

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BEAMING WHITE LLC, and LUIS LAJOUS,

Plaintiffs,

JASON RABON, SHANON RABON,
the marital estate of JASON and
SHANON RABON, WHITEN MY
SMILE NOW; VISION MARKETING
CONSULTANTS, INC., a Delaware
corporation; d/b/a ON THE GO
WHITENING, WHITEN MY SMILE
NOW, and/or DAZZLING WHITE
SMILE USA.

Defendants.

CASE NO. 3:16-CV-05858-DWC

STIPULATED PROTECTIVE ORDER

Pursuant to Fed. R. Civ. P. 26(c) and the Local Rules, Plaintiffs Beaming White LLC and Lajous, and Defendants Jason Rabon, Shanon Rabon, the marital estate of Jason and Shanon Rabon, Whiten My Smile Now, and Vision Marketing Consultants and dba On the Go Beaming, Whiten My Smile Now and/or Dazzling White Smile USA hereby submit the foregoing Stipulated Protective Order for approval and entry by the Court.

1 1. PURPOSES AND LIMITATIONS

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

10 2. “CONFIDENTIAL” MATERIAL

11 “Confidential” material shall include the following documents and tangible things
12 produced or otherwise exchanged (regardless of how generated, stored, or maintained):

- 13 (a) Material the producing party has regarding its customers and its competitors;
- 14 (b) Non-public contracts the producing party has with manufacturers, suppliers,
15 vendors, customers, contractors and subcontractors;
- 16 (c) The financial books and records of the producing party and financial
17 information pertaining to the financial books and records;
- 18 (d) Material about the revenues, costs, expenses, profits, and losses of the
19 producing party;
- 20 (e) Personal information of any employee, customer, or other person;
- 21 (f) Any material the producing party is obligated by contract or state or federal
22 law to keep confidential;

(g) Any other material which the producing party in good faith reasonably believes to include trade secrets, future development or marketing plans, confidential research, development, commercial, or other sensitive information.

3. SCOPE

The protections conferred by this agreement cover not only Confidential Material (as defined above), but also (1) any information copied or extracted from Confidential Material; (2) all copies, excerpts, summaries, or compilations of Confidential Material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal Confidential Material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

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

4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the designating party, or as otherwise set forth in Section 5.3 with respect to Confidential Material designated "ATTORNEYS' EYES ONLY," a receiving party may disclose any Confidential Material only to:

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

(b) the officers, directors, and employees (including in house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation;

(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court, court personnel, and court reporters and their staff;

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

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Confidential Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing Confidential Material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is

1 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
2 standards that will be applied when a party seeks permission from the court to file material under
3 seal.

4 4.4 Experts and/or Consultants. No outside expert or consultant shall be an employee,
5 officer, shareholder, or agent of any competitor of any party.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or
8 non-party that designates information or items for protection under this agreement must take care
9 to limit any such designation to specific material that qualifies under the appropriate standards.
10 The designating party must designate for protection only those parts of material, documents,
11 items, or oral or written communications that qualify, so that other portions of the material,
12 documents, items, or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this agreement.

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

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

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
22 (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
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1 disclosure or discovery material that qualifies for protection under this agreement must be clearly
2 so designated before or when the material is disclosed or produced.

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

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

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

20 5.3 "Attorneys' Eyes Only." The parties shall have the right to further designate
21 Confidential Material or portions thereof as "ATTORNEYS' EYES ONLY." This designation
22 may be made upon a good faith belief that such Confidential Material contains highly sensitive
23 personal information (e.g., personal tax returns, financial statements, bank account statements) or
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1 contains trade secrets or other confidential research, development, regulatory, or commercial
2 information, the disclosure of which to an employee, officer, director, consultant, contractor,
3 subcontractor, or shareholder of any other party or any of its affiliates would create a risk of
4 injury to the designating party's business. Disclosure of such Confidential Material designated as
5 "ATTORNEYS' EYES ONLY" shall be limited to the persons designated in, and in accordance
6 with, Section 4.2, subsections (a), (c), (d), (e), (f), and (g). All other provisions herein applicable
7 to Confidential Material shall be applicable to Confidential Material designated as
8 "ATTORNEYS' EYES ONLY" under this Section 5 .3.

9 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items does not, standing alone, waive the designating party's
11 right to secure protection under this agreement for such material. Upon timely correction of a
12 designation, the receiving party must make reasonable efforts to ensure that the material is
13 treated in accordance with the provisions of this agreement.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
16 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
18 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
19 challenge a confidentiality designation by electing not to mount a challenge promptly after the
20 original designation is disclosed.

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

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

12 7. PROTECTED MATERIALS SUBPOENAED OR ORDERED PRODUCED IN
13 OTHER LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that compel
15 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
16 "ATTORNEYS' EYES ONLY," that party must:

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

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

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose Confidential Material may be affected.

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

1 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential
2 Material to any person or in any circumstance not authorized under this agreement, the receiving
3 party must immediately (a) notify in writing the designating party of the unauthorized
4 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
5 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
6 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
7 Agreement to Be Bound" that is attached hereto as Exhibit A.

8 **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
MATERIAL**

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

15 **NON TERMINATION AND RETURN OF DOCUMENTS**

16 Within 60 days after the termination of this action, including all appeals, each receiving
17 party must return all Confidential Material to the producing party, including all copies, extracts
18 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
19 destruction.

20 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
21 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
22 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
23 work product, even if such materials contain Confidential Material.

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

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

4 || DATED: May 24, 2017

<p><u>s/Kurt Rylander by consent to S.Nagae</u></p> <p>Kurt M. Rylander, WSBA No. 27,819 Mark E. Beatty, WSBA No. 37,076 RYLANDER & ASSOCIATES PC 406 W 12TH ST VANCOUVER, WA 98660 Telephone: 360.750.9931 Fax: 360.397.0473 E-mail: rylander@rylanderlaw.com, beatty@rylanderlaw.com</p> <p>Attorneys for Plaintiffs</p>	<p><u>s/Sarah E. Nagae</u></p> <p>Sarah E. Nagae, WSBA No. 36,984 NEXSEN PRUET, PLLC 4141 Parklake Avenue, Suite 200 Raleigh, NC 27612 Telephone: 919.653.7824 Facsimile: 919.573.7465 E-mail: SNagae@nexsenpruet.com, USTrademark@nexsenpruet.com</p> <p>Brian F. McMahon, WSBA No. 45,739 CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC 1201 Third Avenue, Suite 3600 Seattle, WA 98101 Telephone: 206.682.8100 Fax: 206.224.0779 E-mail: brian.mcmahon@cojk.com, litdoc@cojk.com</p> <p>Attorneys for Defendants</p>
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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 Dated this 24th day of May, 2017.

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11 David W. Christel
12 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____,

declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Beaming White LLC and Luis Lajous v. Jason Rabon, Shanon Rabon, the marital estate of Jason and Shanon Rabon, Whiten My Smile Now, and Vision Marketing Consultants, Inc., and dba On The Go Whitening, Whiten My Smile Now and/or Dazzling White Smile USA*, Case No. 3:16-cv-05858-DWC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____