

DOCKET NO. UWY-CV-14-6026552-S	:	SUPERIOR COURT
	:	
NUCAP INDUSTRIES INC., NUCAP US	:	J.D. WATERBURY
INC., as successor to ANSTRO	:	
MANUFACTURING, INC.;	:	AT WATERBURY
	:	
Plaintiffs,	:	SEPTEMBER 21, 2016
	:	
VS.	:	
	:	
PREFERRED TOOL AND DIE, INC.,	:	
PREFERRED AUTOMOTIVE	:	
COMPONENTS, a division of PREFERRED	:	
TOOL AND DIE; and ROBERT A. BOSCO,	:	
JR.,	:	
	:	
Defendants.	:	

**PLAINTIFFS’ MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SEAL**

Pursuant to Practice Book Sections 7-4B, 7-4C, and 11-20A, Plaintiffs, Nucap Industries Inc. and Nucap US Inc., hereby move for an Order sealing limited portions of their Memorandum of Law in Support of their Motion for an Order of Compliance (“Motion” or “Memorandum of Law”) and sealing Exhibits B, C, and H to their Motion and Memorandum of Law.

**I. BACKGROUND**

This action is against Preferred Tool and Die, Inc. and Preferred Automotive Components (“Preferred”) and Robert A. Bosco, Jr. (“Bosco”) for misappropriation of Plaintiffs’ trade secrets and proprietary product design and manufacturing information. After Preferred—a company with no prior experience in the brake industry—either hired or associated itself with several former employees of Plaintiffs, it quickly “came to market” with a line of automotive brake products that had a striking resemblance to products manufactured and designed by Plaintiffs. One such Preferred employee and former employee of a subsidiary of Plaintiffs, Carl Dambrauskas, even began marketing Preferred’s brake shim products by touting his experience

with Plaintiffs and referencing information relating to the customer's current supplier (Nucap), that Preferred could potentially share with the customer. Preferred also hired Thomas Reynolds, a former employee of Plaintiffs with experience in the manufacturing of Plaintiffs' brake parts, namely shims, through a process referred to as "tooling."

Discovery in this case is subject to a two-tiered Protective Order that allows the parties to designate materials as "Confidential" or "Attorneys' Eyes Only." See Protective Order at ¶ 7, attached as Exhibit A. The "Confidential" designation permits access to the parties, counsel, the Court, and associated personnel providing services in the context of this litigation (court staff, experts, or court reporters, for example). Protective Order at ¶ 6. "Confidential" documents are not permitted to be disclosed outside of the context of the litigation or to any persons not specifically identified by the Order. *Id.* The "Attorneys' Eyes Only" designation precludes access to the documents by anyone other than outside counsel and the Court, if appropriate. *Id.* Preferred has designated the vast majority of its production documents as either "Confidential" or "Attorneys Eyes Only." Paragraph 14 of the Protective Order requires that any party wishing to use "Confidential" or "Confidential – Attorneys' Eyes Only" materials in a court filing must file a motion to have such materials sealed. *Id.* at ¶ 14.

Connecticut courts have the authority to seal documents if necessary to preserve a party's interest that is determined to override the public's interest in viewing the document. Practice Book § 11-20A(c) (records can be sealed if the "judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials."). The "presumption of public access [to documents]... is not absolute." *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 35 (Conn. 2009) (internal citations omitted). "With respect to documents, the presumption of public access never has extended to

every document generated in the course of litigation.” *Id.* at 36. (internal citations omitted). It is well settled that a company’s “interest in protecting the confidentiality of its business practices from competitors necessarily overrides the public’s interest” in accessing the confidential information. *Dominion Nuclear v. Town of Waterford*, 2006 Conn. Super. LEXIS 1486, at \*3-\*4 (Super. Ct. May 19, 2006) (closing courtroom during recitation of certain deposition testimony and sealing corresponding portion of transcript); *Williams Trading, LLC v. Murphy*, 2011 Conn. Super. LEXIS 2175 (Super. Ct. Aug. 29, 2011) (granting motion to seal arbitration transcripts and exhibits containing confidential proprietary business information).

Here, Preferred has designated the entire deposition of Carl Dambrauskas (Exhibit B to Motion for Compliance) as “Confidential – Attorneys’ Eyes Only.” Preferred has further designated as “Confidential – Attorneys’ Eyes Only” a grouping of “pitch” letters from Mr. Dambrauskas (Exhibit H to Motion for Compliance) in which Mr. Dambrauskas solicits business on behalf of Preferred from a series of suppliers or purchasers in the after-market automotive brake industry (all of whom were also Nucap clients or suppliers). Preferred has also marked a copy of current Preferred employee and former Nucap employee Thomas Reynolds’ resume (Exhibit C to Motion for Compliance) as “Confidential.”

