product immunity.  
25 However, nothing herein restricts the right of the receiving party to challenge the producing  
26 party's claim of privilege if appropriate within a reasonable time after receiving notice of the  
27 inadvertent or mistaken disclosure.  
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1           13. No information that is in the public domain or which is already known by the  
2 receiving party through proper means or which is or becomes available to a party from a source  
3 other than the party asserting confidentiality, rightfully in possession of such information on a  
4 non-confidential basis, shall be deemed or considered to be Confidential material under this  
5 Stipulated Confidentiality Agreement and Discovery Confidentiality Order.  
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7           14. This Stipulated Confidentiality Agreement and Discovery Confidentiality Order  
8 shall not deprive any party of its right to object to discovery by any other party or on any  
9 otherwise permitted ground. This Discovery Confidentiality Order is being entered without  
10 prejudice to the right of any party to move the Court for modification or for relief from any of  
11 its terms.  
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13           15. This Stipulated Confidentiality Agreement and Discovery Confidentiality Order  
14 shall survive the termination of this action and shall remain in full force and effect unless  
15 modified by an Order of this Court or by the written stipulation of the parties filed with the  
16 Court.  
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18           16. Upon final conclusion of this litigation, each party or other individual subject to  
19 the terms hereof shall be under an obligation to assemble and to return to the originating source  
20 all originals and unmarked copies of documents and things containing Confidential material  
21 and to destroy, should such source so request, all copies of Confidential material that contain  
22 and/or constitute attorney work product as well as excerpts, summaries and digests revealing  
23 Confidential material; provided, however, that counsel may retain complete copies of all  
24 transcripts and pleadings including any exhibits attached thereto for archival purposes, subject  
25 to the provisions of this Stipulated Confidentiality Agreement and Discovery Confidentiality  
26 Order. To the extent a party requests the return of Confidential material from the Court after the  
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1 final conclusion of the litigation, including the exhaustion of all appeals therefrom and all  
2 related proceedings, the party shall file a motion seeking such relief.

3 DATED this 28<sup>th</sup> day of March, 2018.

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5  
6 /s/ Byron L. Ames  
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15 *CR England, Inc.*

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*Anderson*

12 **ORDER**

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14 Paragraph 9 is modified to reflect that any motion regarding filing confidential  
15 information and motions to seal shall comply with LR IA 10-5 and the dictates of *Kamakana v.*  
16 *City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). *See also, Center for Auto Safety v.*  
*Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016).

17 Paragraphs 15 and 16 are modified to reflect that although the parties may agree to be  
18 bound by the confidentiality terms of this Order beyond the conclusion of this lawsuit, the  
19 dismissal of this action will terminate the jurisdiction of this court.

20 **IT IS SO ORDERED.**

21 DATED: March 29, 2018.

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UNITED STATES MAGISTRATE JUDGE



**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

RANDALL EUGENE ANDERSON,

Plaintiff,

v.

WARREN G. FENTON, an individual, CR  
ENGLAND, INC., a business incorporated  
in the State of Utah and DOES 3-100,

Defendants,

**AGREEMENT TO BE BOUND BY  
DISCOVERY CONFIDENTIALITY  
ORDER**

Case No.: 3:17-cv-00486-RCJ-WGC

I, \_\_\_\_\_, being duly sworn, state that:

My address is \_\_\_\_\_.

My present employer is \_\_\_\_\_ and the address of my present  
employment is \_\_\_\_\_.

My present occupation or job description is \_\_\_\_\_.

I have carefully read and understood the provisions of the Discovery Confidentiality Order in  
this case signed by the Court, and I will comply with all provisions of the Discovery  
Confidentiality Order.

I will hold in confidence and not disclose to anyone not qualified under the Discovery  
Confidentiality Order any Confidential Material or any words, summaries, abstracts, or indices  
of Confidential Information disclosed to me.

I will limit use of Confidential Material disclosed to me solely for purpose of this action.

No later than the final conclusion of the case, I will return all Confidential Material and  
summaries, abstracts, and indices thereof which come into my possession, and documents or  
things which I have prepared relating thereto, to counsel for the party for whom I was employed  
or retained.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name]