

The Honorable James L. Robart

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOARING HELMET CORPORATION, a
Washington corporation,

Plaintiff,

v.

NANAL, INC., d/b/a LEATHERUP.COM, a
Nevada corporation,

Defendant.

No. C09-0789-JLR

[PROPOSED] STIPULATED
PROTECTIVE ORDER REGARDING
CONFIDENTIAL INFORMATION

To expedite and facilitate the production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting and defending this litigation would be warranted, pursuant to FED. R. CIV. P. 26(c), Plaintiff Soaring Helmet Corporation (“Plaintiff” or “Soaring Helmet”) and Defendant Nanal, Inc. (“Defendant” or “Nanal”), hereby stipulate to and petition the Court to enter the following Stipulated Protective Order Regarding Confidential Information (“Order”).

1. Confidential Information. In disclosing materials or information in this action, any Party (“Designating Party”) may designate as “CONFIDENTIAL” the whole or any part of such material or information which the Designating Party reasonably and in good faith believes constitutes or contains “Confidential Information.” “Confidential Information” means commercially sensitive business information or data which is not publicly known and cannot be ascertained from an inspection of publicly available documents, materials or devices. By way of example only, “Confidential Information” may include trade secrets, customer lists, know-how,

1 proprietary data, design and manufacturing information, or employment, marketing, contract,
2 financial, or negotiated information, or other similarly sensitive information which the Designating
3 Party either maintains in confidence or as to which the unprotected disclosure might result in
4 economic or competitive injury, and which is not publicly known and cannot be ascertained from
5 an inspection of publicly available documents, materials, or devices.

6 2. Designation of Confidential Information. If a Designating Party determines that
7 any of its documents, things, or responses, or any testimony produced or provided in the course of
8 this action should be designated as provided in Paragraph 1 as constituting or containing
9 “Confidential Information,” the Designating Party shall label or mark each page of the document,
10 thing, response or testimony with the legend “CONFIDENTIAL.” The Designating Party shall
11 designate only that portion of the document, thing, response or testimony that qualifies for
12 protection under the standards set forth herein. All written discovery responses that contain
13 “Confidential Information” shall be individually and separately identified and designated.

14 3. Use of “Confidential Information”. All materials designated or marked
15 “CONFIDENTIAL” and any information contained therein shall be used only for the purpose of
16 preparing for, prosecuting, defending or settling this action, including any appeals and retrials.
17 This Order shall not be construed to apply to any information that: (a) is lawfully and generally
18 available to the public other than through a breach of this Order or other duty of confidentiality; (b)
19 a party receiving such information can demonstrate was already lawfully known to the party at the
20 time of disclosure and was not subject to conditions of confidentiality; or (c) a party receiving such
21 information can demonstrate was lawfully developed by that party independently of any disclosure
22 by the Designating Party.

23 4. Use of “Confidential Information” in Depositions. Any Party shall have the right to
24 use “Confidential Information” at or for the purpose of taking depositions as set forth herein. At
25 any deposition, upon inquiry with regard to the content of a document or thing marked
26 “CONFIDENTIAL,” or whenever counsel for a Party deems that a question or the answer to a
27 question may result or has resulted in the disclosure of “Confidential Information,” the deposition,
28 or portions thereof, may be designated by the affected Party as containing “Confidential

1 Information” subject to the provisions of this Order. When such designation has been made, the
2 testimony shall be disclosed only to the Qualified Persons defined below, and the information
3 contained therein shall be used only as specified in this Order. Further, counsel for the Party
4 whose “Confidential Information” is involved also may request that all persons, other than the
5 reporter, counsel, and those Qualified Persons defined below, leave the deposition room during the
6 confidential portion of the deposition. Counsel must designate the affected deposition transcript,
7 or portions thereof, “CONFIDENTIAL” no later than fifteen (15) days after receiving the
8 transcript. Those portions of the transcript designated “CONFIDENTIAL” shall be separately
9 bound. During the fifteen (15) day period, the entire transcript shall be treated as “Confidential
10 Information” pursuant to this Order; provided, however, that the deponent shall be allowed access
11 to the transcript during this fifteen (15) day period in order to review, correct and sign the
12 transcript. After expiration of the fifteen (15) days period, if no “CONFIDENTIAL” designations
13 have been made, the entire transcript shall be considered non-confidential. Any documents used at
14 a deposition that are marked “CONFIDENTIAL” shall continue to be treated as such even if the
15 deposition transcript is not designated “CONFIDENTIAL.”

