

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Rivera v. O'Reilly Auto Enterprises LLC

Rivera · No. 1:24-cv-00333-JLT-SAB · Decided February 28, 2025

SUMMARY

This document is an order entering the parties’ stipulated protective order in Alexis Rivera v. O’Reilly Auto Enterprises, LLC, Case No. 1:24-cv-00333-JLT-SAB, in the U.S. District Court for the Eastern District of California. It governs the designation, use, disclosure, challenge, filing under seal, and final disposition of confidential discovery material.

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF
CALIFORNIA 10 ALEXIS RIVERA, Case No. 1:24-cv-00333-JLT-SAB 11 Plaintiff, ORDER
RE: STIPULATED PROTECTIVE 12 ORDER v. 13 O'REILLY AUTO ENTERPRISES LLC, 14
Defendants. 15 16 PURPOSES AND LIMITATIONS 17 Disclosure and discovery activity in this
action are likely to involve 18 production of confidential, proprietary, or private information for
which special 19 protection from public disclosure and from use for any purpose other than 20
prosecuting this litigation may be warranted.

Accordingly, the parties hereby 21 stipulate to the following Stipulated Protective Order. The
parties acknowledge 22 that this Joint Stipulation does not confer blanket protections on all
disclosures or 23 responses to discovery and that the protection it affords from public disclosure
and 24 use extends only to the limited information or items that are entitled to 25 confidential
treatment under the applicable legal principles.

26 2. DEFINITIONS 27 2.1 Challenging Party: a Party or Non-Party that challenges the
designation of information or items under this Order. 1 2.2 “CONFIDENTIAL” Information or
Items: information (regardless of 2 how it is generated, stored or maintained) or tangible things
that qualify for 3 protection under Federal Rule of Civil Procedure 26(c). 4 2.3 Counsel (without
qualifier): Outside Counsel of Record and In- 5 House Counsel (as well as their respective support
staff).

6 2.4 Designating Party: a Party or Non-Party that designates information 7 or items that it
produces in disclosures or in responses to discovery as 8 “CONFIDENTIAL.” 9 2.5 Disclosure or
Discovery Material: all items or information, 10 regardless of the medium or manner in which it is
generated, stored, or maintained 11 (including, among other things, testimony, transcripts, and

tangible things), that 12 are produced or generated in disclosures or responses to discovery in this matter.

13 2.6 Expert: a person with specialized knowledge or experience in a 14 matter pertinent to the litigation who has been retained by a Party or its counsel to 15 serve as an expert witness or as a consultant in this action. 16 2.7 In House Counsel: attorneys who are employees of a party to this 17 action.

In-House Counsel does not include Outside Counsel of Record or any 18 other outside counsel. 19 2.8 Non-Party: any natural person, partnership, corporation, association, 20 or other legal entity not named as a Party to this action. 21 2.9 Outside Counsel of Record: attorneys who are not employees of a 22 party to this action but are retained to represent or advise a party to this action and 23 have appeared in this action on behalf of that party or are affiliated with a law firm 24 which has appeared on behalf of that party.

25 2.10 Party: any party to this action, including all of its officers, directors, 26 employees, consultants, retained experts, and Outside Counsel of Record (and 27 their support staffs). 1 2.11 Producing Party: a Party or Non-Party that produces Disclosure or 2 Discovery Material in this action. 3 2.12 Professional Vendors: persons or entities that provide litigation 4 support services (e.g., photocopying, videotaping, translating, preparing exhibits 5 or demonstrations, and organizing, storing, or retrieving data in any form or 6 medium) and their employees and subcontractors.

7 2.13 Protected Material: any Disclosure or Discovery Material that is 8 designated as "CONFIDENTIAL." 9 2.14 Receiving Party: a Party that receives Disclosure or Discovery 10 Material from a Producing Party. 11 3. SCOPE 12 The protections conferred by this Stipulation cover not only Protected 13 Material (as defined above), but also (1) any information copied or extracted from 14 Protected Material; (2) all copies, excerpts, summaries, or compilations of 15 Protected Material; and (3) any testimony, conversations, or presentations by 16 Parties or their Counsel that might reveal Protected Material.

