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Counsel for Plaintiff Advanced Armament Corporation

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON AT EUGENE

ADVANCED ARMAMENT  
CORPORATION,

Plaintiff,

v.

IAN HALE GARNER, an individual,

Defendant.

Case No. 08-CV-6142-TC

**PLAINTIFF'S MOTION FOR LEAVE TO  
FILE UNDER SEAL DECLARATION IN  
SUPPORT OF PLAINTIFF'S  
OPPOSITION TO MOTION TO STRIKE**

**Local Rule 7.1 Certification**

Counsel for Plaintiff Advanced Armament Corporation ("Plaintiff") conferred with defense counsel regarding this motion. Defense counsel objects to this motion.

**MOTION TO FILE AFFIDAVIT UNDER SEAL**

Pursuant to Local Rule 3.9, Plaintiff moves for leave to file under seal the declaration of Kevin Brittingham in Support of Opposition to Motion to Strike and the exhibits attached thereto on the grounds that the declaration and exhibits contain confidential business information and



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**DECLARATION OF KEVIN  
BRITTINGHAM IN SUPPORT OF  
PLAINTIFF'S MOTION FOR LEAVE TO  
FILE UNDER SEAL**

I, Kevin Brittingham, do hereby declare:

1. I am the President and Chief Executive Officer of Plaintiff Advanced Armament Corporation ("AAC"). The statements herein are made based on my personal knowledge.

2. The information contained in and documents attached to the Declaration of Kevin Brittingham in Support of Plaintiff's Opposition to Motion to Strike includes requests for quotations (RFQs), purchase orders, acknowledgments, and shipping and delivery information relating to AAC's business relationship with Fabrique Nationale de Herstal ("FN") to supply products for use in the SCAR Program, a program of the United States military for production of a rifle known as the SOF [Special Operations Forces] Combat Assault Rifle ("SCAR").

3. The information contained in and documents attached to the declaration are not known to the public, and are known only to AAC, FN and specific limited military entities.

4. AAC is bound by terms of the RFQs and purchase orders that prohibit public release of any kind of the documents themselves and any subject matter contained therein. AAC also is bound by non-disclosure agreements with FN that prohibit the release or disclosure of information related to the SCAR Program and the products Plaintiff is producing. FN required AAC to enter these non-disclosure agreements in order for AAC to become a supplier. These agreements forbid disclosure of such information to any person or entity with the exception of the United States government, employees who “need to know” and, in certain circumstances, when responding to a subpoena.

5. AAC has never breached the confidentiality provisions and non-disclosure agreements and has never discussed details of the SCAR Program, AAC’s products or FN’s products related thereto with third parties or in a public forum, other than to state generally the fact that AAC is delivering products for the SCAR Program in marketing and in responding to Defendant Garner’s defamatory statements.

6. AAC treats the information contained in and documents attached to the declaration at issue as highly confidential given its business and military sensitivity. AAC does not disclose or make it available to the public, AAC’s other governmental customers or dealers selling other AAC products.

7. Even within the company, AAC limits the availability of the information and documents – only those employees who have a need to know have access to it, which at this time is limited to three people. AAC also has held a meeting to insure all of its employees (not just the three that are allowed access) understand the sensitive nature of this information and their duty not to disclose it or anything relating to AAC’s involvement in the SCAR program.

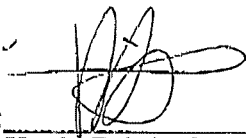
8. The information contained in and documents attached to the declaration include AAC trade secrets, in particular its production capacity and pricing. If this information were disclosed, it would provide an unfair advantage to AAC’s competitors, as this is the type of information considered when bidding against other manufacturers.

9. AAC also maintains the confidentiality of the information contained in and

documents attached to the declaration due to its sensitivity to United States military concerns regarding disclosures about the type, specifications, quantities and timing of the product being ordered.

I declare the foregoing to be true and accurate under penalty of perjury.

DATED this 24th day of June 2008.

By:   
Kevin Brittingham

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**MEMORANDUM IN SUPPORT OF  
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SUPPORT OF PLAINTIFF'S  
OPPOSITION TO MOTION TO STRIKE**

**I. Introduction**

Plaintiff Advanced Armament Corporation filed this motion to stop the trade defamation in which Defendant Garner insisted on engaging over the internet. Now, in order to defeat Defendant Garner's motion to strike and show that his statements are false and defamatory, Plaintiff must present evidence that reveals confidential business information and trade secrets. If this information is revealed publicly, Plaintiff risks not only additional damage to its business beyond that caused by Defendant Garner's statements, but also breach of contract actions by its customer for disclosing information Plaintiff is contractually obligated to keep secret. Plaintiff

therefore seeks leave to file under seal the Declaration of Kevin Brittingham in Support of Opposition to Motion to Strike and the exhibits attached thereto on the grounds that it contains confidential business information and trade secrets.

