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16 UNITED STATES DISTRICT COURT
 17 DISTRICT OF NEVADA

19 1600 EAST NEWLANDS DRIVE, LLC, a
 20 Nevada limited liability company,

21 Plaintiff,

22 v.

23 AMAZON.COM.NVDC, LLC, a Delaware
 24 limited liability company f/k/a
 25 AMAZON.COM.NVDC, INC.;
 26 AMAZON.COM, INC., a Delaware
 Corporation; and DOES I-X; and ROE
 CORPORATIONS XI-XX, inclusive,

27 Defendants.
 28

No. 3:17-cv-00566-HDM-WGC

PROTECTIVE ORDER

(Hon. William G. Cobb)

1 Having received and considered the parties' Stipulation for Protective Order
2 pursuant to Federal Rule of Civil Procedure 26(c), and good cause appearing,

3 **IT IS HEREBY ORDERED** that the following procedures shall apply to
4 confidential documents and information produced or disclosed in this case:

5 **I. CONFIDENTIAL INFORMATION.**

6 **A. Definition of "Confidential".**

7 "Confidential Information" means any non-public testimony, information,
8 documents or data that the designating party or third-party discovery respondent in good
9 faith believes contains confidential, sensitive, business, personal or proprietary
10 information. Confidential Information may include any document or information
11 produced, disclosed or exchanged in accordance with the Federal Rules of Civil Procedure
12 or by agreement, including, without limitation, initial and supplemental disclosures,
13 interrogatory answers, responses to requests for admission, responses to subpoenas,
14 responses to requests for production and any other documents or information produced in
15 response to discovery requests, or contained in deposition testimony and exhibits,
16 pleadings, motions, briefs, affidavits, declarations and any other discovery or disclosure
17 made in this litigation.

18 Confidential Information does not include (1) any information which a party
19 lawfully possessed, obtained or developed other than through discovery in this action; or
20 (2) any information that is or becomes available to the public through no act, or failure to
21 act, attributable to the receiving party or its counsel.

22 **B. Designation of "Confidential" Information.**

23 The parties and third-party discovery respondents may designate Confidential
24 Information in this action by stamping, labeling or otherwise appropriately marking the
25 documents or information as "CONFIDENTIAL—SUBJECT TO PROTECTIVE
26 ORDER". A party must designate information as Confidential prior to producing the
27 information to the other party. A party may remedy an inadvertent failure to designate
28 produced documents or other materials by providing a supplemental notice and

1 designation to the other party within thirty (30) business days after the producing party
2 first learns that it inadvertently failed to designate the information as Confidential.
3 Following such notice, the identified materials shall be fully subject to this Protective
4 Order; however, there shall be no sanction for any use or disclosure of such information
5 prior to the supplemental notice and designation.

6 With respect to discovery responses that contain or constitute Confidential
7 Information, the responding party shall include a “CONFIDENTIAL—SUBJECT TO
8 PROTECTIVE ORDER” designation, as appropriate, on the first page of the discovery
9 response, and on each page of the document containing Confidential Information.

10 Any party may designate any portion of a deposition as Confidential by notifying
11 the other parties on the record during the deposition or in writing within thirty (30)
12 calendar days after receipt of the deposition transcript. The deposition transcript shall be
13 treated as “Confidential” during this thirty-day period. Each court reporter and
14 videographer participating in any deposition in this action shall be informed of, and
15 provided with a copy of, this Protective Order. When directed, each court reporter shall
16 designate those portions of the deposition transcript(s) with the legend “CONFIDENTIAL
17 —SUBJECT TO PROTECTIVE ORDER” as appropriate.

18 **C. Related Documents.**

19 The terms of this Protective Order shall extend to and protect (1) all copies,
20 extracts and complete or partial summaries prepared from documents or information
21 designated as Confidential; (2) portions of deposition transcripts that contain or reflect the
22 content of any documents or information designated as Confidential; (3) portions of
23 briefs, memoranda or any other writing filed with the Court and any exhibits thereto that
24 contain or reflect the content of any documents or information designated as Confidential;
25 and (4) designated testimony taken at a hearing or other proceedings that contains or
26 reflects the content of any documents or information designated as Confidential.