However, the 17 protections conferred by this Stipulation do not cover the following information: 18 (a) any information that is in the public domain at the time of disclosure to a 19 Receiving Party or becomes part of the public domain after its disclosure to a 20 Receiving Party as a result of publication not involving a violation of this 21 Stipulation, including becoming part of the public record through trial or 22 otherwise; and (b) any information known to the Receiving Party prior to the 23 disclosure or obtained by the Receiving Party after the disclosure from a source 24 who obtained the information lawfully and under no obligation of confidentiality 25 to the Designating Party.

Any use of Protected Material at trial shall be governed by a separate agreement or order. 27 / / / / 1 4. DURATION 2 Even after final disposition of this litigation, the confidentiality obligations 3 imposed by this Joint Stipulation shall remain in effect until a Designating Party 4 agrees otherwise in writing or a court order otherwise directs. Final disposition 5 shall be deemed to be the later of (1) dismissal of all claims and defenses in this 6 action, with or without prejudice; and (2) final judgment herein after the 7 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews 8 of this action, including the time limits for filing any motions or applications for 9 extension of time pursuant to applicable law.

10 5. DESIGNATING PROTECTED MATERIAL 11 5.1 Exercise of Restraint and Care in Designating Material for Protection. 12 Each Party or Non-Party that designates information or items for protection 13 under this Joint Stipulation must take care to limit any such designation to specific 14 material that the designating party or non-party has an articulatable, good faith 15 basis to believe that the same qualifies for protection under Federal Rule of Civil 16 Procedure 26(c).

The Designating Party must designate for protection only those 17 parts of material, documents, items, or oral or written communications that qualify 18 – so that other portions of the material, documents, items, or communications for 19 which protection is not warranted are not swept unjustifiably within the ambit of 20 this Joint Stipulation. 21 Mass, indiscriminate, or routinized designations are prohibited.

22 Designations that are shown to be clearly unjustified or that have been made for an 23 improper purpose (e.g., to unnecessarily encumber or retard the case development 24 process or to impose unnecessary expenses and burdens on other parties) expose 25 the Designating Party to sanctions. If it comes to a Designating Party's attention 26 that information or items that it designated for protection do not qualify for 27 protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided 2 in this Joint Stipulation (see, e.g., second paragraph of section 5.2(a) below), or as 3 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for 4 protection under this Joint Stipulation must be clearly so designated before the 5 material is disclosed or produced.

6 Designation in conformity with this Joint Stipulation requires: 7 (a) for information in documentary form (e.g., paper or electronic 8 documents, but excluding transcripts of depositions or other pretrial or trial 9 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to 10 each page that contains protected material. If only a portion or portions of the 11 material on a page qualifies for protection, the Producing Party also must clearly 12 identify the protected portion(s) (e.g., by making appropriate markings in the 13 margins).

14 A Party or Non-Party that makes original documents or materials available 15 for inspection need not designate them for protection until after the inspecting 16 Party has indicated which material it would like copied and produced. During the 17 inspection and before the designation, all of the material made available for 18 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has 19 identified the documents it wants copied and produced, the Producing Party must 20 determine which documents, or portions thereof, qualify for protection under this 21 Order.

Then, before producing the specified documents, the Producing Party must 22 affix the “CONFIDENTIAL” legend to each page that contains Protected 23 Material. If only a portion or portions of the material on a page qualifies for 24 protection, the Producing Party also must clearly identify the protected portion(s) 25 (e.g., by making appropriate markings in margins).

