

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MICHAEL DAVIS,

Plaintiff,

v.

JOHNSON INTERNATIONAL
INDUSTRIES, INC., d/b/a CONTINENTAL
HARDWOOD CO., a Washington
Corporation, and LISA JOHNSON, an
individual and the marital community
comprised of LISA JOHNSON and DON
FULLER,

Defendants.

NO. 2:16-cv-1660-TSZ

**STIPULATED
PROTECTIVE ORDER**

Plaintiff Michael Davis and Defendants Johnson International Industries, Inc., d/b/a Continental Hardwood Co., Lisa Johnson and Don Fuller, through their respective counsel of record, hereby move pursuant to Federal Rule of Civil Procedure (26)(c) for entry of this Stipulated Protective Order:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, commercially valuable or private information for which special protection may be warranted. Disclosure of such confidential information may cause financial or competitive harm to one or both Parties. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order is consistent

1 with LCR 26(c). It does not confer blanket protection on all disclosures or responses to
2 discovery, the protection it affords from public disclosure and use extends only to the limited
3 information or items that are entitled to confidential treatment under the applicable legal
4 principles, and it does not presumptively entitle parties to file confidential information under
5 seal.

6 2. DESIGNATED MATERIAL

7 “Designated Material” shall include the documents, tangible items, or testimony
8 produced, elicited, or otherwise exchanged in this action which the party producing or disclosing
9 such material (the “Designating Party”) designates as “Confidential” or “Highly Confidential –
10 Attorneys’ Eyes Only.” Designated Material may include, but is not limited to, names and
11 contact information of customers and employees; contracts and agreements with customers and
12 employees; personnel information related to non-parties; information maintained as confidential
13 during the normal course of business related to sales, pricing, revenue, strategy and other
14 commercial interests; and medical records.

15 2.1 Designated Material marked “Confidential” shall include any document, file,
16 portion of file, transcribed testimony or other material that the Designating Party in good faith
17 reasonably believes comprises confidential information related to customers, employees,
18 commercial interests, or other information that could cause commercial, professional, or personal
19 harm through disclosure.

20 2.2 Designated Material marked as “Highly Confidential - Attorneys’ Eyes Only”
21 shall include any document, file, portion of file, transcribed testimony or other material that the
22 Designating Party in good faith reasonably believes comprises trade secrets or other competitive
23 sensitive confidential information, financial or other commercial or personally sensitive
24 information that requires such heightened protection. Designated Material may be designated
25 “Highly Confidential – Attorneys’ Eyes Only” only if the Designating Party believes in good
26 faith that designation as “Confidential” will not provide adequate protection.

1 3. SCOPE

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

8 4. ACCESS TO AND USE OF DESIGNATED MATERIAL

9 4.1 Basic Principles. A receiving party may use Designated Material that is disclosed
10 or produced by another party or by a non-party in connection with this case only for prosecuting,
11 defending, or attempting to settle this litigation. Designated Material may be disclosed only to
12 the categories of persons and under the conditions described in this Order. Designated Material
13 must be stored and maintained by a receiving party at a location and in a secure manner that
14 reasonably ensures that access is limited to the persons authorized under this Order.

15 4.2 Disclosure of “Confidential” Information or Items. Unless otherwise ordered by
16 the court or permitted in writing by the Designating Party, material designated as “Confidential”
17 may be disclosed only to the following persons:

- 18 (a) the receiving party;
- 19 (b) the receiving party’s counsel of record in this action, as well as employees
20 of counsel to whom it is reasonably necessary to disclose the information for this litigation;
- 21 (c) the officers, directors, and employees (including in house counsel) of the
22 receiving party to whom disclosure is reasonably necessary for this litigation;
- 23 (d) experts and consultants to whom disclosure is reasonably necessary for
24 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
25 A);
- 26 (e) the court, court personnel, and court reporters and their staff;
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1 (f) copy or imaging services retained by counsel to assist in the duplication of
2 Designated Material, provided that counsel for the party retaining the copy or imaging service
3 instructs the service not to disclose any Designated Material to third parties and to immediately
4 return all originals and copies of any Designated Material;

5 (g) during their depositions, witnesses in the action to whom disclosure is
6 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
7 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
8 transcribed deposition testimony or exhibits to depositions that reveal Designated Material must
9 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
10 under this Order; or

11 (h) the author or recipient of a document containing the information or anyone
12 shown on the document as having received it in the ordinary course of business.

13 4.3 Disclosure of “Highly Confidential – Attorneys’ Eyes Only” Information or
14 Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party,
15 material designated as “Highly Confidential – Attorneys’ Eyes Only” may be disclosed only to
16 the following persons:

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

19 (b) experts and consultants to whom disclosure is reasonably necessary for
20 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
21 A);

22 (c) the court, court personnel, and court reporters and their staff;

23 (d) copy or imaging services retained by counsel to assist in the duplication of
24 Designated Material, provided that counsel for the party retaining the copy or imaging service
25 instructs the service not to disclose any Designated Material to third parties and to immediately
26 return all originals and copies of any Designated Material;

1 (e) during their depositions, witnesses in the action to whom disclosure is
2 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
3 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
4 transcribed deposition testimony or exhibits to depositions that reveal Designated Material must
5 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
6 under this Order;

7 (f) the author or recipient of a document containing the information or anyone
8 shown on the document as having received it in the ordinary course of business; or

9 (g) the receiving party, but only within thirty days of the first day of trial.

