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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID SIGMUND, ROBERT MORFITT, ROBERT WAGNER, DON BINNS, and TREVOR HAYHURST,

Plaintiffs,

v.

CHAD KROEGER, MIKE KROEGER, RYAN PEAKE, DANIEL ADAIR, BRANDON KROEGER, RYAN VIKEDAL, EMI MUSIC CANADA, a foreign corporation, ROADRUNNER RECORDS, INC., a corporation and WARNER CHAPPELL MUSIC, INC., a California corporation, and DOES 1 through 10,

Defendants.

CASE NO. CV11-00923 DMG (JEMx)

~~PROPOSED~~ STIPULATED PROTECTIVE ORDER

DISCOVERY MATTER

Judge: Honorable Dolly M. Gee
Magistrate Judge: John E. McDermott
File Date: January 31, 2011
Trial Date: September 18, 2012

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1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve the production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery, and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The Parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a Party seeks permission from the Court to file material under seal. The parties further acknowledge that this Stipulated Protective Order does not affect either Party’s right to use or disclose its own confidential, proprietary, or private information, or documents or information that (i) are or at any time were generally available to the public, (ii) were obtained from sources other than through disclosure or discovery in this litigation, or (iii) were obtained prior to execution by the Parties of this Stipulated Protective Order.

2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including,

1 among other things, testimony, transcripts, or tangible things) that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.3 “Confidential” Information or Items: information (regardless of
4 how generated, stored or maintained) or tangible things that qualify for protection
5 under standards developed under Fed. R. Civ. P. 26(c).

6 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or
7 Items: extremely sensitive “Confidential Information or Items” whose disclosure
8 to another Party or non-party would create a substantial risk of serious injury that
9 could not be avoided by less restrictive means.

10 2.5 Receiving Party: a Party that receives Disclosure or Discovery
11 Material from a Producing Party.

12 2.6 Producing Party: a Party or non-party that produces Disclosure
13 or Discovery Material in this action.

14 2.7 Designating Party: a Party or non-party that designates
15 information or items that it produces in disclosures or in responses to discovery as
16 “Confidential” or “Highly Confidential — Attorneys’ Eyes Only.”

17 2.8 Protected Material: any Disclosure or Discovery Material that
18 is designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes
19 Only.” Protected Material does not include any Disclosure or Discovery Material
20 that (i) is or at any time was generally available to the public, (ii) was obtained
21 from sources other than through disclosure or discovery in this litigation, or (iii)
22 was obtained prior to execution of this Stipulated Protective Order.

23 2.9 Outside Counsel: attorneys who are not employees of a Party
24 but who are retained to represent or advise a Party in this action.

25 2.10 House Counsel: attorneys who are employees of a Party.

26 2.11 Counsel (without qualifier): Outside Counsel and House
27 Counsel (as well as their support staffs).

1 2.12 Expert: a person with specialized knowledge or experience in a
2 matter pertinent to the litigation who has been retained by a Party or its counsel to
3 serve as an expert witness or as a consultant in this action, and who is not a past or
4 a current employee of a Party or of a competitor of a Party's and who, at the time
5 of retention, is not anticipated to become an employee of a Party or a competitor of
6 a Party's. This definition includes a professional jury or trial consultant retained in
7 connection with this litigation.

8 2.13 Professional Vendors: persons or entities that provide litigation
9 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
10 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
11 and their employees and subcontractors.

12
13 3. SCOPE

14 The protections conferred by this Order cover not only Protected Material
15 (as defined above), but also any information copied or extracted therefrom, as well
16 as all copies, excerpts, summaries, or compilations thereof, plus testimony,
17 conversations, or presentations by Parties or Counsel to or in court or in other
18 settings that might reveal Protected Material.

19
20 4. DURATION

21 Even after the termination of this litigation, the confidentiality obligations
22 imposed by this Order shall remain in effect until a Designating Party agrees
23 otherwise in writing or a court order otherwise directs.

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25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for
27 Protection. Each Party or non-party that designates information or items for
28 protection under this Order must take care to limit any such designation to specific

1 material that qualifies under the appropriate standards. A Designating Party must
2 take care to designate for protection only those parts of material, documents, items,
3 or oral or written communications that qualify – so that other portions of the
4 material, documents, items, or communications for which protection is not
5 warranted are not swept unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited.
7 Designations that are shown to be clearly unjustified, or that have been made for an
8 improper purpose (*e.g.*, to unnecessarily encumber or retard the case development
9 process, or to impose unnecessary expenses and burdens on other parties), expose
10 the Designating Party to sanctions.