Plaintiffs do not necessarily agree that all the documents and materials designated by Preferred as Confidential or Confidential Attorneys’ Eyes Only warrant the protection imposed by Preferred and takes no position on whether the designations are appropriate under the terms of the Protective Order. Pursuant to Paragraph 14 of the Protective Order, however, such materials are required to be filed under seal and Plaintiffs file this motion to seal in accordance with the terms of Paragraph 14.

## II. CONCLUSION

For the foregoing reasons, Plaintiffs moves that the Court enter an order directing that Plaintiffs' Memorandum of Law and Exhibits B, C, and H be filed under seal. In accordance with Practice Book Practice Book Sections 7-4B, 7-4C, and 11 -20A, Plaintiffs will lodge an un-redacted version of its Motion, Memorandum of Law, and all supporting exhibits with the Court, and will simultaneously file a redacted version of its Motion and Memorandum of Law on the Court's public docket.

PLAINTIFFS,  
NUCAP INDUSTRIES, INC. and NUCAP US,  
INC.

By /s/ Stephen W. Aronson

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**CERTIFICATION**

This is to certify that a copy of the foregoing was mailed, postage prepaid or delivered electronically or non-electronically, on this 21st day of September 2016 to all counsel and self-represented parties of record, as follows:

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/s/Stephen W. Aronson  
Stephen W. Aronson

**Exhibit A**

**Stipulated Protective Order**

NO. UWY-CV-14-6026552-S

NUCAP INDUSTRIES, INC. et al.,	)	SUPERIOR COURT
	)	
Plaintiffs,	)	J.D. OF WATERBURY
	)	
v.	)	AT WATERBURY
	)	
PREFERRED TOOL AND DIE, INC., et al.,	)	
	)	
Defendants.	)	AUGUST 4, 2015

**JOINT MOTION FOR ENTRY OF STIPULATED PROTECTIVE ORDER**

Defendants Preferred Tool and Die, Inc., and Preferred Automotive Components (“Preferred”), Defendant Robert A. Bosco, Jr. (“Bosco”), and Plaintiffs Nucap Industries, Inc. and Nucap US, Inc.’s (“Nucap”) hereby move for entry of the Stipulated Protective Order filed herewith this date.

PLAINTIFFS,  
NUCAP INDUSTRIES, INC. AND  
NUCAP US, INC.

DEFENDANTS,  
PREFERRED TOOL AND DIE, INC. AND  
PREFERRED AUTOMOTIVE COMPONENTS

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DEFENDANT ROBERT BOSCO, Jr.

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NO. UWY-CV-14-6026552-S

NUCAP INDUSTRIES, INC. et al.,	)	SUPERIOR COURT
	)	
Plaintiffs,	)	J.D. OF WATERBURY
	)	
v.	)	AT WATERBURY
	)	
PREFERRED TOOL AND DIE, INC., et al.,	)	
	)	
Defendants.	)	AUGUST 4, 2015

**STIPULATED PROTECTIVE ORDER**

Plaintiffs Nucap Industries, Inc. and Nucap US, Inc.’s (“Nucap”), Defendants Preferred Tool and Die, Inc., and Preferred Automotive Components (collectively “Preferred”), and Defendant Robert Bosco, Jr. (“Bosco”), hereby request, pursuant to Connecticut Practice Book § 13-5, that the following Protective Order be entered by the Court.

1. This Protective Order shall govern any designated information produced between and by Nucap, Preferred, and Bosco in this action, including all designated deposition testimony, documents and discovery materials; all such information, documents, portion of any documents and other material may be referred to as “Designated Material” under this Order.

2. Counsel for any party shall have the right to designate as CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’ EYES ONLY and, therefore, subject to this Protective Order, any information, document or portion of any document that the designating party reasonably and in good faith believes contains, reflects or reveals trade secrets or other confidential research, development, marketing, strategic, financial or other confidential commercial or personal information the disclosure of which would tend to cause harm to the designating party’s legitimate business or privacy interests of the designating party or employees thereof, or other information required by law or agreement to be kept confidential.

3. Designations shall be made by stamping each page of the document containing confidential information with the legend CONFIDENTIAL or CONFIDENTIAL- ATTORNEYS’ EYES ONLY, prior to its production. Designated Material not reduced to documentary form shall be designated

by the producing party in a reasonably equivalent way. If inadvertently produced without such legend, the producing party shall furnish written notice to the receiving party that the information or document shall be CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS' EYES ONLY under this Protective Order.