10 4.4 Filing Designated Material. Before filing Designated Material or discussing or
11 referencing such material in court filings, the filing party shall confer with the Designating Party
12 to determine whether the Designating Party will remove the confidential designation, whether
13 the document can be redacted, or whether a motion to seal or stipulation and proposed order is
14 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
15 standards that will be applied when a party seeks permission from the court to file material under
16 seal.

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
19 or non-party that designates information or items for protection under this agreement must take
20 care to limit any such designation to specific material that qualifies under the appropriate
21 standards. The Designating Party must designate for protection only those parts of material,
22 documents, items, or oral or written communications that qualify, so that other portions of the
23 material, documents, items, or communications for which protection is not warranted are not
24 swept unjustifiably within the ambit of this agreement.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
26 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
27

1 unnecessarily encumber or delay the case development process or to impose unnecessary
2 expenses and burdens on other parties) expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it designated
4 for protection do not qualify for protection, the Designating Party must promptly notify all other
5 parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
7 (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
8 disclosure or discovery material that qualifies for protection under this Order must be clearly so
9 designated before or when the material is disclosed or produced.

10 (a) Information in documentary form: (*e.g.*, paper or electronic documents
11 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), the Designating Party must affix the words "CONFIDENTIAL" or "HIGHLY
13 CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains Designated
14 Material. If only a portion or portions of the material on a page qualifies for protection, the
15 Designating Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
16 markings in the margins).

17 (b) Testimony given in deposition or in other pretrial proceedings: the parties
18 and any participating non-parties must identify on the record, during the deposition or other
19 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
20 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
21 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
22 transcript, or exhibits thereto, as Designated Material. Prior to the expiration of the fifteen day
23 period, the entire deposition transcript shall be treated as "HIGHLY CONFIDENTIAL –
24 ATTORNEYS' EYES ONLY." If a party or non-party desires to protect Designated Material at
25 trial, the issue should be addressed during the pre-trial conference.

26 (c) Other tangible items: the Designating Party must affix in a prominent
27 place on the exterior of the container or containers in which the information or item is stored the
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1 word “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If
2 only a portion or portions of the information or item warrant protection, the Designating Party, to
3 the extent practicable, shall identify the protected portion(s).

4 5.3 Failures to Designate. A failure to designate qualified information or items does
5 not, standing alone, waive the Designating Party’s right to secure protection under this Order for
6 such material. Upon receiving correction of a designation, the receiving party must make
7 reasonable efforts to ensure that the material is treated in accordance with the provisions of this
8 Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
11 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
13 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
14 challenge a confidentiality designation by electing not to mount a challenge promptly after the
15 original designation is disclosed.

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

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

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
4 LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that party must:

8 (a) promptly notify the Designating Party in writing and include a copy of the
9 subpoena or court order;

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

13 (c) cooperate with respect to all reasonable procedures sought to be pursued
14 by the Designating Party whose Designated Material may be affected.

15 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

25 When a producing party gives notice to receiving parties that certain inadvertently
26 produced material is subject to a claim of privilege or other protection, the obligations of the
27 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
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1 provision is not intended to modify whatever procedure may be established in an e-discovery
2 order or agreement that provides for production without prior privilege review. The parties
3 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

4 10. NON TERMINATION AND RETURN OF DOCUMENTS

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

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

13 The confidentiality obligations imposed by this Order shall remain in effect until a
14 Designating Party agrees otherwise in writing or a court orders otherwise.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16 DATED: May 30, 2017

/s/ Marina M. Visan
Todd W. Wyatt, WSBA #31608
Marina M. Visan, WSBA #49127
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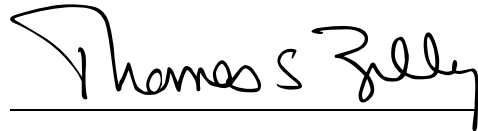
23 DATED: May 30, 2017

/s/ Darren A. Feider
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Attorneys for Defendants

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other
4 proceeding in any other court, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

7
8 DATED this 1st day of June, 2017.

9
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11 Thomas S. Zilly
12 United States District Judge

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
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of *Michael Davis v. Johnson International Industries, Inc., d/b/a Continental Hardwood*
8 *Co., Lisa Johnson and Don Fuller*, Care No. 2:16-cv-1660-TSZ. I agree to comply with and to
9 be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge
10 that failure to so comply could expose me to sanctions and punishment in the nature of contempt.
11 I solemnly promise that I will not disclose in any manner any information or item that is subject
12 to this Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

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 Date: _____

18 City and State where sworn and signed: _____

19 Printed name: _____

20 Signature: _____