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13 Attorneys for Plaintiffs and Counterdefendants  
 14 MM&R PRODUCTS, INC. and TRE MILANO, LLC

15 UNITED STATES DISTRICT COURT  
 16 CENTRAL DISTRICT OF CALIFORNIA  
 17 WESTERN DIVISION

18 MM&R PRODUCTS, INC.,  
 19 a California corporation, and TRĒ  
 20 MILANO, LLC, a California limited  
 liability company,  
 21 Plaintiffs,  
 22 v.  
 23 STITCH N’ GENIUS, INC.,  
 24 a California corporation, ELIAS  
 25 AMKIE, an individual; and DOES 1 –  
 26 10, inclusive,  
 Defendants.

27 AND RELATED COUNTERCLAIMS

) Case No. CV 09-04082 VBF (RCx)

) **[PROPOSED] STIPULATED**  
 ) **PROTECTIVE ORDER**

) NOTE: CHANGES MADE BY THE COURT

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PROTECTIVE ORDER

This Protective Order is issued to facilitate document disclosure and production under the Local Rules of this Court and the Federal Rules of Civil Procedure. Unless modified pursuant to the terms contained in this Order or by further Order of the Court, this Order shall remain in effect both through and after the conclusion of this litigation.

The parties herein anticipate that documents, testimony, and information containing or reflecting confidential, proprietary, trade secret, or commercially sensitive information are likely to be disclosed in this litigation, and request that the Court enter this Order setting forth the conditions for the disclosure, treatment, and use of such information. Therefore, pursuant to Federal Rule of Civil Procedure 26(c), the Court finds good cause for and enters this Protective Order (“Order”).

1. DEFINITIONS

(a) “Confidential Information” means any Discovery Material that is designated as “Confidential” or “Confidential – Attorneys’ Eyes Only” as provided for in this Order. Confidential Information may be incorporated within or include documents, tangible things, and witness testimony.

(b) “Discovery Material” means all information, including from any non-party to this action, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that is produced, disclosed, or generated in connection with discovery in this matter.

(c) “Party” means any party to this action, including all of its officers, directors, and employees.

1 (d) “Producing Party” means any Party or third party who  
2 discloses or produces any Discovery Material in this action. Any third party  
3 invoking the protections of this Protective Order agrees that such party has read  
4 and understood the Protective Order and shall sign the acknowledgment attached  
5 as Exhibit A.

6 (e) “Receiving Party” means any Party who receives Discovery  
7 Material from a Producing Party.  
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10 2. SCOPE AND PURPOSES

11 (a) The protections conferred by this Order cover and govern the  
12 designation of, use, and disclosure of Confidential Information and related  
13 Discovery Material, including any information copied or extracted therefrom, and  
14 all copies, excerpts, summaries, or compilations thereof, including testimony,  
15 conversations, or presentations by Producing Parties or Receiving Parties or their  
16 counsel in Court or in other settings that might reveal Confidential Information.

17 (b) Confidential Information shall be used solely for this  
18 litigation, and not for any other purpose whatsoever, including without limitation  
19 any other litigation, patent prosecution or acquisition, or any business or  
20 competitive purpose or function. Confidential Information shall not be distributed,  
21 disclosed or made available to anyone except as expressly provided in this Order.

22 (c) Any Producing Party who designates Confidential Information  
23 under this Order shall do so only with a good faith belief that the designated  
24 material is Confidential Information that is protectable under Federal Rule of  
25 Civil Procedure 26(c) and the terms of this Order. If it comes to a Producing  
26 Party’s attention that designated material does not qualify for protection at all, or  
27 does not qualify for the level of protection asserted, the Producing Party must  
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1 promptly notify all other parties that it is withdrawing or changing the  
2 designation.

3 (d) Any person challenging a Producing Party's designation of  
4 Confidential Information under this Order shall do so only with a good faith belief  
5 that designated material is not protectable Confidential Information under Federal  
6 Rule of Civil Procedure 26(c) and the terms of this Order.  
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9 **3. LIMITATIONS AND PRESERVATION OF RIGHTS**

10 (a) Nothing in this Order shall prevent or restrict a Producing  
11 Party's own disclosure or use of its own Confidential Information for any  
12 purpose.