16 5. Disclosure of “Confidential Information”. “Confidential Information” produced
17 pursuant to this Order may be disclosed or made available only to the Court and Court personnel,
18 and to Qualified Persons as defined below:

19 (a) litigation counsel of record for the Parties and in-house counsel for the
20 Parties, including associate attorneys, paralegal, clerical, secretarial, other staff employed by such
21 counsel, and outside copying and other litigation support services that are working under the
22 direction of such counsel in preparing for, or the prosecution, defense or settlement of this action
23 (including appeals and retrials);

24 (b) the Parties, including officers, directors, or employees of the Parties deemed
25 necessary by counsel to aid in the preparation, prosecution, defense, or settlement of this action;

26 (c) experts or consultants, together with their staff, retained by the Parties or
27 their counsel to assist in the preparation, prosecution, defense or settlement of this action, provided
28 that the disclosure of “Confidential Information” is preceded by the execution of the undertaking in

1 the form of Exhibit A hereto, which undertaking shall be maintained by counsel for the party
2 engaging said expert or consultant;

3 (d) during their depositions, witnesses in this action to whom disclosure is
4 reasonably necessary, provided such witnesses shall be provided with a copy of this Order and
5 shall execute an undertaking in the form of Exhibit A before receiving any “Confidential
6 Information,” which undertaking shall be attached to the transcript(s) of any such deposition;

7 (e) jurors;

8 (f) court reporters and videographers employed in this action;

9 (g) the author of the document or the original source of the information, any
10 person the document or information on its face indicates had previously received or reviewed it
11 independently of discovery in this action, and any person who is identified in another document or
12 another witness’s testimony as having previously received or reviewed the document or
13 information independently of discovery in this action;

14 (h) any other person as to whom the Parties agree in writing before receiving
15 any “Confidential Information,” provided such person shall be provided with a copy of this Order
16 and shall execute an undertaking in the form of Exhibit A, a copy of which shall be provided to
17 counsel for each Party within three (3) court days of its execution.

18 6. No Waiver re Confidential Nature of Information. This Order is entered solely for
19 the purpose of facilitating the exchange of documents and information between the Parties to this
20 action without involving the Court unnecessarily in the process. Nothing in this Order, nor the
21 production of any information or document under the terms of this Order, nor any proceedings
22 pursuant to this Order, shall be deemed to have the effect of an admission or a waiver by any Party.

23 7. No Waiver of Privilege. This Order will not prejudice the right of any Party to
24 oppose production of any information on the ground of attorney-client privilege, attorney work
25 product doctrine, or any other objection, privilege, protection, or ground provided under the law.

26 8. Challenge to “CONFIDENTIAL” Designation. A Party who disputes the propriety
27 of a Designating Party’s designation of material as “CONFIDENTIAL” shall challenge such
28 designation within a reasonable time after receipt of the materials so designated. In the event that a

1 Party challenges such designation, the Parties shall first try to resolve the dispute in good faith. If
2 the dispute cannot be resolved, the Party challenging the designation may request appropriate relief
3 from the Court. The burden of proving that information has been properly designated
4 “CONFIDENTIAL” is on the Designating Party.

5 9. Filing “Confidential Information” With the Court. Any Party seeking to submit
6 “Confidential Information” to the Court shall comply with CR 5(g) and other applicable rules
7 governing the filing and consideration of motions.

8 10. Use of “Confidential Information” in Open Court. Nothing contained in this Order
9 shall be construed to prejudice any Party’s right to use at trial or in any open hearing before the
10 Court any “Confidential Information” designated pursuant to this Order. However, reasonable
11 notice of intended use of such “Confidential Information” shall be given to counsel for the
12 Designating Party to enable that Party to seek relief from the Court or to otherwise arrange for
13 proper safeguards.

14 11. Subsequent Production of “Confidential Information”. Nothing herein shall prevent
15 any person who has received “Confidential Information” pursuant to this Order from producing
16 such information in cooperation with law enforcement personnel. Nothing herein shall prevent any
17 person who has received “Confidential Information” pursuant to this Order from producing such
18 information in response to a lawful subpoena or other compulsory process; provided that any
19 person receiving such subpoena or process shall: (a) as soon as reasonably practical, give notice to
20 the Designating Party by telephone and facsimile and shall furnish the Designating Party with a
21 copy of the subpoena or other compulsory process so as to afford the Designating Party a
22 reasonable opportunity to seek a protective order; and (b) not produce such “Confidential
23 Information” before receiving a court order or the consent of the Designating Party, if application
24 for a protective order is made by the Designating Party before the return date of the subpoena. In
25 the event that the court denies such an application for a protective order and production of such
26 “Confidential Information” is made, such information shall continue to be treated as “Confidential
27 Information” by all persons subject to this Order unless and until this Court shall otherwise order.
28

1 The Designating Party shall bear all the burdens and expenses of seeking such protection of its
2 “Confidential Information.”