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1 **II. CHALLENGES TO DESIGNATIONS.**

2 If a party challenges the confidentiality designations of any Confidential
3 Information, the party shall provide the designating party with written notice of its
4 challenge. The parties shall meet and confer in good faith within seven (7) calendar days
5 of the notice and utilize their best efforts to attempt to resolve the dispute. If the parties
6 are unable to resolve the dispute within seven (7) calendar days of the meet and confer,
7 the party challenging the confidentiality designation may seek appropriate relief from the
8 Court. The designating party bears the burden of proving that the Confidentiality
9 designation is appropriate under the circumstances.

10 If a party challenging the designation of information as Confidential seeks relief
11 from the Court, the protections of this Protective Order will continue to apply to the
12 designated information until the matter is decided by the Court.

13 **III. ACCESS TO AND USE OF INFORMATION.**

14 **A. Use of Confidential Information for Litigation Purposes Only.**

15 All Confidential Information received in this action, whether through disclosures,
16 discovery or otherwise, shall be used solely for purposes of this action and not for any
17 other purpose.

18 **B. Access to Confidential Information.**

19 Information designated as Confidential Information, and any information or
20 materials derived therefrom, shall only be disclosed to, made available to, or used by:

- 21 1. Outside counsel for the parties and their employees or
22 contractors, to whom disclosure of Confidential Information is
23 necessary for purposes of the litigation;
- 24 2. In-house counsel for a party;
- 25 3. The Court and its personnel in any proceeding in this action;
- 26 4. The author or identified recipient of the Confidential
27 Information;

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5. The officer taking, reporting or videotaping a deposition and employees of such officer to the extent necessary to prepare the transcript or video of the deposition;
6. Upon execution of an Acknowledgement in the form attached as Exhibit A, individual parties and the officers, directors or employees of corporate parties who are assisting with or evaluating this action;
7. Upon execution of an Acknowledgement in the form attached as Exhibit A, deposition or trial witnesses who are not officers, directors or employees of the parties, during their deposition or trial testimony, to whom disclosure is reasonably necessary (with the understanding that witnesses may receive a copy of all exhibits marked or used during their deposition or testimony in connection with their review of the transcripts, but shall not retain copies of Confidential documents);
8. Upon execution of an Acknowledgement in the form attached as Exhibit A, insurers of the parties who require the information to assist in or evaluate this action;
9. Upon execution of an Acknowledgement in the form attached as Exhibit A, independent experts who have been retained by the parties in this action or their counsel of record;
10. Upon execution of an Acknowledgement in the form attached as Exhibit A, graphics, design, jury consultant or focus group services retained by the parties or counsel;
11. Upon execution of an Acknowledgement in the form attached as Exhibit A, third party vendors retained by the parties or counsel to assist with the preservation of documents, electronic discovery for this lawsuit, document review for this

1 lawsuit, or the collection and production of documents and
2 Confidential Information in this lawsuit;

3 12. Upon execution of an Acknowledgement in the form attached
4 as Exhibit A, any third-party mediator jointly selected by the
5 parties or appointed by the Court; and

6 13. Any other person to whom the designating party agrees in
7 writing.

8 Parties shall disclose copies of Exhibit A, as executed by persons receiving
9 Confidential Information (except for non-testifying expert consultants), to counsel of
10 record in this action within fifteen (15) days of execution.

11 **C. Information Submitted to the Court.**

12 Any party filing any paper with the Court that contains or discloses the substance
13 or content of information designated as Confidential Information shall move to file the
14 paper under seal concurrently with the filing of the papers. Such paper shall be filed and
15 kept under seal until further order of the Court.

16 Subject to the Federal Rules of Evidence, and notwithstanding the foregoing,
17 nothing in this Protective Order affects in any way the admissibility of any documents,
18 testimony or other evidence at trial, or restricts the use of information at trial. Any party
19 who intends to use at trial another party's or third-party discovery respondent's
20 Confidential Information shall give the designating party reasonable notice of the
21 intention to use such Confidential Information sufficiently in advance of trial so that the
22 designating party has a reasonable opportunity to request that such material be received in
23 camera, redacted, filed under seal or received by the Court under other conditions to
24 prevent unnecessary disclosure in accordance with any applicable court rules and
25 procedures. The Court may then determine whether the proffered evidence shall be
26 treated as Confidential Information and, if so, what protection may be afforded to such
27 evidence at the trial or hearing.