13 (b) Nothing in this Order shall preclude any person or party from  
14 disclosing Confidential Information to an individual who prepared the  
15 Confidential Information or is already in possession of the Confidential  
16 Information.

17 (c) Nothing in this Order shall restrict in any way the use or  
18 disclosure of Confidential Information by a Receiving Party: (a) that is or has  
19 become publicly known through no fault of the Receiving Party; (b) that is  
20 lawfully acquired by or known to the Receiving Party independent of the  
21 Producing Party; (c) that has been previously produced, disclosed or provided by  
22 the Producing Party to any other party without an obligation of confidentiality  
23 and not by inadvertence or mistake; (d) with the consent of the Producing Party;  
24 or (e) pursuant to order of the Court.

25 (d) Nothing in this Order shall be construed to prejudice any  
26 Party's right to use any Confidential Information in Court or in any Court filing  
27 with consent of the Producing Party or Order of the Court.  
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1 (e) This Order is without prejudice to the right of any Party or  
2 non-party to seek further or additional protection of any Confidential Information,  
3 to de-designate Confidential Information, or to modify this Order in any way,  
4 including, without limitation, seeking: (1) a protective order that certain  
5 Confidential Information or Discovery Material not be produced at all; (2) to  
6 compel the disclosure of or de-designate Confidential Information or Discovery  
7 Material; or (3) to modify, add to, or remove provisions set forth in this Order.  
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10 4. ACCESS TO AND USE OF CONFIDENTIAL INFORMATION

11 (a) Secure Storage. Confidential Information must be stored and  
12 maintained by a Receiving Party at a location and in a secure manner that ensures  
13 that access is limited to the persons authorized under this Order.

14 (b) Legal Advice Based on Confidential Information. Nothing in  
15 this Order shall prevent Counsel from advising their clients with respect to this  
16 litigation based in whole or in part upon Confidential Information, provided  
17 Counsel does not disclose the Confidential Information itself except as provided  
18 in this Order.

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20 5. DESIGNATING CONFIDENTIAL INFORMATION

21 (a) Available Designations. A Producing Party (including third  
22 parties) may designate its own Discovery Material with any of the following  
23 designations, provided that it meets the requirements for such designations as  
24 provided for herein: “CONFIDENTIAL” or “CONFIDENTIAL –  
25 ATTORNEYS’ EYES ONLY.” Any third party invoking the protections of this  
26 Protective Order agrees that such party has read and understood the Protective  
27 Order and shall sign the acknowledgment attached as Exhibit A.  
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1 (b) Written Discovery and Documents and Tangible Things.

2 Written discovery, documents, and tangible things that meet the requirements for  
3 the confidentiality designations listed in Paragraph 5(a) may be so designated by  
4 placing the appropriate designation on every page of the written material. In the  
5 event that original documents are produced for inspection, the Producing Party  
6 may produce the original documents for inspection with a temporary designation  
7 that is suitable under the circumstances, provided that copies of the original  
8 documents shall be similarly designated by placing the appropriate legend on the  
9 copies when they are produced to or by the Receiving Party.

10 (c) Depositions and Testimony. Parties or testifying persons or

11 entities may designate depositions and other testimony with the appropriate  
12 designation (i) by indicating on the record at the time the testimony is given or (ii)  
13 by sending written notice that the testimony is designated within thirty (30)  
14 calendar days of receipt of the transcript of the testimony. Whether or not any  
15 designation is made at the time the testimony was given, all testimony shall be  
16 treated as if it had been designated “CONFIDENTIAL – ATTORNEY’S EYES  
17 ONLY” from the date of the testimony until thirty (30) calendar days after receipt  
18 of the transcript of the testimony. Testimony not designated either orally at the  
19 time of the testimony or by written notice to the Parties within thirty (30) calendar  
20 days after receipt of the transcript of the testimony shall be deemed not to be  
21 Confidential Information, subject, however, to the other terms of this Order. Any  
22 designated Discovery Material that is used in the taking of a deposition shall  
23 remain subject to the provisions of this Order, along with the transcript pages of the  
24 deposition testimony dealing with such Discovery Material. In the event the  
25 deposition is videotaped, the original and all copies of the videotape shall be  
26 marked by the video technician to indicate that the contents of the videotape are  
27 subject to this Order, substantially along the lines of “This videotape contains  
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1 confidential testimony used in this case and is not to be viewed or the contents  
2 thereof to be displayed or revealed except as permitted by the Protective Order,  
3 by order of the Court, or pursuant to written stipulation of the parties.”  
4

