

Honorable Robert S. Lasnik

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

<p>MARK HOFFMAN, on his own behalf and on behalf of other similarly situated persons,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>ONE TECHNOLOGIES, LLC</p> <p style="text-align: center;">Defendant.</p>

Case No. 2:16-cv-01006-RSL

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

STIPULATED PROTECTIVE ORDER

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things
3 produced or otherwise exchanged having proprietary, trade secret, competitively sensitive
4 information, or non-public or otherwise private information of a natural person: (1) non-public
5 advertising procedures, strategies, tests, and results that could provide a competitive advantage to
6 any party's competitor; (2) identities of business partners not known to the public, including all
7 affiliates and publishers; (3) non-public financial, revenue, and pricing information; (4) a party's
8 customers, and their personally identifying information and credit information; (5) customer lists,
9 including emails; (6) information subject to confidentiality provision in contracts or to pre-
10 existing confidentiality obligations; (7) contracts, agreements, approvals, and authorizations
11 related to the three credit bureaus (*i.e.*, Experian, TransUnion, and Equifax); (8) personally
12 identifying information of a natural person, including without limitation any information of a
13 natural person that might be used to facilitate, enable, or otherwise abet identity theft; and (9)
14 other confidential, private, proprietary or trade secret information of a party related to one of the
15 foregoing categories that is identified in writing as such at the time of its disclosure.
16

17 Highly sensitive confidential information may also be designated by the disclosing party
18 as "Attorneys' Eyes Only." Unless otherwise indicated herein, all aspects of this Stipulated
19 Protective Order applicable to material designated as confidential shall apply to any material
20 designated as Attorneys' Eyes Only.
21

22 By listing the foregoing, none of the parties concede that such information is
23 discoverable, relevant, or admissible at trial, and none of the parties waive their rights to object to
24 discoverability or admissibility of material that is ultimately designated confidential and/or
25 Attorneys Eyes Only.

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1 A producing party is permitted, but not required, to designate the foregoing information
2 confidential or Attorneys Eyes Only as applicable.

3 3. SCOPE

4 The protections conferred by this agreement cover not only confidential material (as
5 defined above), but also (1) any information copied or extracted from confidential material; (2)
6 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
7 conversations, or presentations by parties or their counsel that might reveal confidential material.
8 However, the protections conferred by this agreement do not cover information that is in the
9 public domain or becomes part of the public domain through trial or otherwise.
10

11 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

12 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
13 or produced by another party or by a non-party in connection with this case only for prosecuting,
14 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
15 the categories of persons and under the conditions described in this agreement. Confidential
16 material must be stored and maintained by a receiving party at a location and in a secure manner
17 that ensures that access is limited to the persons authorized under this agreement. For clarity,
18 confidential material may not be used by any non-designating party to investigate, prosecute, or
19 defend any litigation other than this litigation.
20

21 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
22 ordered by the court or permitted in writing by the designating party, a receiving party may
23 disclose any confidential material only to:

24 (a) the receiving party's counsel of record in this action, as well as employees of
25 counsel to whom it is reasonably necessary to disclose the information for this litigation;

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1 (b) if the receiving party is not a natural person, then the officers, directors, and
2 employees (including in house counsel) of the receiving party to whom disclosure is reasonably
3 necessary for this litigation, unless the material produced contains highly sensitive confidential
4 information and is appropriately designated Attorney's Eyes Only;

5 (c) the named plaintiff, Mark Hoffman;

6 (d) retained testifying experts and non-testifying experts and consultants to whom
7 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
8 and Agreement to Be Bound" (Exhibit A), unless the material produced contains highly sensitive
9 confidential information and is appropriately designated Attorney's Eyes Only, in which case
10 prior express written consent of the disclosing party must also be obtained prior to disclosure;
11

12 (e) the court, court personnel, and court reporters and their staff;

13 (f) copy or imaging services retained by counsel to assist in the duplication of
14 confidential material, provided that counsel for the party retaining the copy or imaging service
15 instructs the service not to disclose any confidential material to third parties and to immediately
16 return all originals and copies of any confidential material;

17 (g) deposition, trial, or potential fact witnesses in the action to
18 whom disclosure is reasonably necessary and who have signed the "Acknowledgment and
19 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or
20 ordered by the court. Pages of transcribed deposition or trial testimony or deposition or trial
21 exhibits that reveal confidential material must be separately bound by the court reporter and may
22 not be disclosed to anyone except as permitted under this agreement;
23

24 (h) the author or recipient of a document containing the information or a
25 custodian or other person who already permissibly possessed or knew the information.

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1 4.3 Filing Confidential Material. Before filing confidential material or discussing or
2 referencing such material in court filings, the filing party shall confer with the designating party
3 to determine whether the designating party will remove the confidential designation, whether the
4 document can be redacted, or whether a motion to seal or stipulation and proposed order is
5 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
6 standards that will be applied when a party seeks permission from the court to file material under
7 seal.
8

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
11 or non-party that designates information or items for protection under this agreement must take
12 care to limit any such designation to specific material that qualifies under the appropriate
13 standards. The designating party must designate for protection only those parts of material,
14 documents, items, or oral or written communications that qualify, so that other portions of the
15 material, documents, items, or communications for which protection is not warranted are not
16 swept unjustifiably within the ambit of this agreement.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
18 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
19 unnecessarily encumber or delay the case development process or to impose unnecessary
20 expenses and burdens on other parties) expose the designating party to sanctions.