26 (b) for testimony given in deposition or in other pretrial or trial 27 proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony. 1 (c) for information produced in some form other than documentary and for 2 any other tangible items, that the Producing Party affix in a prominent place on the 3 exterior of the container or containers in which the information or item is stored 4 the legend “CONFIDENTIAL.” If only a portion or portions of the information or 5 item warrant protection, the Producing Party, to the extent practicable, shall 6 identify the protected portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent 8 failure to designate qualified information or items does not, standing alone, waive 9 the Designating Party’s right to secure protection under this Joint Stipulation for 10 such material. Upon timely correction of a designation, the Receiving Party must 11 make reasonable efforts to assure that the material is treated in accordance with 12 this Order.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS 14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a 15 designation of confidentiality at any time. Unless a prompt challenge to a 16 Designating Party’s confidentiality designation is necessary to avoid foreseeable, 17 substantial unfairness, unnecessary economic burdens, or a significant disruption 18 or delay of the litigation, a Party does not waive its right to challenge a 19 confidentiality designation by electing not to mount a challenge promptly after the 20 original designation is disclosed.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute 22 resolution process by providing written notice of each designation it is challenging 23 and describing the basis for each challenge. To avoid ambiguity as to whether a 24 challenge has been made, the written notice must recite that the challenge to 25 confidentiality is being made in accordance with this specific paragraph of the 26 Joint Stipulation.

The parties shall attempt to resolve each challenge in good faith²⁷ and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice.

In conferring, the Challenging Party must explain the basis for² its belief that the confidentiality designation was not proper and must give the³ Designating Party an opportunity to review the designated material, to reconsider⁴ the circumstances, and, if no change in designation is offered, to explain the basis⁵ for the chosen designation. A Challenging Party may proceed to the next stage of⁶ the challenge process only if it has engaged in this meet and confer process first or⁷ establishes that the Designating Party is unwilling to participate in the meet and⁸ confer process in a timely manner.

⁹ 6.3 Judicial Intervention. If the Parties cannot resolve a challenge¹⁰ without court intervention, the Designating Party shall file and serve a motion to¹¹ retain confidentiality within 30 days of the initial notice of challenge or within¹⁴ ¹² days of the parties agreeing that the meet and confer process will not resolve their¹³ dispute, whichever is earlier.

Each such motion must be accompanied by a¹⁴ competent declaration affirming that the movant has complied with the meet and¹⁵ confer requirements imposed in the preceding paragraph. Failure by the¹⁶ Designating Party to make such a motion including the required declaration within¹⁷ ²¹ days (or 14 days, if applicable) shall automatically waive the confidentiality¹⁸ designation for each challenged designation.

In addition, the Challenging Party¹⁹ may file a motion challenging a confidentiality designation at any time if there is²⁰ good cause for doing so, including a challenge to the designation of a deposition²¹ transcript or any portions thereof. Any motion brought pursuant to this provision²² must be accompanied by a competent declaration affirming that the movant has²³ complied with the meet and confer requirements imposed by the preceding²⁴ paragraph.

²⁵ The burden of persuasion in any such challenge proceeding shall be on the²⁶ Designating Party. Frivolous challenges, and those made for an improper purpose²⁷ (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has¹ waived the confidentiality designation by failing to file a motion to retain² confidentiality as described above, all parties shall continue to afford the material³ in question the level of protection to which it is entitled under the Producing⁴ Party's designation until the court rules on the challenge.

⁵ 7. ACCESS TO AND USE OF PROTECTED MATERIAL ⁶ 7.1 Basic Principles. A Receiving Party may use Protected Material that⁷ is disclosed or produced by another Party or by a Non-Party in connection with⁸ this case only for prosecuting, defending, or attempting to settle this

litigation. 9 Such Protected Material may be disclosed only to the categories of persons and 10 under the conditions described in this Joint Stipulation.

When the litigation has 11 been terminated, a Receiving Party must comply with the provisions of section 13 12 below (FINAL DISPOSITION). 13 Protected Material must be stored and maintained by a Receiving Party at a 14 location and in a secure manner that ensures that access is limited to the persons 15 authorized under this Order. 16 7.2 Disclosure of “CONFIDENTIAL” Information or Items.