5 6. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL –  
6 ATTORNEYS’ EYES ONLY”

7 (a) A Producing Party may designate Discovery Material as  
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY if it contains or reflects  
9 information that is extremely confidential and/or sensitive in nature and the  
10 Producing Party reasonably believes that the disclosure of such Discovery  
11 Material is likely to cause economic harm or significant competitive disadvantage  
12 to the Producing Party.  
13

14 (b) Discovery Material designated as “CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY” may be disclosed only to:

16 (i) The Receiving Party’s outside litigation counsel of record  
17 as of the signing of this protective order and their staff;

18 (ii) Any expert or consultant retained by the Receiving Party  
19 to assist in this action (as well as members of such person’s staff to whom  
20 disclosure is reasonably necessary for this litigation), provided that disclosure is  
21 only to the extent necessary to perform such work; and provided that: (a) each such  
22 person (including staff members) has signed the acknowledgement form annexed  
23 hereto as Exhibit A, (b) a copy of the signed acknowledgement form has been  
24 provided to all outside counsel of record, and (c) no unresolved objections to such  
25 disclosure exist after proper notice has been given to all parties as set forth in  
26 Paragraph 8(b) below;

27 (iii) Court reporters, stenographers and videographers  
28 retained to record testimony taken in this action;

- 1 (iv) The Court, jury, and Court personnel;  
2 (v) Graphics, translation, design, and/or trial consulting  
3 services including mock jurors retained by a Party;  
4 (vi) Any other person with the prior written consent of the  
5 Producing Party; and  
6 (vii) Any mediator selected by the parties to mediate this  
7 action.

8 7. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”

9 (a) A Producing Party may designate Discovery Material as  
10 “CONFIDENTIAL” if it contains or reflects confidential, proprietary, trade  
11 secret, and/or commercially sensitive information.

12 (b) Discovery Material designated as “CONFIDENTIAL” may be  
13 used only in connection with this action and disclosed only to the following:

- 14 (i) Those persons to whom Discovery Material designated as  
15 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed;  
16 (ii) Parties to this action; and  
17 (iii) Any other person with the prior written consent of the  
18 Producing Party.  
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20 8. EXPERTS AND CONSULTANTS

21 (a) Experts and consultants receiving Confidential Information  
22 shall not be a current officer, director or employee of a Party or of a competitor of  
23 a Party, nor anticipated at the time of retention to become an officer, director or  
24 employee of a Party or of a competitor of a Party, unless the parties so-agree that  
25 such an individual can receive Confidential Information.  
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1 (b) Experts and consultants receiving Confidential Information  
2 shall not consult to a Party or to a competitor of a Party on matters other than the  
3 present lawsuit.

4 (c) Prior to disclosing any Confidential Information to any outside  
5 experts or consultants, of a Receiving Party, the party seeking to disclose such  
6 information shall provide the Producing Party with written notice that includes:  
7 (i) the name of the person; (ii) the present employer and title of the person; (iii) an  
8 up-to-date curriculum vitae of the person; and (iv) a copy of the signed  
9 acknowledgment form annexed hereto as Exhibit A.