4. Deposition transcripts, or portions thereof, may be designated as subject to this Protective Order either: (a) during the deposition; or (b) by written notice to the reporter and all counsel of record, within thirty (30) days after the deposition transcript is received by the designating party. For testimony designated CONFIDENTIAL or CONFIDENTIAL- ATTORNEYS' EYES ONLY, the designating party shall have the right to exclude from a deposition before the taking of the designated testimony all persons not authorized to receive such information under this Protective Order.

5. Each party and all persons bound by the terms of this Protective Order shall use any information or documents that are designated as CONFIDENTIAL or CONFIDENTIAL- ATTORNEYS' EYES ONLY, as well as any copies, excerpts, abstracts, analyses, summaries, descriptions, or other forms of recorded information containing, reflecting, or disclosing such information, solely for the purpose of prosecution or defense of this action, and for no other purpose or action. The attorneys of record for the parties shall exercise reasonable care to insure that any information or documents that are designated as CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS' EYES ONLY, as well as any copies, excerpts, abstracts, analyses, summaries, descriptions, or other forms of recorded information containing, reflecting, or disclosing such information, are (a) used only for the purposes specified herein; and (b) disclosed only to authorized persons.

6. Documents or information designated as CONFIDENTIAL, as well as any copies, excerpts, abstracts, analyses, summaries, descriptions, or other forms of recorded information containing, reflecting, or disclosing such information, may be disclosed only to:

- (a) the Court and its officers;
- (b) counsel representing the parties named in this litigation and paralegals, assistants, office clerks, secretaries and other personnel working under counsel's supervision;

- (c) parties named in this litigation, including their officers, directors and employees (including in-house counsel) to whom disclosure is reasonably necessary for this litigation;
- (d) court reporters, translators, duplicating services and auxiliary services of like nature routinely engaged by counsel; and
- (e) outside experts and consultants used by counsel of the parties to assist in this litigation, provided such experts and consultants (1) are disclosed to the opposing party in accordance with Paragraph 10 and (2) agree to be bound by this Order by signing a document substantially in the form of Exhibit A.

7. Each party shall have the right to designate as ~~CONFIDENTIAL~~– ATTORNEYS’ EYES ONLY and subject to this Protective Order any information described in Paragraph 2, which the designating party reasonably and in good faith considers to be of such a sensitive nature that disclosure to an opposing party poses a potential threat of substantial serious or irreparable harm or commercial disadvantage, including but not limited to confidential research and development, non-public product design information, trade secrets, financial information, or information capable of being utilized for the preparation or prosecution of patent applications. Information designated ~~CONFIDENTIAL~~–ATTORNEYS’ EYES ONLY, as well as any copies, excerpts, abstracts, analyses, summaries, descriptions, or other forms of recorded information containing, reflecting, or disclosing such information, may only be disclosed to the following persons:

- (a) the Court and its officers;
- (b) counsel representing the parties named in this litigation and paralegals, assistants, office clerks, secretaries and other personnel working under counsel’s supervision;
- (c) court reporters, translators, duplicating services and auxiliary services of like nature routinely engaged by counsel; and
- (d) outside experts and consultants used by counsel of the parties to assist in this litigation, provided such experts and consultants (1) are disclosed to the opposing party in accordance

with Paragraph 10 and (2) agree to be bound by this Order by signing a document substantially in the form of Exhibit A.

8. Documents or information designated as CONFIDENTIAL or CONFIDENTIAL–ATTORNEYS’ EYES ONLY may also be shown to (a) a witness during the examination of such witness at an examination, deposition, hearing or trial, or in preparation for the same, provided that (1) the witness is privy to the confidential document or information, or (2) the designating party consents to the disclosure to the particular witness in advance and such witness agrees to be bound by this Order by signing a document substantially in the form of Exhibit A; or (b) any individual who counsel believe(s) in good faith is a potential witness provided that (1) the potential witness is privy to the confidential document or information, or (2) the designating party consents to the disclosure to the particular potential witness in advance and such potential witness agrees to be bound by this Order by signing a document substantially in the form of Exhibit A. Immediately following the examination, deposition, hearing or trial, or preparation for the same, such witness or potential witness must return all confidential documents and copies thereof to the producing party.

