

1 BERTRAM FIELDS (SBN 024199)
BFields@ggfirm.com
2 AARON J. MOSS (SBN 190625)
AMoss@GreenbergGlusker.com
3 GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor
4 Los Angeles, California 90067-4590
Telephone: (310) 553-3610/Fax: (310)553-0687

5 Attorneys for Plaintiff

6 ALONZO WICKERS IV (SBN 169454)
alonzowickers@dwt.com
7 DAVIS WRIGHT TREMAINE LLP
8 865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
9 Telephone: (213) 633-6800/Fax: (213) 633-6899

10 ELIZABETH A. McNAMARA (Pro Hac Vice)
lizmcnamara@dwt.com
11 DEBORAH A. ADLER (Pro Hac Vice)
deborahadler@dwt.com
12 DAVIS WRIGHT TREMAINE LLP
1633 Broadway, 27th Floor
13 New York, New York 10019
Telephone: (212) 489-8230/Fax: (212) 489-8340

14 Attorneys for Defendants

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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
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19 TOM CRUISE,) Case No. CV 12-09124 (DDP) (JCX)
Plaintiff,)
20 vs.) **DISCOVERY MATTER**
21 BAUER PUBLISHING COMPANY,) **STIPULATED PROTECTIVE**
L.P. BAUER MAGAZINE L.P.,) **ORDER**
22 BAUER MEDIA GROUP, INC.,) [[Proposed] Order Granting Stipulated
BAUER, INC., HEINRICH BAUER) Protective Order Lodged Concurrently]
23 NORTH AMERICA, INC., and DOES)
1-10, inclusive,)
24 Defendants.) Action Filed: October 24, 2012
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1 Plaintiff Tom Cruise, on the one hand, and Defendants Bauer Publishing
2 Company, L.P., Bauer Magazine L.P., Bauer Media Group, Inc., Bauer Inc., Heinrich
3 Bauer North America, Inc. (collectively, the “Bauer Defendants”), on the other (the
4 “Parties”), on the other hand, through their respective counsel of record in the above-
5 captioned matter, hereby stipulate to entry of this Stipulated Protective Order
6 (“Order”) pursuant to Federal Rule of Civil Procedure 26(c)(1), Local Rule 79-5, and
7 applicable decisional law regarding the treatment of confidential information.

8 **1. PURPOSES AND LIMITATIONS**

9 The Parties acknowledge that disclosure and discovery activity in this
10 litigation is likely to include production of confidential, proprietary, trade secret or
11 otherwise private information for which special protection from public dissemination
12 or disclosure (and from use for any purpose other than prosecuting and defending this
13 matter) is warranted. Thus, this Order is warranted and required to prevent and/or
14 limit disclosure of such information and/or documents that have been and may be
15 exchanged and/or produced in this case. The Parties further acknowledge that this
16 Order does not confer blanket protections on all disclosures or responses to discovery
17 and that the protection it affords extends only to the limited information or items that
18 are entitled to treatment as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY” Information or Items.

20 **2. DEFINITIONS**

21 Except as otherwise expressly defined in this Order, the following definitions
22 shall apply:

23 **2.1 Disclosure or Discovery Material.** All items or information, regardless
24 of the medium or manner generated, stored, or maintained (including, among other
25 things, testimony, transcripts, or tangible things) that are produced or generated in
26 disclosures, responses to discovery, or other requests for documentation in this
27 matter.

28 **2.2 “CONFIDENTIAL” Information or Items.** Information (regardless of

1 how generated, stored or maintained) or tangible things that constitute private
2 records, trade secrets, or other confidential material, research, development,
3 commercial, or protected information. The use of the term CONFIDENTIAL in this
4 Order shall be included under this definition.

5 **2.3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**

6 **Information or Items.** Information that is CONFIDENTIAL and whose disclosure
7 to another party would create a substantial risk of injury that could not be avoided by
8 less restrictive means.

9 **2.4 Receiving Party.** A party that receives Disclosure or Discovery
10 Material from a Producing Party.

11 **2.5 Producing Party.** A party that produces Disclosure or Discovery
12 Material in this case.

13 **2.6 Designating Party.** A Party that designates information or items that it
14 produces in disclosures or in responses to discovery or otherwise as
15 “CONFIDENTIAL” Information or Items or “HIGHLY CONFIDENTIAL-
16 ATTORNEYS’ EYES ONLY” Information or Items.