Unless 17 otherwise ordered by the court or permitted in writing by the Designating Party, a 18 Receiving Party may disclose any information or item designated 19 “CONFIDENTIAL” only to: 20 (a) the Receiving Party’s Outside Counsel of Record in this action, as well 21 as employees of said Outside Counsel of Record to whom it is reasonably 22 necessary to disclose the information for this litigation and who have signed the 23 “Acknowledgment and Agreement to Be Bound” that is attached hereto as 24 Exhibit A; 25 (b) the officers, directors, and employees (including In-House Counsel) of 26 the Receiving Party to whom disclosure is reasonably necessary for this litigation 27 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); 1 (c) Experts (as defined in this Order) of the Receiving Party to whom 2 disclosure is reasonably necessary for this litigation and who have signed the 3 “Acknowledgment and Agreement to Be Bound” (Exhibit A); 4 (d) the court and its personnel; 5 (e) court reporters and their staff, professional jury or trial consultants, 6 mock jurors, and Professional Vendors to whom disclosure is reasonably 7 necessary for this litigation and who have signed the “Acknowledgment and 8 Agreement to Be Bound” (Exhibit A); 9 (f) during their depositions, witnesses in the action to whom disclosure is 10 reasonably necessary and who have signed the “Acknowledgment and Agreement 11 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or 12 ordered by the court.

Pages of transcribed deposition testimony or exhibits to 13 depositions that reveal Protected Material must be separately bound by the court 14 reporter and may not be disclosed to anyone except as permitted under this Joint 15 Stipulation. 16 (g) the author or recipient of a document containing the information or a 17 custodian or other person who otherwise possessed or knew the information.

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED 19 PRODUCED IN OTHER LITIGATION 20 If a Party is served with a subpoena or a court order issued in other 21 litigation that compels disclosure of any information or items designated in this 22 action as “CONFIDENTIAL,” that Party must: 23 (a) promptly notify in writing the Designating Party. Such notification shall 24 include a copy of the subpoena or court order; 25 (b) promptly notify in writing the party who caused the subpoena or order 26 to issue in the other litigation that some or all of the material covered by the 27 subpoena or order is subject to this Joint Stipulation.

Such notification shall include a copy of this Joint Stipulation; and 1 (c) cooperate with respect to all reasonable procedures sought to be pursued 2 by the Designating Party whose Protected Material may be affected. 3 If the Designating Party timely seeks a protective order, the Party served 4 with the subpoena or court order shall not produce any information designated in 5 this action as “CONFIDENTIAL” before a determination by the court from which 6 the subpoena or order issued, unless the Party has obtained the Designating 7 Party’s permission.

The Designating Party shall bear the burden and expense of 8 seeking protection in that court of its confidential material – and nothing in these 9 provisions should be construed as authorizing or encouraging a Receiving Party in 10 this action to disobey a lawful directive from another court. 11 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE 12 PRODUCED IN THIS LITIGATION 13 (a) The terms of this Joint Stipulation are applicable to information 14 produced by a Non-Party in this action and designated as “CONFIDENTIAL.” 15 Such information produced by Non-Parties in connection with this litigation is 16 protected by the remedies and relief provided by this Joint Stipulation.

Nothing in 17 these provisions should be construed as prohibiting a Non-Party from seeking 18 additional protections. 19 (b) In the event that a Party is required, by a valid discovery request, to 20 produce a Non-Party’s confidential information in its possession, and the Party is 21 subject to an agreement with the Non-Party not to produce the Non-Party’s 22 confidential information, then the Party shall: 23 (1) promptly notify in writing the Requesting Party and the Non-Party 24 that some or all of the information requested is subject to a confidentiality 25 agreement with a Non-Party; 26 (2) promptly provide the Non-Party with a copy of the Joint Stipulation 27 in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and 1 (3) make the information requested available for inspection by the Non- 2 Party.