9. Unless otherwise ordered by the Court or otherwise agreed to in writing by the designating party, a party that seeks to disclose Designated Material to an expert or consultant in accordance with Paragraphs 6(e) or 7(d) must first adhere to the following:

- (a) The party must provide written notice to the designating party that (1) sets forth the party’s desire to disclose Designated Material to the expert or consultant, (2) sets forth the full name of the expert or consultant and the city and state of his or her primary residence, (3) attaches a copy of the expert or consultant’s current resume reflecting his or her current employer(s), (4) identifies each person or entity from whom the expert or consultant has worked or consulted for in his or her areas of expertise during the preceding five years; and (5) identifies any litigation in connection with which the expert or consultant has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

- (b) Unless, within ten (10) days of receiving appropriate notice as defined in part (a) above, the designating party provides a written objection setting forth, in detail, legitimate grounds for refusing consent, the party may disclose the Designated Material to the identified expert or consultant. "Legitimate grounds" as used in this paragraph shall mean more than merely challenging the qualifications of the expert or consultant.
- (c) If the party receives a timely written objection complying with part (b) above, the parties must meet and confer to try to resolve the matter by agreement within seven (7) days of the written objection. If the parties are unable to agree, the party seeking to make the disclosure may file a motion with the Court outlining the party's need to disclose the Designated Material to the expert or consultant. The designating party opposing disclosure shall bear the burden of proving that the risk of harm outweighs the receiving party's need to disclose.

10. Counsel shall maintain a collection of all signed documents by which persons have agreed to be bound by this Order.

11. This Protective Order shall not preclude any party from seeking and obtaining, on an appropriate showing, such additional protection with respect to the confidentiality of documents or other discovery material as that party may consider appropriate. Nor shall any party be precluded from claiming that any matter designated hereunder is not entitled to the protection of this Protective Order, from applying to the Court for an Order permitting the disclosure or use of information or documents otherwise prohibited by this Protective Order, or from applying for an Order modifying this Protective Order in any respect.

12. If a party objects to the designation of any particular document or other information as CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS' EYES ONLY during the discovery period, then the following procedure shall apply:

- (a) The objecting party shall give counsel of record for the designating party written notice thereof, specifying the document or information as to which an objection is asserted and the reasons for the objection;

- (b) If the parties cannot reach agreement concerning the matter within seven (7) business days after the delivery of the written notice, then the designating party may, within seven (7) business days thereafter, file and serve a motion with the Court seeking a court order that the materials are CONFIDENTIAL or CONFIDENTIAL–ATTORNEYS’ EYES ONLY within the meaning of the Protective Order. The Designated Materials shall continue to be treated as CONFIDENTIAL or CONFIDENTIAL– ATTORNEYS’ EYES ONLY until determined to be otherwise by order of the Court or by agreement of the parties;
- (c) If the designating party has not filed a motion with the Court seeking a court order that materials are to be treated as CONFIDENTIAL or CONFIDENTIAL– ATTORNEYS’ EYES ONLY by the fifteenth (15th) business day following written notice as described in (a) above, then such materials are no longer subject to this Protective Order.
- (d) In any such motion filed with the Court, the designating party will have the burden to show “good cause” supporting the designation.

13. Inadvertent production of any documents or information subject to the attorney-client privilege or work product doctrine shall not constitute a waiver of such privilege or of the work-product protection. The parties agree that upon discovery of inadvertent production, the disclosing party may immediately request the return of such documents and the receiving party shall promptly return, sequester or destroy the specified information and any copies it has and may not use or disclose the information.

14. If a party intends to use Designated Material in any Court filing, such party shall file the designating material under seal.

15. Summaries or statistical analyses derived from documents designated as CONFIDENTIAL or CONFIDENTIAL–ATTORNEYS’ EYES ONLY shall be considered Designated Material unless presented in a manner that the underlying confidential information is not disclosed and could not be derived from the information contained in such summary or statistical analyses. Use of Designated Material in such summary or statistical analyses shall not affect the parties’ ongoing obligations to maintain the confidentiality of confidential information used therein.

16. Nothing in this Protective Order shall preclude a party from using any information that: (a) was in the public domain at the time it was designated as CONFIDENTIAL or CONFIDENTIAL–ATTORNEYS’ EYES ONLY under this order or, prior to the date of the use or disclosure by the party, has entered the public domain through no fault of the party or any party to whom the receiving party has disclosed such Designated Material; (b) was rightfully communicated to the party by persons who such party reasonably believes are not bound by confidentiality obligations with respect there to; or (c) is disclosed by the party with the prior written approval of the opposing party who designated such information as CONFIDENTIAL or CONFIDENTIAL–ATTORNEYS’ EYES ONLY.

