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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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12 ILYA PODOBEDOV, JORDAN  
13 MOUSSOUROS and RICHARD N.  
JAMES, on behalf of themselves and all  
others similarly situated,

14 Plaintiffs,

15 vs.

16 LIVING ESSENTIALS, LLC,  
17 INNOVATION VENTURES, LLC d/b/a  
18 LIVING ESSENTIALS, MANOJ  
BHARGAVA and BIOCLINICAL  
DEVELOPMENT, INC.,

19 Defendants.  
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CASE NO. LACV11-6408 PSG (PLAx)

**PROTECTIVE ORDER  
REGARDING CONFIDENTIAL  
INFORMATION**

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1. **Scope of Order.** This Order Re: Confidential Information (“Protective Order”) governs the handling of all material produced, given, or filed during discovery or other proceedings in this action, but shall not apply to the trial of this action (at which time the Court will make other orders, as appropriate, concerning this subject). The provisions of this Protective Order shall apply to the Parties, and any other Person producing, receiving, or disclosing Material in this action.

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1 this litigation, and not for any business, competitive, or  
2 governmental purpose or function, and such Materials shall not be  
3 disclosed to anyone except as provided herein.

4 (c) As a further general guideline, Materials designated at “Highly  
5 Confidential Formula – For Attorneys’ Eyes Only” shall be those  
6 things that relate to a Party’s proprietary product formula that must  
7 be protected from disclosure. Absent a specific order from this  
8 Court, Materials designated as “Highly Confidential Formula – For  
9 Attorneys’ Eyes Only” shall be used by the Parties solely in  
10 connection with this litigation, and not for any business,  
11 competitive, or governmental purpose or function, and such  
12 Materials shall not be disclosed to anyone except as provided  
13 herein.

14 (d) “Protected Material” means any type or classification of Material  
15 that is designated as “Confidential,” “Highly Confidential,” or  
16 “Highly Confidential Formula – For Attorneys’ Eyes Only” by the  
17 Producing Person and that contains trade secrets, future business  
18 plans, information regarding products not released or announced to  
19 the public, nonpublic proprietary product development  
20 information, nonpublic proprietary product formula information,  
21 customer lists, nonpublic financial information, nonpublic business  
22 operations information of a confidential nature, personnel  
23 information in an employee’s confidential employment file, and/or  
24 information protected by the right to privacy. For purposes of  
25 clarification, a Producing Person may designate Material as  
26 “Highly Confidential” or “Highly Confidential Formula –  
27 Attorneys’ Eyes Only” only if the Producing Person believes in  
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1 good faith the Material contains extremely sensitive confidential  
2 information, including but not limited to information which is  
3 commercial, pricing, cost, or marketing information relating to the  
4 Producing Person or the Producing Person's commercial products  
5 or planned commercial products, or technical and research  
6 information or product formula information that is extremely  
7 sensitive. Publicly available information is not Protected Material.  
8 The Parties cannot reasonably anticipate all information that will  
9 be requested and produced in this action, and they therefore reserve  
10 the right to designate as Protected Material any document or  
11 category of information that they in good faith believe is entitled to  
12 the designation even if it is not expressly mentioned in the  
13 definition above.

14 (e) "Confidential Information" means any information contained in  
15 Protected Material, as defined above, and only the limited portions  
16 of briefs, memoranda, exhibits, or testimony, or the limited  
17 portions of any other writing filed with the Court that mentions,  
18 discusses, or refers to any Protected Material.

19 (f) "Material" means papers, documents, tapes, testimony, and other  
20 information produced, given, or filed during discovery or other  
21 proceedings in this action, including, but not limited to, answers to  
22 interrogatories, responses to requests for admissions, deposition  
23 testimony, information provided during any settlement discussions,  
24 and all copies, excerpts, summaries, and information derived from  
25 any such papers or documents.

26 (g) "Person" means a natural person, firm, association, organization,  
27 partnership, business, public entity, or other person acting on  
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1                   behalf of such person.

2                   (h) “Party” or “Parties” means Living Essentials, LLC, Innovation  
3                   Ventures, LLC, Manoj, Bhargava, Bio Clinical Development, Inc.,  
4                   Ilya Podobedov, Jordan Moussouros, and Richard N. James, or any  
5                   other Person who is joined in this action as a party.

6                   (i) “Producing Person” means any Person, as defined above,  
7                   producing or disclosing Material in this action.

8                   (j) “Discovering Party” means any Party that requests and receives  
9                   Materials in this action through the discovery process.