3 (c) If the Non-Party fails to object or seek a protective order from this 4 court within 14 days of receiving the notice and accompanying information, the 5 Receiving Party may produce the Non-Party’s confidential information responsive 6 to the discovery request. If the Non-Party timely seeks a protective order, the 7 Receiving Party shall not produce any information in its possession or control that 8 is subject to the confidentiality agreement with the Non-Party before a 9 determination by the court.

Absent a court order to the contrary, the Non-Party 10 shall bear the burden and expense of seeking protection in this court of its 11 Protected Material. 12 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL 13 If a Receiving Party learns that, by inadvertence or otherwise, it has 14 disclosed Protected Material to any person or in any circumstance not authorized 15 under this Joint Stipulation, the Receiving Party must immediately (a) notify in 16 writing the Designating Party of the unauthorized disclosures, (b) use its best 17

efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the 18 person or persons to whom unauthorized disclosures were made of all the terms of 19 this Order, and (d) request such person or persons to execute the 20 “Acknowledgment and Agreement to Be Bound” that is attached hereto as 21 Exhibit A. 22 11.

INADVERTENT PRODUCTION OF PRIVILEGED OR 23 OTHERWISE PROTECTED MATERIAL 24 When a Producing Party gives notice to Receiving Parties that certain 25 inadvertently produced material is subject to a claim of privilege or other 26 protection, the obligations of the Receiving Parties are those set forth in Federal 27 Rule of Civil Procedure 26(b) (5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for 1 production without prior privilege review.

Pursuant to Federal Rule of Evidence 2 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure 3 of a communication or information covered by the attorney-client privilege or 4 work product protection, the parties may incorporate their agreement in the 5 stipulated protective order. 6 12. MISCELLANEOUS 7 12.1 Relation to Any Court or Local Rules.

Without a separate court order, 8 this Joint Stipulation and the parties’ stipulation thereto does not change, amend, 9 or circumvent any court rule or local rule. 10 12.2 Right to Further Relief. Nothing in this Order abridges the right of 11 any person to seek its modification by the court in the future. 12 12.3 Modification of the Protective Order by the Court.

The Court may 13 modify the terms and conditions of this Order for good cause, or in the interest of 14 justice, or on its own order at any time in these proceedings. 15 12.4 Right to Assert Other Objections. By stipulating to the entry of this 16 Protective Order no Party waives any right it otherwise would have to object to 17 disclosing or producing any information or item on any ground not addressed in 18 this Stipulated Protective Order.

Similarly, no Party waives any right to object on 19 any ground to use in evidence of any of the material covered by this Protective 20 Order. 21 12.5 Filing Documents Under Seal. No document shall be filed under seal 22 unless counsel secures a court order allowing the filing of a document under seal. 23 An application to file a document under seal shall be served on opposing counsel, 24 and on the person or entity that has custody or control of the document, if different 25 from opposing counsel.

If the applicable to file under seal a document designated 26 as confidential is being made by the non-designating party, then, upon request, the 27 designating party must promptly provide the applicant with the legal basis for the confidential designation to include within the application. If opposing counsel, or 1 the person or entity that has custody and control of the document, wishes

to 2 oppose the application, he/she must contact the chambers of the judge who will 3 rule on the application, to notify the judge's staff that an opposition to the 4 application will be filed.

5 13. FINAL DISPOSITION 6 Within 60 days after the final disposition of this action, as defined in 7 paragraph 4, each Receiving Party must return all Protected Material to the 8 Producing Party or destroy such material.

As used in this subdivision, "all 9 Protected Material" includes all copies, abstracts, compilations, summaries, and 10 any other format reproducing or capturing any of the Protected Material. Whether 11 the Protected Material is returned or destroyed, the Receiving Party must submit a 12 written certification to the Producing Party (and, if not the same person or entity, 13 to the Designating Party) by the 60 day deadline that (1) identifies (by category, 14 where appropriate) all the Protected Material that was returned or destroyed and 15 (2) affirms that the Receiving Party has not retained any copies, abstracts, 16 compilations, summaries or any other format reproducing or capturing any of the 17 Protected Material.