17. Upon final termination of this action, whether by settlement, dismissal or other disposition, but no later than 45 days following written notice from the opposing Party: (a) Nucap’s counsel shall either destroy or assemble and return to Preferred’s counsel all documents designated as CONFIDENTIAL or CONFIDENTIAL–ATTORNEYS’ EYES ONLY by Preferred, and any material derived or generated from such Designated Material, and all copies thereof, except for court filings, deposition transcripts, trial exhibits and attorney work product; and (b) Preferred’s counsel and Bosco’s counsel shall either destroy or assemble and return to Nucap’s counsel all documents designated as CONFIDENTIAL or CONFIDENTIAL–ATTORNEYS’ EYES ONLY by Nucap, and any material derived or generated from such Designated Material, and all copies thereof, except for court filings, deposition transcripts, trial exhibits and attorney work product. Said destruction or return of said material and copies shall take place within forty-five (45) days of receipt of such a written request from opposing counsel or of final termination of this action, whichever is later. If Nucap’s counsel, Preferred’s counsel, and Bosco’s counsel elect to destroy said material, then they shall provide written certification to opposing counsel certifying that such materials and copies have been destroyed once destruction has been completed.

18. With respect to testimony elicited during hearings and other proceedings, whenever counsel for any party deems that any question or line of questioning calls for the disclosure of Protected Information, counsel may designate on the record prior to such disclosure that the disclosure is subject to confidentiality restrictions. Whenever Protected Information is to be discussed in a hearing or other

proceeding, any party claiming such confidentiality may ask the Court to have excluded from the hearing or other proceeding any person who is not entitled under this Order to receive information so designated.

19. The termination of this action shall not terminate the directives of this Protective Order.

20. Nothing contained in this Protective Order shall preclude a party from objecting to the discoverability of any information or documents.

21. This Protective Order may be modified, and any matter related to it may be resolved, by written stipulation of the parties or by further order of the Court.

22. The parties and any other persons or entities subject to the terms of this Order agree that the Superior Court of Connecticut, Waterbury Judicial District, shall have jurisdiction over them for the purposes of enforcing this Order, notwithstanding any subsequent disposition of this action. The parties and any other person or entities subject to the terms of this Order further agree that Connecticut law, without regard to conflicts of law principles, shall govern any action to enforce or relating to this Order.

PLAINTIFFS  
NUCAP INDUSTRIES, INC. AND  
NUCAP US, INC.

DEFENDANTS  
PREFERRED TOOL AND DIE, INC. AND  
PREFERRED AUTOMOTIVE COMPONENTS

*/s/Nicole H. Najam*

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DEFENDANT ROBERT BOSCO, Jr.

*/s/David A. DeBassio*

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**EXHIBIT A**

NO. UWY-CV-14-6026552-S

NUCAP INDUSTRIES, INC. et al.,	)	SUPERIOR COURT
	)	
Plaintiffs,	)	J.D. OF WATERBURY
	)	
v.	)	
	)	
PREFERRED TOOL AND DIE, INC., et al.,	)	
	)	
Defendants.	)	_____, 2015

**AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

I certify that I have carefully read the Protective Order in the above-captioned case and that I fully understand the terms of the Order. I recognize that I am bound by the terms of that Order, and I agree to comply with those terms.

\_\_\_\_\_

Executed this \_\_\_\_ day of 20\_\_.

Name  
Affiliation  
Business Address  
Home Address

**CERTIFICATION**

This is to certify that a copy of the foregoing was mailed, postage prepaid or delivered electronically or non-electronically, on this 5<sup>TH</sup> day of August, 2015 to all counsel and self-represented parties of record, as follows:

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/s/Nicole H. Najam  
Nicole H. Najam

DOCKET NO: UWYCV146026552S

SUPERIOR COURT

NUCAP INDUSTRIES INC. Et Al  
V.  
PREFERRED TOOL AND DIE, INC. Et Al

JUDICIAL DISTRICT OF WATERBURY  
AT WATERBURY

8/5/2015

ORDER

ORDER REGARDING:  
08/04/2015 144.00 MOTION FOR PROTECTIVE ORDER PB 13-5

The foregoing, having been considered by the Court, is hereby:

ORDER:

The court enters the parties' Stipulated Protective Order, subject to the condition that, if any party intends to file Designated Material under seal, as provided in paragraph 14, the procedures of the Practice Book, see Practice Book Sec. 11-20A, remain applicable. By approving the parties' Stipulated Protective Order, the court has not given the parties permission to file Designated Material under seal.

Judicial Notice (JDNO) was sent regarding this order.

415596

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Judge: ROBERT B SHAPIRO