17 **2.7 Protected Material.** Any Disclosure or Discovery Material that is
18 designated as “CONFIDENTIAL” Information or Items or “HIGHLY
19 CONFIDENTIAL- ATTORNEYS’ EYES ONLY” Information or Items.

20 **2.8 Expert.** A person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a party or his/her/its counsel to
22 serve as an expert witness or as a consultant in this action. This definition includes a
23 professional jury or trial consultant retained in connection with this litigation.

24 **3. SCOPE**

25 The protections conferred by this Order cover not only Protected Material (as
26 defined above), but also any information copied or extracted therefrom, as well as all
27 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations,
28 or presentations by parties or counsel to or in this litigation or in other settings that

1 might reveal Protected Material. Nothing in the Order shall be construed as requiring
2 disclosure of documents, information, or any other materials that are privileged in
3 nature, or subject to the attorney-client privilege or the attorney work-product
4 doctrine, and/or documents, information or other materials that are, or may be
5 claimed to be, otherwise beyond the scope of permissible discovery.

6 **4. DURATION**

7 This order shall apply from the time it is entered, and shall survive the
8 termination of this litigation. Further, within five (5) court days from the issuance of
9 a judgment in this matter, the parties agree to “meet and confer” in good faith to
10 ensure that Protected Material does not become part of the public record and ensure
11 that Protected Material is not impermissibly disclosed to third parties.

12 **5. DESIGNATING PROTECTED MATERIAL**

13 **5.1 Exercise of Restraint and Care in Designating Material for**
14 **Protection.**

15 Each party that designates information or items for protection
16 under this Order must take care to limit any such designation to specific material that
17 qualifies under the appropriate standards. A Designating Party must take care to
18 designate for protection only those parts of material, documents, items, or oral or
19 written communications that qualify so that other portions of the material,
20 documents, items, or communications for which protection is not warranted are not
21 swept unjustifiably within the ambit of this Order.

22 If it comes to a party’s attention that information or items that it designated for
23 protection do not qualify for protection at all, or do not qualify for the level of
24 protection initially asserted, that party must promptly notify all other parties that it is
25 withdrawing the mistaken designation.

26 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
27 this Order, or as otherwise stipulated or ordered, material that qualifies for protection
28 under this Order must be clearly so designated before the material is disclosed or
produced:

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(a) For information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” at the top or bottom of each page that contains Protected Material.

(b) For testimony given in deposition or in other pre-trial proceedings, that the Designating Party within thirty (30) days of the deposition, hearing, or other proceeding, shall designate and specify any portions of the testimony that qualify as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to protection, the Designating Party may later identify within a reasonable period the specific portions of the testimony as to which protection is sought, and specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY”).

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” as instructed by the Designating Party.

(c) For information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as

1 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL-ATTORNEYS’
2 EYES ONLY.”

3 **5.3 Inadvertent Failure to Designate or Disclosure.** Pursuant to the
4 Federal Rule of Evidence 502(d), an inadvertent failure to designate qualified
5 information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-
6 ATTORNEYS’ EYES ONLY” does not waive the Designating Party’s right to
7 secure protection under this Order for such material. If material is designated as
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY”
9 after the material was initially produced, the Receiving Party, on timely notification
10 of the designation, must make reasonable efforts to assure that the material is treated
11 in accordance with the provisions of this Order. Additionally, the parties recognize
12 the possibility of inadvertent production of materials to which a party may make a
13 claim of privilege or of protection from discovery as trial preparation material. The
14 inadvertent production of such material shall not operate as a waiver of that privilege
15 or protection and shall not operate as any subject matter waiver of that privilege or
16 protection. The Receiving Party, on timely notification of the inadvertent
17 production, must make reasonable efforts to assure that the material is returned to the
18 Producing Party.

19 **5.4 Challenging Other Party’s Designation.** A party shall not be
20 obligated to challenge the propriety of any “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation at the time made,
22 and failure to do so shall not preclude a subsequent challenge thereto or constitute an
23 admission that such designation was proper. If a party contends that any material is
24 not entitled to “CONFIDENTIAL or “HIGHLY CONFIDENTIAL – ATTORNEYS’
25 EYES ONLY” treatment, such party may give written notice to the party or non-
26 party who designated the material as “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” The parties shall first try to
28 dispose of such dispute in good faith on an informal basis. If the dispute cannot be

1 resolved within seven (7) calendar days of the written notice described above, the
2 party or non-party who designated the material as “CONFIDENTIAL” or “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall have fourteen (14) calendar
4 days from the receipt of such written notice to apply to the Court pursuant to Local
5 Rule 37 for an order confirming the material should retain its designation as
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY.” The material shall be treated as “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” until that motion is decided by
9 the Court.