Notwithstanding this provision, Counsel are entitled to retain 18 an archival copy of all pleadings, motion papers, trial, deposition, and hearing 19 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert 20 reports, attorney work product, and consultant and expert work product, even if 21 such materials contain Protected Material.

Any such archival copies that contain 22 or constitute Protected Material remain subject to this Joint Stipulation as set forth 23 in Section 4. 24 Absent an ex parte motion made within 10 calendar days of the termination 25 of the case, the Parties understand that the Court will destroy any confidential 26 documents in its possession 27 1 Dated: February 27, 2025 HIGGS FLETCHER & MACK LLP 2 3 By: /s/ Geoffrey M. Thorne JAMES M. PETERSON 4 GEOFFREY M. THORNE Attorneys for Defendant 5 O'REILLY AUTO ENTERPRISES, 6 LLC 7 Dated: February 27, 2025 ATTICUS LAW GROUP 8 9 By: /s/ Jeff Ranen 10 JEFF RANEN PARISA KHADEMI 11 Attorneys for Plaintiff ALEXIS RIVERA 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 1 Exhibit A 2 I hereby certify that I have carefully read the Protective Order issued by the 3 District Court for the Eastern District of California, in the action entitled Alexis 4 Rivera v. O'Reilly Auto Enterprises, LLC, et al., Case No. 1:24-cv-00333-JLT- 5 SAB.

I recognize that I am bound by the terms of that Order, and I agree to 6 comply with those terms. I agree not to disclose Confidential Documents to 7 anyone who has not signed a copy of this Certificate. I agree to use Confidential 8 Documents only in connection with this action, and not for any other purpose 9 including, without limitation, business, competitive or governmental purposes or 10 function.

I hereby consent to be subject to the personal jurisdiction of the District 11 Court for the Eastern District of California, with respect to any proceeding relative 12 to the enforcement of that Order,

including, without limitation, any proceeding 13 related to the contempt of court. 14 15 Executed
this _____ day of _____ (month), _____ (year) at 16
_____ (city).

17 18 19 Signature: _____ 20 Name:
_____ 21 Job Title: _____ 22
Employer: _____ 23 Bus. Address:
_____ 24 25 26 27 1 COURT ORDER ENTERING

STIPULATED PROTECTIVE ORDER 2 Pursuant to the stipulation of the parties and good cause
appearing, IT IS HEREBY 3 | ORDERED that: 4 1.

The above stipulated protective order is ENTERED; 5 2. The provisions of the parties' stipulation
and this protective order shall remain in 6 effect until further order of the Court; 7 3. The parties
are advised that pursuant to the Local Rules of the United States 8 District Court, Eastern District
of California, any documents which are to be filed 9 under seal will require a written request
which complies with Local Rule 141; 10 4.

The party making a request to file documents under seal shall be required to show 11 either good
cause or compelling reasons to seal the documents, depending on the 12 type of filing, Pintos v.
Pac. Creditors Ass'n, 605 F.3d 665, 677-78 (9th Cir. 13 2009); Ctr. for Auto Safety v. Chrysler
Grp., LLC, 809 F.3d 1092, 1101 (9th Cir. 14 2016); and 15 5. If a party's request to file Protected
Material under seal is denied by the Court, 16 then the previously filed material shall be
immediately accepted by the court and 17 become information in the public record and the
information will be deemed filed 18 as of the date that the request to file the Protected Information
under seal was 19 made.

20 IT IS SO ORDERED. DAM Le 22 | Dated: _ February 28, 2025 _ ef STANLEY A. BOONE
23 United States Magistrate Judge 24 25 26 27 28