10 (d) Within ten (10) calendar days of receipt of the disclosure of  
11 the proposed outside expert or consultant, or the Producing Party may object in  
12 writing to the disclosure of its Confidential Information to such person for good  
13 cause. In the absence of an objection at the end of the ten (10) day period, the  
14 person shall be deemed approved under this Order. There shall be no disclosure  
15 of Confidential Information to such person prior to expiration of this ten (10) day  
16 period. If the Producing Party objects to disclosure to such person within the ten  
17 (10) day period, the parties shall meet and confer within five (5) business days,  
18 unless the parties stipulate in writing to extend the meet and confer period, and  
19 attempt in good faith to resolve the dispute. If the dispute is not resolved, the  
20 party objecting to the disclosure will have ten (10) calendar days from the date of  
21 the meet and confer to seek relief from the Court, pursuant to Local Rule 37,  
22 unless otherwise agreed by the parties. If relief is not sought from the Court  
23 within that time (or any other time agreed to by the parties), the objection shall be  
24 deemed withdrawn. If relief is sought, the objecting party's Confidential  
25 Information shall not be disclosed to such person until the objection is resolved by  
26 the Court.  
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1 (e) For purposes of this section, “good cause” shall include an  
2 objectively reasonable concern that the expert or consultant will, advertently or  
3 inadvertently, use or disclose Confidential Information in a way or ways that are  
4 inconsistent with the provisions contained in this Order including, in particular,  
5 for a purpose other than related to this litigation (e.g., for competitive decision  
6 making, for developing its own products or technologies, or to misappropriate  
7 competitor trade secrets).

8 (f) Prior to receiving any Confidential Information under this  
9 Order, the proposed outside expert, consultant or any member of their respective  
10 staffs must execute a copy of the “Agreement to Be Bound by Protective Order”  
11 attached as Exhibit A to this Order.  
12

13 (g) Confidential Information disclosed to any expert or consultant  
14 may be retained by such expert or consultant provided that such expert or  
15 consultant subsequently returns any and all copies of such Confidential  
16 Information to the Producing Party promptly upon termination of their  
17 engagement or in compliance with the provisions of Section 15 (Final  
18 Disposition), whichever occurs sooner.  
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20 9. CHALLENGING DESIGNATIONS OF CONFIDENTIAL  
21 INFORMATION

22 (a) A Party shall not be obligated to challenge the propriety of any  
23 designation of Discovery Material as Confidential Information under this Order at  
24 the time the designation is made, and a failure to do so shall not preclude a  
25 subsequent challenge thereto.

26 (b) Other than challenges to a designation made at a deposition or  
27 hearing (which challenges may be made orally on the record at the time of the  
28 testimony), any challenge to a designation of Discovery Material under this Order

1 shall: (i) be written and served on outside counsel for the Producing Party, (ii)  
2 shall particularly identify the documents or information that the Receiving Party  
3 contends should be differently designated, and (iii) shall particularly identify the  
4 grounds for the objection to the designation. Thereafter, further protection of  
5 such material shall be resolved in accordance with the following procedures:

6 (i) The objecting party shall have the burden of conferring  
7 with the Producing Party claiming protection in a good faith effort to resolve the  
8 dispute, as set forth in Local Rule 37-1;

9 (ii) Failing agreement, the objecting party may bring a  
10 motion that the Discovery Material is not entitled to the designation made by the  
11 Producing Party, as set forth in Local Rule 37-2;

12 (iii) This Order shall not preclude or prejudice any Producing  
13 Party or any Receiving Party from arguing for or against any designation, establish  
14 any presumption that a particular designation is valid, or alter the burden of proof  
15 that would otherwise apply in a dispute over discovery or disclosure of  
16 information.

17 (iv) Notwithstanding any challenge to a designation, the  
18 Discovery Material shall continue to be treated as designated by the Producing  
19 Party under this Order until otherwise resolved by agreement of the parties or by  
20 further order of the Court.  
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23 **10. SUBPOENAS OR COURT ORDERS**

24 If at any time Confidential Information is subpoenaed by any court, arbitral,  
25 administrative, or legislative body, the Party to whom the subpoena or other  
26 request is directed shall immediately give written notice thereof to every  
27 Producing Party who has produced such Discovery Material and to its counsel and  
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1 shall provide each such Producing Party with an opportunity to move for a  
2 protective order regarding the production of confidential materials.