3 12. Return or Destruction of “Confidential Information”. Within thirty (30) days after
4 entry of final judgment, including appeals and retrials, or after dismissal of this action with
5 prejudice, all materials, including documents and things and all copies thereof designated
6 “CONFIDENTIAL,” shall be returned to the Designating Party. In lieu of returning such
7 designated materials, counsel for the receiving Party may certify in writing to counsel for the
8 Designating Party that the materials have been destroyed; provided, however, that for each Party,
9 counsel may retain one complete and unredacted set of pleadings and papers filed with the Court,
10 including all attachments thereto, or served on the opposing party, and deposition transcripts
11 (excluding the underlying documents produced in discovery in this action).

12 13. Order Survives Termination. This Order shall survive the termination of this action,
13 and the Court shall retain jurisdiction to resolve any dispute concerning the use of “Confidential
14 Information” disclosed hereunder.

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1 The foregoing is AGREED AND STIPULATED TO by the parties through their counsel of
2 record as of the dates indicated below.

3 Respectfully submitted,

4 Dated: 7/27/2010

Dated: _____

5 INVICTA LAW GROUP, PLLC

HENDRICKS & LEWIS PLLC

6
7 By: *Heather Morado*

By: _____

8 Heather M. Morado, WSBA No. 35135
9 Stacie Foster, WSBA No. 23397
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Email: kh@hlaw.com
Email: sl@hlaw.com

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22 ORDER

23 Good cause shown therefore, IT IS SO ORDERED.

24 DATED this ____ day of _____, 2010.

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The Hon. James L. Robart
United States District Judge

1 The foregoing is AGREED AND STIPULATED TO by the parties through their counsel of
2 record as of the dates indicated below.

3 Respectfully submitted,

4 Dated: _____

Dated: 8/3/10

5 INVICTA LAW GROUP, PLLC

HENDRICKS & LEWIS PLLC

6
7 By: _____

By:  _____

8 Heather M. Morado, WSBA No. 35135
9 Stacie Foster, WSBA No. 23397
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Email: kh@hllaw.com
Email: sl@hllaw.com

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20
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22 ORDER

23 Good cause shown therefore, IT IS SO ORDERED.

24 DATED this ____ day of _____, 2010.

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27
28

The Hon. James L. Robart
United States District Judge

EXHIBIT A

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOARING HELMET CORPORATION, a
Washington corporation,

No. C09-0789-JLR

Plaintiff,

ACKNOWLEDGEMENT AND
AGREEMENT TO BE BOUND BY
TERMS OF PROTECTIVE ORDER

v.

NANAL, INC., d/b/a LEATHERUP.COM, a
Nevada corporation,

Defendant.

I, _____ (print or type name), in connection with
the above-entitled action, hereby acknowledge that I have received a copy of the Stipulated
Protective Order Regarding Confidential Information entered into between and among the parties,
which is attached hereto as Exhibit 1, have read the same, and agree to be bound by all of the
provisions thereof.

I hereto agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for enforcement of the undertaking made herein.

Dated: _____

Signature: _____

Printed Name: _____

1 **PROOF OF SERVICE**

2 I am employed in the County of King, State of Washington. I am over the age of
3 eighteen years and am not a party to the within action. My business address is Hendricks &
4 Lewis PLLC, 901 Fifth Avenue, Suite 4100, Seattle, Washington 98164.

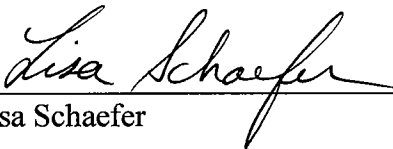
5 I hereby certify that on August 3, 2010, I electronically filed the foregoing with the Clerk
6 of the Court using the CM/ECF system which will send notification of such filing to the
7 following CM/ECF participants:

8 Heather M. Morado, Esq.
9 Stacie Foster, Esq.
10 Steve Edmiston, Esq.
11 Invicta Law Group, PLLC
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16 sfoster@invictalaw.com
17 sedmiston@invictalaw.com

18 Attorneys for Plaintiff Soaring
19 Helmet Corporation

20 I declare under penalty of perjury under the laws of the State of Washington that the
21 foregoing is true and correct.

22 Executed August 3, 2010, at Seattle, Washington.

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Lisa Schaefer