11 If it comes to a Party’s or a non-party’s attention that information or
12 items that it designated for protection do not qualify for protection at all, or do not
13 qualify for the level of protection initially asserted, that Party or non-party must
14 promptly notify all other Parties that it is withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise
16 provided in this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as
17 otherwise stipulated or ordered, material that qualifies for protection under this
18 Order must be clearly so designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 a. For information in documentary form (apart from
21 transcripts of depositions or other pretrial or trial proceedings), that the Producing
22 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
23 ATTORNEYS’ EYES ONLY” on each page that contains protected material. If
24 only a portion or portions of the material on a page qualifies for protection, the
25 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making
26 appropriate markings in the margins) and must specify, for each portion, the level
27 of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

1 A Party or non-party that makes original documents or
2 materials available for inspection need not designate them for protection until after
3 the inspecting Party has indicated which material it would like copied and
4 produced. During the inspection and before the designation, all of the material
5 made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
7 documents it wants copied and produced, the Producing Party must determine
8 which documents, or portions thereof, qualify for protection under this Order, then
9 before producing the specified documents, the Producing Party must affix the
10 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
11 ATTORNEYS’ EYES ONLY”) at the top of each page that contains Protected
12 Material. If only a portion or portions of the material on a page qualifies for
13 protection, the Producing Party also must clearly identify the protected portion(s)
14 (e.g., by making appropriate markings in the margins) and must specify, for each
15 portion, the level of protection being asserted (either “CONFIDENTIAL” or
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

17 b. For testimony given in deposition or in other pretrial or
18 trial proceedings, that the Party or non-party offering or sponsoring the testimony
19 identify on the record, before the close of the deposition, hearing, or other
20 proceeding, all protected testimony, and further specify any portions of the
21 testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY.” When it is impractical to identify separately each portion of testimony
23 that is entitled to protection, and when it appears that substantial portions of the
24 testimony may qualify for protection, the Party or non-party that sponsors, offers,
25 or gives the testimony may invoke on the record (before the deposition or
26 proceeding is concluded) a right to have up to 20 days (beginning to run when the
27 testifying Party receives a transcript from the reporter) to identify the specific
28 portions of the testimony as to which protection is sought and to specify the level

1 of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
2 – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are
3 appropriately designated for protection within the 20 days shall be covered by the
4 provisions of this Stipulated Protective Order.

5 Transcript pages containing Protected Material must be
6 separately bound by the court reporter, who must affix to the top of each such page
7 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY,” as instructed by the Party or non-party offering or sponsoring the
9 witness or presenting the testimony.

10 c. For information produced in some form other than
11 documentary, and for any other tangible items, that the Producing Party affix in a
12 prominent place on the exterior of the container or containers in which the
13 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the
15 information or item warrant protection, the Producing Party, to the extent
16 practicable, shall identify the protected portions, specifying whether they qualify as
17 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

18 5.3 Inadvertent Failures to Designate. If timely corrected, an
19 inadvertent failure to designate qualified information or items as “Confidential” or
20 “Highly Confidential – Attorneys’ Eyes Only” does not, standing alone, waive the
21 Designating Party’s right to secure protection under this Order for such material.
22 If material is appropriately designated as “Confidential” or “Highly Confidential –
23 Attorneys’ Eyes Only” after the material was initially produced, the Receiving
24 Party, on timely notification of the designation, must make reasonable efforts to
25 assure that the material is treated in accordance with the provisions of this Order.
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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Unless a prompt challenge to a
3 Designating Party’s confidentiality designation is necessary to avoid foreseeable
4 substantial unfairness, unnecessary economic burdens, or a later significant
5 disruption or delay of the litigation, a Party does not waive its right to challenge a
6 confidentiality designation by electing not to mount a challenge promptly after the
7 original designation is disclosed.

8 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
9 Designating Party’s confidentiality designation must do so in good faith and must
10 begin the process by conferring directly with counsel for the Designating Party. In
11 conferring, the challenging Party must explain the basis for its belief that the
12 confidentiality designation was not proper and must give the Designating Party an
13 opportunity to review the designated material, to reconsider the circumstances,
14 and, if no change in designation is offered, to explain the basis for the chosen
15 designation. The Designating Party shall have 5 business days after the meet and
16 confer to provide such explanation. A challenging Party may proceed to the next
17 stage of the challenge process only if it has engaged in this meet and confer
18 process first.