3 11. FILING CONFIDENTIAL INFORMATION

4 (a) Absent written permission from the Producing Party or a Court  
5 order secured after appropriate notice to all interested persons, a Receiving Party  
6 may not file in the public record any Confidential Information.

7 (b) Any Receiving Party is authorized under Local Rule 79-5 to  
8 file under seal with the Court any brief, document or materials that are designated  
9 as Confidential Information under this Order.

10 (c) In the event that the Court, sua sponte, declines to allow the  
11 filing under seal of Confidential Information so designated by someone other than  
12 the filing party, a filing containing purported Confidential Information shall not  
13 be considered untimely as a result of any dispute or issue relating to the propriety  
14 of the designation as Confidential Information.  
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17 12. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL

18 (a) The inadvertent production by a Producing Party of Discovery  
19 Material subject to the attorney-client privilege, work-product immunity, or any  
20 other applicable privilege or immunity will not waive the applicable privilege or  
21 immunity if a request for return of such inadvertently produced Discovery  
22 Material is made promptly after the Producing Party, using due diligence, learns  
23 of its inadvertent production.

24 (b) Upon a request from any Producing Party who has  
25 inadvertently produced Discovery Material that it believes is privileged or immune,  
26 each Receiving Party shall immediately (i) return to the Producing Party or destroy  
27 such Discovery Material and all copies and supply written notice to the Producing  
28 Party that it has done so and retained no copies; or (ii) object to the assertion of

1 privilege or immunity and make no further disclosure of the Discovery Material  
2 until the matter is resolved pursuant to a motion to be made by the Producing Party  
3 within ten (10) calendar days.

4 (c) Nothing herein shall prevent the Receiving Party from  
5 preparing a record containing the date, author, recipients, and topic of the  
6 inadvertently produced Discovery Material and such other non-privileged/non-  
7 immune information as is reasonably necessary to identify and describe the  
8 Discovery Material in any motion to compel production of the Discovery Material.  
9

10  
11 13. INADVERTENT FAILURE TO DESIGNATE

12 (a) The inadvertent failure by a Producing Party to designate  
13 Discovery Material as Confidential Information with one of the designations  
14 provided for under this Order shall not waive any such designation provided that  
15 the Producing Party promptly notifies all Receiving Parties that such Discovery  
16 Material is protected under one of the categories of this Order after learning of the  
17 inadvertent failure to so designate.

18 (b) A Receiving Party shall not be in breach of this Order for any  
19 use of such Discovery Material before the Receiving Party receives notice of the  
20 inadvertent failure to designate. Once a Receiving Party has received notice of  
21 the inadvertent failure to designate pursuant to this provision, the Receiving Party  
22 shall treat such Discovery Material (subject to the exception in Paragraph (c) below)  
23 at the appropriately designated level pursuant to the terms of this Order.

24 (c) If the Receiving Party disputes the designation, the  
25 provisions of Section 9 shall apply to that dispute.  
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1           14.   INADVERTENT DISCLOSURE OF CONFIDENTIAL  
2                            INFORMATION

3           (a)    In the event of a disclosure of any Confidential Information  
4 pursuant to this Order to any person or persons not authorized to receive such  
5 disclosure under this Order, the Receiving Party responsible for having made such  
6 disclosure, and each Party with knowledge thereof, shall immediately notify  
7 counsel for the Producing Party whose Confidential Information has been  
8 disclosed and provide to such counsel all known relevant information concerning  
9 the nature and circumstances of the disclosure. The disclosing Party shall also  
10 promptly take all reasonable measures to retrieve the improperly disclosed  
11 Confidential Information and to ensure that no further or greater unauthorized  
12 disclosure and/or use thereof is made.

13  
14           (b)   Unauthorized or inadvertent disclosure does not change the  
15 status of Confidential Information or waive the right to hold the disclosed  
16 document or information as protected.