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1 **D. Subpoena for Confidential Information.**

2 If any Confidential Information governed by this Order is subpoenaed or requested
3 from a party who has received such Confidential Information pursuant to this Order by a
4 court, administrative body, legislative body or any other person or entity purporting to
5 have authority to require the production of such information, the person to whom the
6 subpoena or request is directed shall give immediate written notice of the subpoena or
7 request to the party that designated the Confidential Information and include a copy of the
8 subpoena or request. Upon receipt of the notice specified in this paragraph, the
9 designating party shall be responsible for obtaining any order it believes necessary to
10 prevent disclosure of Confidential Information. The person or party to whom the
11 subpoena or request is directed shall not produce any Confidential Information absent (1)
12 receipt of written notice from the party that designated the Confidential Information
13 stating that the party does not object to production of the Confidential Information; (2)
14 final resolution of any objection asserted by the designating party; or (3) order requiring
15 production issued by any court with jurisdiction over the subpoenaed person or party. If,
16 however, the designating party does not respond or otherwise take any action to obtain an
17 order of protection for the Confidential Information, then the party in receipt of the
18 subpoena or other request as described above may comply with the subpoena or request
19 pursuant to the applicable rules of civil procedure.

20 **IV. DISCLOSURE OF CONFIDENTIAL INFORMATION.**

21 If Confidential Information is disclosed to anyone other than in a manner
22 authorized by this Protective Order, the party responsible for such disclosure must
23 immediately bring all pertinent facts relating to such disclosure to the attention of the
24 producing party and make every reasonable effort to retrieve such Confidential
25 Information or Customer Information and to prevent further disclosure.

26 **V. CONFIDENTIALITY OF A PARTY'S OWN DOCUMENTS.**

27 Nothing in this Protective Order shall affect the right of the producing or
28 designating party to disclose to its own officers, directors, employees, consultants or

1 experts, or to any other person, information or documents the party has designated as
2 Confidential Information.

3 **VI. TERMINATION OF LITIGATION.**

4 Within sixty (60) calendar days of the final resolution of this action, including any
5 appeal, all persons subject to the terms of this Protective Order shall (1) destroy, or
6 assemble and return to the producing party, all Confidential Information; and (2) destroy
7 any outlines, summaries, abstracts, compilations, memoranda or other documents, which
8 constitute, embody, contain or disclose the contents of the Confidential Information;
9 except that counsel of record in this action may retain one archival copy of pleadings and
10 other Court filings, deposition transcripts, deposition exhibits, trial transcripts, trial
11 exhibits, correspondence, legal research memoranda, and work product.

12 The terms of this Protective Order shall survive and remain in full force and effect
13 after the final conclusion or resolution of this action. The Court shall retain jurisdiction
14 over the parties, their counsel, and all persons to whom Confidential Information has been
15 disclosed for the purpose of enforcing the terms of this Protective Order and/or redressing
16 any violation thereof and may impose appropriate sanctions for violation of this Protective
17 Order.

18 **VII. ADDITIONAL PROTECTION.**

19 Nothing in this Protective Order shall preclude any party from seeking and
20 obtaining, on a sufficient showing, additional protection with respect to the confidentiality
21 of documents or other discovery material. Likewise, nothing in this Protective Order shall
22 preclude a party from seeking relief from this Protective Order with respect to particular
23 documents or discovery material designated hereunder.

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VIII. MODIFICATION.

The terms of this Protective Order may be modified by (1) agreement of the parties or (2) order of this Court for good cause appearing, upon application by any party or upon the Court's own order.

ORDER

Paragraph III, C - Information Submitted to the Court is **modified** to reflect that any motion regarding filing confidential information and motions to seal shall comply with LR 1A 10-5 and the dictates of *Kamakana v. 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).

Paragraph VI - Termination of Litigation is **modified** to reflect that although the parties may agree to be bound by the confidentiality terms of this Order beyond the conclusion of this lawsuit, the dismissal of this action will terminate the jurisdiction of this Court.

IT IS SO ORDERED.

DATED: January 10, 2018.

William G. Cobb

UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

**Agreement to the Terms of the Protective Order in
1600 East Newlands Drive, LLC v. Amazon.com.NVDC, LLC and Amazon.com, Inc.
(U.S. District Court for the District of Nevada,
Case No. 3:17-cv-00566-HDM-WGC)**

I, _____, being a person authorized under the Protective Order in the above-named action to have access to Confidential Information protected by the Protective Order, have read and understood the Protective Order, and hereby agree to comply with and be bound by the terms of the Protective Order.

I further agree to submit to the jurisdiction of the U.S. District Court for the District of Nevada for the purpose of enforcing the terms of the Protective Order, even if such enforcement proceeding occurs after termination of this action.

DATED: _____

Print Name and affiliation:

of _____

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