10 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

11 **6.1 Basic Principles.** A Receiving Party may only use Protected Material
12 that is disclosed or produced by another party in connection with this case for
13 prosecuting and defending this litigation. Such Protected Material may be disclosed
14 only to the Court and to the categories of persons described in this Order who are
15 permitted access to such Protected Material. No other persons shall be provided with
16 the Protected Material. When the litigation has been concluded, a Receiving Party
17 shall comply with the provisions of Paragraphs 4 and 9 herein. Counsel for a
18 Receiving Party which provides Protected Material to a permitted person specified
19 below shall maintain a copy of the signed Exhibit A, Acknowledgment and
20 Agreement To Be Bound.

21 **6.2 “CONFIDENTIAL” Information May Be Disclosed Only to the**
22 **Following Persons:**

23 Protected Material designated as “CONFIDENTIAL” by a Designating Party
24 may be disclosed **only** to the following persons:

- 25 (a) “Outside Counsel”, which shall specifically be defined as
26 attorneys, paralegals, and their staff who are employed by or members
27 of the law firms currently retained by the parties to this action as
28 indicated by the caption and all independent companies or agencies that

1 are directly engaged by Outside Counsel to perform litigation support
2 services under the supervision of such counsel whose duties and
3 responsibilities require access to the CONFIDENTIAL Information or
4 Items.

5 (b) "In-House Counsel", which shall be defined as attorneys
6 who are employees of a party and all independent companies or
7 agencies that are directly engaged by inside counsel to perform litigation
8 support services, paralegal assistants, stenographic, clerical or other staff
9 working under the supervision of such counsel and managers and others
10 charged with making strategic decisions, including regarding settlement,
11 whose duties and responsibilities require access to the
12 CONFIDENTIAL" Information or Items, and only after execution of
13 Exhibit A hereto by that person.

14 (c) Experts (as defined in Paragraph 2.8 above) who have been
15 retained to assist in preparation of this action for trial, and only after
16 execution of Exhibit A hereto by that person.

17 (d) The parties and the employees, contractors, officers,
18 directors and board members of the parties, and only after execution of
19 Exhibit A hereto by that person.

20 (e) Any person whose testimony is taken in this litigation,
21 provided that such person may only be shown copies of
22 "CONFIDENTIAL" Information or Items during his or her testimony,
23 and may not retain any "CONFIDENTIAL" Information or Items, and
24 only after execution of Exhibit A hereto by that person.

25 (f) Any prospective witness and only after execution of
26 Exhibit A hereto by that person, subject to the provisions in Section 6.4
27 below.

28 (g) Any other person by written agreement of the Designating

1 Party and only after execution of Exhibit A hereto by that person.

2 (h) The Court in this proceeding and the Court’s clerical or
3 other staff working under the Court’s supervision, and any jury
4 empanelled at trial in this action.

5 **6.3 Information Designated as “HIGHLY CONFIDENTIAL –**
6 **ATTORNEYS’ EYES ONLY” May Be Disclosed Only to the Following**
7 **Persons:**

8 Protected Material designated as “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY” Information or Items by a Designating Party may be
10 disclosed only to the following persons:

11 (a) Outside Counsel (as defined in Paragraph 6.2 above).

12 (b) In-House Counsel (as defined in Paragraph 6.2 above), and
13 only after execution of Exhibit A hereto by that person.

14 (c) Experts (as defined in Paragraph 2.8 above) above who
15 have been retained to assist in preparation of this action for trial, with
16 disclosure only to the extent necessary to perform such work, and only
17 after execution of Exhibit A hereto by that person.

18 (d) Any person whose testimony is taken, provided that such
19 person may only be shown copies of “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY” Information during his or her testimony,
21 and may not retain any “HIGHLY CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY” Information, and only after execution of Exhibit A
23 hereto by that person.

24 (e) The Court in this proceeding and the Court’s clerical or
25 other staff working under the Court’s supervision, and any jury
26 empanelled at trial in this action.

27 **6.4 Duty to Maintain “Protected Material” Securely.** Protected Material
28 must be stored and maintained by a Receiving Party in a secure manner that ensures

1 that access is limited to the persons authorized under this Order. Nothing in this
2 Order shall be deemed to restrict in any way any Producing Party with respect to the
3 use of its own Protected Material.