10                3.     **Designation of Protected Material.** A Producing Party may  
11                designate discovery Material as “Confidential,” “Highly Confidential,” or “Highly  
12                Confidential Formula – Attorneys’ Eyes Only” in the following manner:

13                   (a) Designation of Documents: Any document (defined herein as  
14                   including, but not limited to: exhibits, documents and things  
15                   (including computer diskettes and other storage media) produced in  
16                   response to discovery requests, interrogatory responses, responses  
17                   to requests for admission, motions, briefs, memoranda, and copies  
18                   of any of the foregoing) produced or given by any Producing  
19                   Person during discovery, hearings, or trial in this case which sets  
20                   forth or contains any Confidential Information may be so  
21                   designated by affixing the legend “Confidential,” “Highly  
22                   Confidential,” or “Highly Confidential Formula – Attorneys’ Eyes  
23                   Only” as applicable, on each page containing Confidential  
24                   Information at the time such document is produced or provided, or  
25                   as soon thereafter as the Producing Person seeking protection  
26                   becomes aware of the confidential nature of the document.

27                   (b) Designation of Deposition Testimony: Deposition testimony may  
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1 be designated “Confidential,” “Highly Confidential,” or “Highly  
2 Confidential Formula – Attorneys’ Eyes Only” by oral designation  
3 on the record, or within ten (10) days after the transcript of such  
4 deposition is mailed to the designating Person. The designating  
5 Person shall instruct the court reporter to separately bind the  
6 portions of the deposition transcript so designated, and to stamp the  
7 word “Confidential,” “Highly Confidential,” or “Highly  
8 Confidential Formula – Attorneys’ Eye Only” as applicable, on  
9 each designated page of the transcript. Pending expiration of this  
10 ten-day period, all Parties shall treat all deposition testimony and  
11 exhibits as if they had been designated as “Highly Confidential.”

12 (c) Treatment of Court-Filed Materials. A Party that intends to file  
13 with the Court any information that another Party or non-party has  
14 designated as “Confidential,” “Highly Confidential,” or “Highly  
15 Confidential Formula – Attorneys’ Eyes Only” shall comply with  
16 the sealing and lodging requirements of the Court’s Local Rules.  
17 Where only a portion of the submission or filing contains  
18 Confidential Information, only that portion shall be filed under  
19 seal. The parties shall keep in confidence all copies of such  
20 Materials as provided in this Order.

21 4. **Treatment of Protected Material.** Material designated “Highly  
22 Confidential Formula – Attorneys’ Eyes Only” may not be disclosed except as set  
23 forth in paragraph 5 below. Material designated “Highly Confidential” may not be  
24 disclosed except as set forth in paragraph 6 below. Material designated  
25 “Confidential” may not be disclosed except as set forth in paragraph 7 below.  
26 Protected Material shall be kept in secure facilities, and access to those facilities  
27 shall be permitted only to those Persons having proper access thereto under this  
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1 Protective Order. Protected Material shall be used solely for the purposes of this  
2 litigation and shall not be used for any business or other purpose. The restrictions  
3 on use of Protected Material set forth in this Order shall survive the conclusion of  
4 the litigation, and, after conclusion of this litigation, the Court shall retain  
5 jurisdiction for the purpose of enforcing this Protective Order.

6       5.     **Access to Material Designated “Highly Confidential Formula –**  
7 **Attorneys’ Eyes Only.”** Material designated “Highly Confidential Formula –  
8 Attorneys’ Eyes Only” may be disclosed only to the following:

- 9           (a) Counsel of record for any Party, including any attorneys at their  
10           law firms to whom it is necessary that the information be disclosed  
11           for the purposes of this litigation;
- 12           (b) Court personnel, including stenographic reporters engaged in such  
13           proceedings as are necessarily incident to preparation for trial and  
14           trial of this action;
- 15           (c) Not more than four (4) independent consultants or experts, retained  
16           in connection with this action, provided that each such person first  
17           acknowledges in writing, under oath, that he or she has read this  
18           Protective Order and agrees to be bound by its terms, and provided  
19           further that such person first acknowledges the she/he does not  
20           have a business or competitive conflict with any Party. This  
21           acknowledgment shall be made by execution of the Declaration  
22           attached hereto as Exhibit A. The attorneys of record for the  
23           Discovering Party will inform the Producing Person prior to  
24           disclosure to the independent consultant or expert that the material  
25           will be provided to an independent consultant or expert, and that  
26           the independent consultant or expert has agreed not to disclose the  
27           material to anyone other than counsel of record for any Party. The  
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1 identities of the experts or consultants need not be provided to the  
2 opposing party in advance of disclosure. All such written  
3 acknowledgments shall be maintained by counsel making the  
4 disclosure of the Protected Material, and shall be provided to the  
5 opposing Party's counsel at the conclusion of this action, upon  
6 request. If it becomes necessary for a party to show the  
7 information to more than four experts, it must first seek permission  
8 from the opposing party. If such permission is denied, the party  
9 seeking further disclosure may move the Court;