19 6.3 Judicial Intervention. A Party that elects to press a challenge to
20 a confidentiality designation after considering the justification offered by the
21 Designating Party may file and serve a motion under Civil Local Rule 7 (and in
22 compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged
23 material and sets forth in detail the basis for the challenge. Each such motion must
24 be accompanied by a competent declaration that affirms that the movant has
25 complied with the meet and confer requirements imposed in the preceding
26 paragraph and that sets forth with specificity the justification for the confidentiality
27 designation that was given by the Designating Party in the meet and confer
28 process.

1 The burden of persuasion in any such challenge proceeding shall be
2 on the Designating Party. Until the Court rules on the challenge, all Parties shall
3 continue to afford the material in question the level of protection to which it is
4 entitled under the Producing Party’s designation.

5
6 7. ACCESS TO USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected
8 Material that is disclosed or produced by another Party or by a non-party in
9 connection with this case only for prosecuting, defending, or attempting to settle
10 this litigation. Such Protected Material may be disclosed only to the categories of
11 persons and under the conditions described in this Order. When the litigation has
12 been terminated, a Receiving Party must comply with the provisions of section 11,
13 below (FINAL DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving
15 Party at a location and in a secure manner that ensures that access is limited to the
16 persons authorized under this Order. Pages of transcribed deposition testimony or
17 exhibits to depositions that reveal Protected Material must be separately bound by
18 the court reporter and may not be disclosed to anyone except as permitted under
19 this Stipulated Protective Order.

20 7.2 Disclosure of “CONFIDENTIAL” Information or Items.

21 Unless otherwise ordered by the Court or permitted in writing by the Designating
22 Party, a Receiving Party may disclose any information or item designated
23 CONFIDENTIAL, as applicable, only to:

24 a. The Receiving Party and the Receiving Party’s Counsel
25 of record in this action, as well as employees of said Counsel to whom it is
26 reasonably necessary to disclose the information for this litigation;

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1 b. The officers, directors, and employees (including House
2 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
3 this litigation;

4 c. Experts (as defined in this Order) of the Receiving Party
5 (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have
6 signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

7 d. The Court and its personnel;

8 e. Court reporters, their staffs, and professional vendors to
9 whom disclosure is reasonably necessary for this litigation and who have signed
10 the “Agreement to Be Bound by Protective Order” (Exhibit A);

11 f. During their depositions, witnesses in the action to whom
12 disclosure is reasonably necessary and who, from the face of the document, appear
13 to have previously authored or received it, and who have signed the “Agreement to
14 Be Bound by Protective Order” (Exhibit A).

15 g. The author of the document or the original source of the
16 information.

17 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’
18 EYES ONLY” Information or Items. Unless otherwise ordered by the Court or
19 permitted in writing by the Designating Party, a Receiving Party may disclose any
20 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
21 EYES ONLY” only to:

22 a. The Receiving Party’s Outside Counsel of record in this
23 action, as well as employees of said Counsel to whom it is reasonably necessary to
24 disclose the information for this litigation;

25 b. House Counsel of a Receiving Party acting in a legal
26 capacity and to whom disclosure is reasonably necessary for this litigation;

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1 c. Experts (as defined in this Order) of the Receiving Party
2 (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have
3 signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

4 d. The Court and its personnel;

5 e. Court reporters, their staffs, and professional vendors to
6 whom disclosure is reasonably necessary for this litigation and who have signed
7 the “Agreement to Be Bound by Protective Order” (Exhibit A); and

8 f. The author of the document or the original source of the
9 information.

10
11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
12 PRODUCED IN OTHER LITIGATION

13 If a Receiving Party is served with a subpoena or an order issued in
14 other litigation that would compel disclosure of any information or items
15 designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating
17 Party, in writing (by fax or e-mail, if possible) immediately and in no event more
18 than three court days after receiving the subpoena or order. Such notification must
19 include a copy of the subpoena or court order.

20 The Receiving Party also must immediately inform in writing the
21 Party who caused the subpoena or order to issue in the other litigation that some or
22 all the material covered by the subpoena or order is the subject of this Protective
23 Order. In addition, the Receiving Party must deliver a copy of this Stipulated
24 Protective Order promptly to the Party in the other action that caused the subpoena
25 or order to issue.