## **II. ARGUMENT**

The Brittingham declaration supports Plaintiff's Opposition to Defendant's Motion to Strike pursuant to Oregon's Anti-SLAPP statute, ORS 31.150. Under ORS 31.150, Plaintiff is required to present substantial evidence of a prima facie case of defamation by Defendant Garner. One of the elements of a prima facie case is the falsity of the defamatory statements at issue. The Brittingham declaration sets forth facts and documentary evidence that establish the falsity of Defendant Garner's statements regarding AAC's business relationship with its customer Fabrique Nationale de Herstal ("FN") with respect to the SCAR Program, a program of the United States military for production of a rifle known as the SOF [Special Operations Forces] Combat Assault Rifle ("SCAR").

The Brittingham declaration includes information regarding the purchase and sale of specific parts used to manufacture the rifle, including the type and quantity of those parts, the dates on which they have been ordered and delivered, and their cost. The documents include requests for quotations (RFQs), purchase orders, acknowledgements, and shipping and delivery information. See Declaration of Kevin Brittingham in Support of Motion for Leave to File Under Seal, ¶ 2. It also includes information regarding Plaintiff's production capacity and product pricing – trade secrets in Plaintiff's industry. Id. at ¶ 8; see, e.g., ORS 192.501 (recognizing production data as a trade secret).

Plaintiff is bound by terms of these RFQs and purchase orders that prohibit public release of any kind of the documents themselves and any subject matter contained therein. Id. at ¶ 4. Plaintiff also is bound by non-disclosure agreements with FN that prohibit the release or disclosure of information related to the SCAR Program and the products Plaintiff is producing.

Id. Plaintiff has honored these confidentiality provisions and non-disclosure agreements. Id. at ¶ 5. Plaintiff also maintains the confidentiality of the information and documents due to its sensitivity to United States military concerns regarding disclosures about the type, specifications, quantities and timing of the product being ordered. Id. at ¶ 9.

In practice, Plaintiff treats the information and documents at issue as highly confidential given their business and military sensitivity. Id. at ¶ 6. They are not disclosed or made available to the public, AAC's other governmental customers or dealers selling other AAC products. Id. Additionally, AAC has taken steps to insure this information remains confidential, including limiting the availability of this information – only those employees who have a need to know have access to it (currently only three people) – and holding a meeting to insure all of its employees understand the sensitive nature of this information and their duty not to disclose it. Id. at ¶ 7.

Good cause and compelling reasons exist for filing the Brittingham declaration and exhibits thereto under seal. If Plaintiff is forced to breach contracts and reveal trade secrets in order to combat the trade defamation at issue in this case, it effectively will be deprived of a remedy. Given Defendant Garner's statements at issue here and willingness to post them on the internet, Plaintiff has every reason to suspect that the information it provides to defeat Defendant's motion will find its way to Plaintiff's competitors. The information at issue would give Plaintiff's competitors an unfair advantage, as it is the type of information considered when bidding against other manufacturers. See Declaration of Kevin Brittingham in Support of Motion for Leave to File Under Seal, ¶ 8.

The filing of the declaration under seal will not prevent the public from understanding the judicial process, as the parties' arguments and positions will be made clear from the briefing, all of which will be publicly available. See Hagestad v. Tragesser, 49 F.3d 1430, 1434 (9th Cir. 1995) (“The factors relevant to a determination of whether the strong presumption of access is



overcome include the ‘public interest in understanding the judicial process and whether disclosure of the material could result in improper use of the material for scandalous or libelous purposes or infringement upon trade secrets.’ After taking all relevant factors into consideration, the district court must base its decision on a compelling reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture.”) (internal citations omitted); Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1179 (9th Cir. 2006) (recognizing that the public’s interest in disclosure is outweighed when “court files might have become a vehicle for improper purposes,” such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.”). Moreover, by excluding from this request for leave to file under seal Plaintiff’s briefing in response to the Motion to Strike, and seeking to file under seal only the Brittingham declaration in support, Plaintiff has narrowed as much as possible the information that will be shielded from public view.<sup>1</sup>

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<sup>1</sup> Although most of the statements in the Brittingham declaration contain confidential information, not every statement in the Brittingham declaration discloses such information. Local Rule 3.9(a), however, prohibits sealing portions of a document and requires that the entire document be sealed.

### III. CONCLUSION

If Plaintiff is not allowed to file the Brittingham declaration under seal, it will be forced to choose between on the one hand, not filing the necessary declaration and forgoing any right to stop the defamation at issue in this case and recover damages related thereto, and on the other, filing but breaching its agreements with a primary customer, potentially losing that customer, and disclosing its trade secrets. For the reasons articulated herein, Plaintiff respectfully requests that the Court grant its Motion for Leave to File Under Seal the Declaration of Kevin Brittingham in Support of Opposition to Motion to Strike.

DATED this 25th day of June 2008.

LANDYE BENNETT BLUMSTEIN LLP

By: /s/ Jennifer L. Gates  
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Counsel for Plaintiff Advanced Armament Corporation

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Plaintiff has therefore not sought leave to file a redacted version of the declaration while sealing the confidential portions of the document.

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