10 (d) Paralegal, stenographic, clerical and secretarial personnel regularly  
11 employed by counsel of record to whom disclosure is reasonably  
12 necessary in connection with this litigation, provided that each  
13 such person first acknowledges in writing, under oath, that he or  
14 she has read the Protective Order and agrees to be bound by its  
15 terms, and provided further that such person first acknowledges the  
16 she/he does not have a business or competitive conflict with any  
17 Party. This acknowledgment shall be made by execution of the  
18 Declaration attached hereto as Exhibit A; and

19 (e) Any other Person to whom the Producing Person agrees in writing.

20 Nothing in this Order shall prohibit a Party, or Persons employed or formerly  
21 employed by or affiliated with such Party, from reviewing the Materials it  
22 designates as Highly Confidential Formula – Attorneys' Eyes Only, or from  
23 reviewing any Materials it has authored or on which it is identified as a recipient.

24 Except as otherwise specifically noted, all procedures in the remaining  
25 paragraphs of this Protective Order that govern the treatment of information  
26 designated as Confidential or Highly Confidential shall also govern the treatment  
27 of information designated as "Highly Confidential Formula – Attorneys' Eyes  
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1 Only.” If a provision provides for different treatment of information designated as  
2 Confidential and Highly Confidential, then the “Highly Confidential Formula –  
3 Attorneys’ Eyes Only” information shall be entitled to the higher level of  
4 protection.

5       6.     **Access to Material Designated “Highly Confidential.”** Material  
6 designated “Highly Confidential” may be disclosed only to the following:

- 7           (a) Counsel of record for any Party, including in-house counsel;  
8           (b) Paralegal, stenographic, clerical, and secretarial personnel regularly  
9               employed by counsel listed in (a) above;  
10          (c) Court personnel, including stenographic reporters engaged in such  
11               proceedings as are necessarily incident to preparation for trial and  
12               trial of this action;  
13          (d) Personnel of copy service firms or attorney service firms retained  
14               by counsel listed in (a) above in connection with this action;  
15          (e) Any independent consultant or expert, retained in connection with  
16               this action, provided that each such person first acknowledges in  
17               writing, under oath, that he or she has read this Protective Order  
18               and agrees to be bound by its terms, and provided further that such  
19               person first acknowledges the she/he does not have a business or  
20               competitive conflict with any Party. This acknowledgment shall be  
21               made by execution of the Declaration attached hereto as Exhibit A.  
22               All such written acknowledgments shall be maintained by counsel  
23               making the disclosure of the Protected Material, and shall be  
24               provided to the opposing Party’s counsel at the conclusion of this  
25               action, upon request; and  
26          (f) Any other Person to whom the Producing Person agrees in writing.

27 Nothing in this Order shall prohibit a Party, or Persons employed or formerly  
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1 employed by or affiliated with such Party, from reviewing the Materials it  
2 designates as Highly Confidential, or from reviewing any Materials it has authored  
3 or on which it is identified as a recipient.

4       7.     **Access to Material Designated “Confidential.”** Material designated  
5 “Confidential” may be disclosed to any Person listed in paragraphs 5 and 6 above  
6 and, in addition, may be disclosed to a Party; any officer, director, employee, or  
7 former employee of a Party; or to any officer, director, employee, or former  
8 employee of a parent, subsidiary, or affiliate of a Party, disclosure to whom counsel  
9 believes in good faith is necessary to assist in the prosecution or defense of this  
10 action, provided that such Person agrees to maintain the confidentiality of the  
11 information disclosed in accordance with the terms of this Protective Order by  
12 execution of the Declaration attached hereto as Exhibit A.