21 If it comes to a designating party's attention that information or items that it designated
22 for protection do not qualify for protection, the designating party must promptly notify all other
23 parties that it is withdrawing the mistaken designation.
24

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this

1 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
2 ordered, disclosure or discovery material that qualifies for protection under this agreement must
3 be clearly so designated before or when the material is disclosed or produced.

4 (a) Information in documentary form: (e.g., paper or electronic documents and
5 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
6 the designating party must affix the word “CONFIDENTIAL” to each page that contains
7 confidential material. If only a portion or portions of the material on a page qualifies for
8 protection, the producing party also must clearly identify the protected portion(s) (e.g., by
9 making appropriate markings in the margins).

10 (b) Testimony given in deposition or in other pretrial proceedings: the
11 parties and any participating non-parties must identify on the record, during the deposition or
12 other pretrial proceeding, all protected testimony, without prejudice to their right to so designate
13 other testimony after reviewing the transcript. Any party or non-party may, within fifteen days
14 after receiving the transcript of the deposition or other pretrial proceeding, designate portions of
15 the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
16 confidential information at trial, the issue should be addressed during the pre-trial conference.

17 (c) Other tangible items: the producing party must affix in a prominent place on
18 the exterior of the container or containers in which the information or item is stored the word
19 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
20 the producing party, to the extent practicable, shall identify the protected portion(s).

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
22 designate qualified information or items does not, standing alone, waive the designating party’s
23 right to secure protection under this agreement for such material. Upon timely correction of a
24

25 STIPULATED PROTECTIVE ORDER

1 designation, the receiving party must make reasonable efforts to ensure that the material is
2 treated in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10
11 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
12 regarding confidential designations without court involvement. Any motion regarding
13 confidential designations or for a protective order must include a certification, in the motion or in
14 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
15 conference with other affected parties in an effort to resolve the dispute without court action. The
16 certification must list the date, manner, and participants to the conference. A good faith effort to
17 confer requires a face-to-face meeting or a telephone conference.

18 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
19 intervention, the designating party may file and serve a motion to retain confidentiality under
20 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
21 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
22 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
23 other parties) may expose the challenging party to sanctions. All parties shall continue to
24 maintain the material in question as confidential until the court rules on the challenge.
25

STIPULATED PROTECTIVE ORDER

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
5 party must:

6 (a) promptly notify the designating party in writing and include a copy of the
7 subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena or order is
10 subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by
12 the designating party whose confidential material may be affected.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
15 material to any person or in any circumstance not authorized under this agreement, the receiving
16 party must immediately (a) notify in writing the designating party of the unauthorized
17 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
18 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
19 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
20 Agreement to Be Bound” that is attached hereto as Exhibit A.
21

22 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
23 MATERIAL

24 When a producing party gives notice to receiving parties that certain inadvertently
25 produced material is subject to a claim of privilege or other protection, the obligations of the

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1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
2 provision is not intended to modify whatever procedure may be established in an e-discovery
3 order or agreement that provides for production without prior privilege review. The parties agree
4 to the entry of a non-waiver order under Fed. R. Evid. 502 as set forth herein.

5 10. NON TERMINATION AND RETURN OF DOCUMENTS

6 Within 60 days after the termination of this action, including all appeals, each receiving
7 party must return all confidential material to the producing party, including all copies, extracts
8 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
9 destruction.
10

11 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
12 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
13 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
14 work product, even if such materials contain confidential material.

15 The confidentiality obligations imposed by this agreement shall remain in effect until a
16 designating party agrees otherwise in writing or a court orders otherwise.

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18 DATED: June 27, 2017

19
20 /s/ Albert H. Kirby
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25 Attorneys for Plaintiff

STIPULATED PROTECTIVE ORDER

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Attorneys for Defendant

8 PURSUANT TO STIPULATION, IT IS SO ORDERED.

9 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502, the production of any
10 documents in this proceeding shall not, for the purposes of this proceeding or any other
11 proceeding in any other court, constitute a waiver by the producing party of any privilege
12 applicable to those documents, including the attorney-client privilege, attorney work-product
13 protection, or any other privilege or protection recognized by law.
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15 DATED: June 28, 2017

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18 Robert S. Lasnik
19 United States District Judge
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STIPULATED PROTECTIVE ORDER

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I have
5 read in its entirety and understand the Stipulated Protective Order that was issued by the United
6 States District Court for the Western District of Washington on [date] in the case of
7 *Hoffman v. One Technologies, LLC*, No. 2:16-cv-01006-RSL, I agree to comply with and to be
8 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
9 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
10 solemnly promise that I will not disclose in any manner any information or item that is subject to
11 this Stipulated Protective Order to any person or entity except in strict compliance with the
12 provisions of this Order.
13

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this action.
17

18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____
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