26 The purpose of imposing these duties is to alert the interested parties
27 to the existence of this Protective Order and to afford the Designating Party in this
28 case an opportunity to try to protect its confidentiality interests in the court from

1 which the subpoena or order issued. The Designating Party shall bear the burdens
2 and the expenses of seeking protection in that court of its confidential material –
3 and nothing in these provisions should be construed as authorizing or encouraging
4 a Receiving Party in this action to disobey a lawful directive from another court.
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6 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has
8 disclosed Protected Material to any person or in any circumstance not authorized
9 under this Stipulated Protective Order, the Receiving Party must immediately
10 (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use
11 its best efforts to retrieve all copies of the Protected Material, (c) inform the person
12 or persons to whom unauthorized disclosures were made of all the terms of this
13 Order, and (d) request such person or persons to execute the “Acknowledgment
14 and Agreement to Be Bound” that is attached hereto as Exhibit A.
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16 10. FILING PROTECTED MATERIAL

17 Without written permission from the Designating Party or a court
18 order secured after appropriate notice to all interested persons, a Party may not file
19 in the public record in this action any Protected Material. A Party that seeks to file
20 under seal any Protected Material must provide the Designating Party with a
21 minimum of 5 days notice in addition to any notice required to secure a court order
22 and must comply with Civil Local Rule 79-5. A Party that seeks to use or disclose
23 any Protected Material, including information or documents, at any hearing or trial,
24 must provide the Designating Party with a minimum of 5 days notice in addition to
25 any applicable notice required by the Court.
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1 11. FINAL DISPOSITION

2 Unless otherwise ordered or agreed in writing by the Producing Party,
3 within sixty days after the final termination of this action, each Receiving Party
4 must return all Protected Material to the Producing Party. As used in this
5 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
6 summaries or any other form of reproducing or capturing any of the Protected
7 Material. With permission in writing from the Designating Party, the Receiving
8 Party may destroy some or all of the Protected Material instead of returning it.
9 Whether the Protected Material is returned or destroyed, the Receiving Party must
10 submit a written certification to the Producing Party (and, if not the same person or
11 entity, to the Designating Party) by the sixty day deadline that identifies (by
12 category, where appropriate) all the Protected Material that was returned or
13 destroyed and that affirms that the Receiving Party has not retained any copies,
14 abstracts, compilations, summaries or other forms of reproducing or capturing any
15 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
16 retain an archival copy of all pleadings, motion papers, transcripts, legal
17 memoranda, correspondence or attorney work product, even if such materials
18 contain Protected Material. Any such archival copies that contain or constitute
19 Protected Material remain subject to this Protective Order as set forth in Section 4
20 (DURATION), above.

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22 12. RETURN OF INADVERTENTLY PRODUCED MATERIALS

23 The disclosure or production of documents protected by the attorney-
24 client privilege or work-product protection, whether inadvertent or not, will not
25 constitute a waiver of the privilege or protection by the disclosing Party in either
26 the litigation pending before the Court, or any other Federal or State proceeding.

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1 In the event that the Receiving Party discovers that it has received
2 either attorney-client privilege or work-product protected documents, it will bring
3 that fact to the attention of the Producing Party immediately upon discovery.

4 In the event that the Producing Party discovers that it has produced
5 either attorney-client privilege or work-product protected documents, it will bring
6 that fact to the attention of the Receiving Party immediately upon discovery.

7 Upon request by the Producing Party, the Receiving Party will
8 promptly return to the Producing Party any attorney client privilege or work-
9 product-protected document and any copies that the Receiving Party may have
10 made.

11 Upon request by the Producing Party, the Receiving Party will
12 promptly disclose the names of any individuals who have read or have had access
13 to the attorney-client privilege or work-product-protected document. Further, the
14 Receiving Party must take reasonable steps to retrieve the information if the
15 Receiving Party disclosed it before being notified.

16 No such produced attorney-client privilege or work-product-protected
17 document may be used in evidence against the Producing Party.

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19 13. MISCELLANEOUS

20 13.1 Right to Further Relief. Nothing in this Order abridges the
21 right of any person to seek its modification by the Court in the future.

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1 13.2 Right to Assert Other Objections. By stipulating to the entry of
2 this Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on
5 any ground to use in evidence of any of the material covered by this Protective
6 Order.

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8 IT IS SO ORDERED.

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10 DATED: December 8, 2011

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/s/John E. McDermott

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The Honorable John E. McDermott
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [*print or type full name*], of _____ [*print or type full address*], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____[date] in the case of *Sigmund et al. v. Kroeger et al.*, Case No. CV11-00923 DMG (JEMx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [*print or type full name*], of _____ [*print or type full address and telephone number*], as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]