4 **6.5 Presentation Of Protected Material To Court.**

5 a. For any documents, pleadings, applications and/or motions
6 submitted to the Court by any party, in connection with any proceeding other than a
7 discovery motion, that attach, quote from, or refer to the substance of documents or
8 materials containing or consisting of “CONFIDENTIAL Information or Items” or
9 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY Information or Items,”
10 the submitting party shall present to the Court a written application and a proposed
11 order demonstrating good cause along with the document(s) submitted for filing
12 under seal in conformance with United States District Court for the Central District
13 of California Local Rule (“Local Rule”) 79-5.1. The proposed order shall address
14 both the sealing of the application and order itself, if appropriate. The original and
15 judge’s copy of the documents containing the purported “CONFIDENTIAL
16 Information or Items” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
17 ONLY Information or Items” shall be submitted to the Court in separate sealed
18 envelopes or other appropriate sealed containers with a copy of the title page attached
19 to the front of each such envelope or container, and a statement substantially in the
20 following form: “This envelope is sealed pursuant to [statute or rule], contains
21 [“CONFIDENTIAL Information or Items” or “HIGHLY CONFIDENTIAL-
22 ATTORNEYS’ EYES ONLY Information or Items”] and is not to be opened or the
23 contents revealed, except by Order of the Court or agreement by the parties.”

24 b. Where filings under seal are explicitly authorized by statute or
25 rule, the authority therefor shall appear on the title page of the proposed filing as
26 required by Local Rule 79-5.1.

27 c. Applications and Orders to Seal, along with the material to be
28 placed under seal, shall not be electronically filed, but shall be filed manually, and a

1 Notice of Manual Filing shall be electronically filed identifying the manually filed
2 materials.

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

5 If a Receiving Party is served with a subpoena or an order issued in other
6 litigation that would compel disclosure of any information or items designated in this
7 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’
8 EYES ONLY”, the Receiving Party must so notify the Designating Party, in writing
9 (by fax, if possible) within a reasonable time period and in no event more than three
10 (3) court days after receiving the subpoena or order. Such notification must include a
11 copy of the subpoena or court order. The Receiving Party also must immediately
12 inform in writing the party who caused the subpoena or order to issue in the other
13 litigation that some or all the material covered by the subpoena or order is the subject
14 of this Order. In addition, the Receiving Party must deliver a copy of this Order
15 promptly to the party in the other action that caused the subpoena or order to issue.

16 The purpose of imposing these duties is to alert the interested parties to the
17 existence of this Order and to afford the Designating Party in this case an opportunity
18 to protect its confidentiality interests in the court from which the subpoena or order
19 issued. This Order shall not be construed as requiring the Receiving Party to seek
20 relief from the subpoena or to challenge or appeal any order of a court of competent
21 jurisdiction requiring production of the information at issue.

22 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
24 Protected Material to any person or in any circumstance not authorized under this
25 Order, the Receiving Party must immediately (a) notify in writing the Designating
26 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of
27 the Protected Material, (c) inform the person or persons to whom unauthorized
28 disclosures were made of all the terms of this Order, and (d) request such person or

1 persons to execute the “Acknowledgment and Agreement to Be Bound” that is
2 attached hereto as Exhibit A. The Designating Party reserves all rights against the
3 Receiving Party for its violations. In the event any party or person violates or
4 threatens to violate any term of this Order, any party may seek immediate injunctive
5 relief against any such party or person violating or threatening to violate any term of
6 this Order.

7 **9. FINAL DISPOSITION**

8 Unless otherwise ordered or agreed in writing by the Producing Party, within
9 thirty (30) calendar days after the final termination of this litigation (including any
10 appeals or court review), each Receiving Party, upon written request by opposing
11 counsel, must return all Protected Material to the Producing Party. As used in this
12 subdivision, all Protected Material includes all copies, abstracts, compilations,
13 summaries or any other form of reproducing or capturing any of the Protected
14 Material. With express permission in writing from the Producing Party, the
15 Receiving Party may destroy some or all of the Protected Material instead of
16 returning it. Whether the Protected Material is returned or destroyed, the Receiving
17 Party must submit a written certification under penalty of perjury to the Producing
18 Party (and, if not the same person or entity, to the Designating Party) by the thirty
19 calendar day deadline that affirms that the Receiving Party has not retained any
20 copies, abstracts, compilations, summaries or other forms of reproducing or capturing
21 any of the Protected Material. Notwithstanding this provision, counsel are entitled to
22 retain one archival copy of all pleadings, exhibits used in the litigation, motion
23 papers, transcripts, legal memoranda, correspondence or attorney work-product, even
24 if such materials contain Protected Material. Any such archival copies that contain
25 or constitute Protected Material remain subject to this Order.