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18           15.   FINAL DISPOSITION

19           (a)    Not later than ninety (90) days after the final disposition of  
20 this litigation, (including after any appeals), each Party shall return to the  
21 respective outside counsel of the Producing Party or destroy all Confidential  
22 Information of a Producing Party. All Receiving Parties of any such Confidential  
23 Information shall certify in writing that all such materials have been returned to  
24 the respective outside counsel of the Producing Party or destroyed.

25           (b)    Notwithstanding the provision for return or destruction of  
26 Confidential Information in paragraph (a) above, outside counsel may retain  
27 pleadings, correspondence to or from counsel for the opposing Party(ies), and  
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1 attorney and consultant work product that include or refer to another party's  
2 Confidential Information as part of the case record and for archival purposes.

3  
4 16. DURATION AND JURISDICTION

5 Even after the termination of this case, this Order and its terms,  
6 requirements, and effects shall survive and remain in full force and effect in its  
7 entirety until this Court otherwise directs by order. The Court shall retain  
8 jurisdiction over any and all persons and parties bound by this Order for the  
9 purposes of hearing and resolving any disputes related to or arising out of this  
10 Order for 30 days after entry of judgment or dismissal.  
11

12  
13 17. MISCELLANEOUS

14 (a) Right to Further Relief. Nothing in this Order abridges the  
15 right of any person to seek modification of the Order by the Court in the future.  
16 By stipulating to this Order, the Parties do not waive the right to argue that certain  
17 material may require additional or different confidentiality protections than those  
18 set forth herein.

19 (b) Successors. This Order shall be binding upon the Parties  
20 hereto, their attorneys, successors, assigns, subsidiaries, divisions, employees,  
21 agents, retained consultants and experts, and any persons or organizations over  
22 which they have direct control.

23 (c) Burdens of Proof. Nothing in this Order shall be construed to  
24 change the burdens of proof or legal standards applicable in disputes regarding  
25 whether particular Discovery Material is confidential, which level of  
26 confidentiality is appropriate, whether disclosure should be restricted, and, if so,  
27 what restrictions should apply.  
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1 (d) Modification by Court. This Order is subject to further court  
2 order based upon public policy or other considerations, and the Court may modify  
3 this Order sua sponte in the interests of justice. The United States District Court  
4 for the Central District of California, Western Division, is responsible for the  
5 interpretation and enforcement of this Order. All disputes concerning  
6 Confidential Information, however designated, produced under the protection of  
7 this Order shall be resolved by the United States District Court for the Central  
8 District of California, Western Division.  
9

10 Dated: September 17, 2009 SHELDON MAK ROSE & ANDERSON PC

11  
12 By: /s/A. Eric Bjorgum \_\_\_\_\_  
13 Jeffrey G. Sheldon  
14 William J. Brutocao  
15 A. Eric Bjorgum

16 Attorneys for Plaintiffs/Counterdefendants  
17 MM&R PRODUCTS, INC. and TRE  
18 MILANO, LLC

19 Dated: September 17, 2009 EDWIN D. SCHINDLER  
20 ROBERT E. LYON

21 By: /s/Robert E. Lyon \_\_\_\_\_  
22 Edwin D. Schindler  
23 Robert E. Lyon

24 Attorneys for Defendants/Counterclaimants  
25 STITCH N' GENIUS, INC. and ELIAS  
26 AMKIE

27 ORDER

28 IT IS SO ORDERED, as amended at paras. 8(d), 9(b)(i) & (ii) and 16.

Dated: September 21, 2009 /S/ Rosalyn M. Chapman  
United States Magistrate Judge



EXHIBIT A

I, \_\_\_\_\_, acknowledge and declare that I have received a copy of the Protective Order (“Order”) in MM&R Products, Inc. v. Stitch ‘n’ Genius, Inc., Case No. CV 09-04082 VBF (RCx) (Central Dist. of California). I have read the Order, I understand and agree to be bound by its terms, and I consent to the jurisdiction of the Court for the purpose of any proceeding to enforce the terms of the Order.

Name of individual: \_\_\_\_\_

Present occupation/job description: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of Company or Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Signature]