26 **10. MISCELLANEOUS**

27 **10.1 Right to Further Relief.** Nothing in this Order abridges the right of
28 any person to seek its modification by the Court in the future. Each party expressly

1 acknowledges that such modifications may be necessary. Further, each party
2 expressly acknowledges that written modifications to this Order approved by the
3 parties may be necessary as the case goes forward.

4 **10.2 Enforcement.** Each party and person bound by this Order, including all
5 those who have executed Exhibit A, agrees that the United States District Court for
6 the Central District of California has jurisdiction to enforce the terms of this Order,
7 and that such jurisdiction continues beyond the date this matter is concluded. The
8 United States District Court for the Central District of California shall retain
9 jurisdiction over all parties and persons who have received Protected Material for the
10 purpose of enforcing the provisions of the Order after the action is otherwise
11 terminated, making such rulings and entering such orders as may be necessary to
12 compel compliance and impose sanctions as the Court shall determine. Should a
13 dispute materialize concerning whether a person was improperly provided Protected
14 Material, the party in possession of Exhibit A for that person shall provide it to the
15 complaining party upon five (5) court days written notice.

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1 **10.3 Right to Assert Other Objections.** By stipulating to the entry of this Order,
2 no party waives any right it otherwise would have to object to disclosing or
3 producing any information or item on any ground not addressed in this Order. The
4 parties specifically agree that they shall not use this Order to support a waiver
5 argument in any discovery motion, or to argue that any party waived its objections to
6 produce any particular documents or information.

7 **10.4 Effective Without Court Order.** The parties agree to be bound by this Order
8 pending the entry of this Order, or an alternative thereto which is satisfactory to the
9 parties, by the Court, and any violation of this Order’s terms shall be subject to the
10 same sanctions and penalties as if this Order had been entered by the Court.

11 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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13 DATED: March 6, 2013

14 GREENBERG GLUSKER FIELDS
15 CLAMAN & MACHTINGER LLP
16 BERTRAM FIELDS
17 AARON J. MOSS

DAVIS WRIGHT TREMAINE LLP
ALONZO WICKERS IV
ELIZABETH A. McNAMARA
DEBORAH A. ADLER

18 By: /s/ Aaron J. Moss
19 Aaron J. Moss

By: /s/ Alonzo Wickers IV
Alonzo Wickers IV

20 Attorneys for Plaintiff
21 TOM CRUISE

Attorneys for Defendants
BAUER PUBLISHING COMPANY,
L.P., BAUER MAGAZINE L.P., BAUER
22 MEDIA GROUP, INC., BAUER, INC.,
23 and HEINRICH BAUER NORTH
24 AMERICA, INC.

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

6	TOM CRUISE,)	Case No. CV 12-09124 (DDP) (JCX)
7	Plaintiff,)	<u>ASSURANCE OF</u>
8	vs.)	<u>CONFIDENTIALITY</u>
9	BAUER PUBLISHING COMPANY,)	
10	L.P. BAUER MAGAZINE L.P.,)	
11	BAUER MEDIA GROUP, INC.,)	
12	BAUER, INC., HEINRICH BAUER)	
13	NORTH AMERICA, INC., and DOES)	
14	1-10, inclusive,)	
15	Defendants.)	

I, _____, of _____ have read in its entirety and understand the Stipulated Protective Order (“Order”) in the above-captioned litigation. I agree to comply with and to be bound by all the terms of this Order. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Order to any person or entity except in strict compliance with the provisions of this Order. I fully understand that if I violate any provision of the Order, I will be subject to sanctions by the Court, in addition to any other remedies that a party may have. If I am not a party to this dispute, I agree that the Court may enforce this agreement at any time, including following the conclusion of this matter, and that an action may be brought in the United States District Court for the Central District of California to enforce the terms of this Order, and I submit to the jurisdiction of this Court.

I hereby declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct of my own personal knowledge.

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Dated: _____

Signature: _____

Full Name: _____

Address: _____

Phone Number: _____