13       8.     **Examination of Third Party Witnesses.** Any Person may be  
14 examined as a witness during a deposition concerning any Protected Material that  
15 appears on its face or from other documents or testimony to have been received or  
16 authored by that Person. During examination, an examining Party may show such  
17 a witness such Protected Material. If a Party wishes to examine a witness during a  
18 deposition concerning any Protected Material of another Person, and the witness  
19 has not previously received, authored, or otherwise had lawful access to such  
20 Protected Material, the examining Party shall first obtain the consent of the  
21 Producing Person who designated the Material, or their attorneys, if any, and shall  
22 require the witness to agree to maintain the confidentiality of the Protected  
23 Material in accordance with the terms of this Protective Order by execution of the  
24 Declaration attached hereto as Exhibit A.

25       9.     **Challenging Confidentiality Designations.** By entering into this  
26 Protective Order, no Party concedes that any Material designated as Protected  
27 Material has been properly so designated. Should any Party object to any  
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1 confidentiality designation, the objecting Party shall provide written notice of the  
2 basis for such objection to the Producing Party and shall attempt in good faith to  
3 resolve the objection informally with the Producing Party as soon as practicable. If  
4 the objection cannot be informally resolved within a reasonable time, the objecting  
5 Party may move for an order determining whether the Materials are properly  
6 designated, pursuant to Local Rule 37-1, et seq. Until a motion is filed and  
7 resolved by the Court, all such Materials shall be treated as Protected Materials.  
8 The foregoing is without prejudice to the right of any Person to apply to the Court  
9 for modification of this Protective Order or for a further protective order relating to  
10 Confidential Information.

11       **10. Confidentiality Obligations to Third Parties.** In the event that  
12 information in the possession or control of a Person from whom discovery is  
13 sought involves the confidentiality rights of a non-party or that its disclosure would  
14 violate a Protective Order issued in another action, the Person with possession or  
15 control of the information will attempt to obtain the consent of the non-party to  
16 disclose the information subject to the terms of this Protective Order. If the  
17 consent of the non-party cannot be obtained, the Person will notify the Party  
18 seeking discovery of: (a) the existence of the information without producing such  
19 information; and (b) the identity of the non-party (provided, however, that such  
20 disclosure of the identity of the non-party in and of itself does not violate any  
21 confidentiality obligation). The Party seeking discovery may then make further  
22 application to the non-party or seek other means to obtain such information.

23       **11. Inadvertent Disclosure of Confidential Information.** Inadvertent  
24 failure to designate as Protected Material any information pursuant to this Order  
25 shall not constitute a waiver of any otherwise valid claim for protection thereof, so  
26 long as such designation is asserted promptly following discovery of the  
27 inadvertent failure. At such time, arrangements shall be made for the Producing  
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1 Party to appropriately mark the information in accordance with this Order.

2       **12. Inadvertent Disclosure of Privileged Information.** The production  
3 (or making available for inspection) of Material without an express written notice  
4 of intent to waive the attorney-client privilege or work product immunity or any  
5 other applicable privilege or immunity from discovery shall not constitute a waiver  
6 of the attorney-client privilege or work product immunity or any other applicable  
7 privilege or immunity from discovery, so long as the Producing Person informs the  
8 Receiving Person of the identity of the Materials the Producing Person contends  
9 are privileged, reasonably promptly after the Producing Person becomes aware of  
10 the specific Materials that were allegedly inadvertently produced. If the Receiving  
11 Person becomes aware of specific Materials that it believes may be subject to a  
12 claim of privilege by the Producing Person, the Receiving Person shall timely  
13 notify the Producing Person of these specific Materials. Upon being made aware  
14 of these Materials, the Producing Person shall timely designate any such Materials  
15 as within the attorney-client privilege or work product immunity or any other  
16 applicable privilege or immunity and request return of such Materials to the  
17 Producing Person. Upon request by the Producing Person, the Receiving Person  
18 shall immediately return all copies of such inadvertently produced Material(s), and  
19 shall otherwise comply with the provisions of Federal Rule of Civil  
20 Procedure 26(b)(5)(B). Nothing herein shall prevent the Receiving Person from  
21 challenging the propriety of the attorney-client privilege or work product immunity  
22 or other applicable privilege or immunity designation by submitting a written  
23 challenge to the Court, but any such challenge shall not assert as a basis the fact or  
24 circumstances of the inadvertent production. If a claim is disputed, the Receiving  
25 Person shall not use or disclose Materials for which a claim of privilege or  
26 immunity is made pursuant to this paragraph for any purpose until the matter is  
27 resolved by agreement of the parties or by the Court. This Order constitutes a party  
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1 agreement within the meaning of Federal Rule of Evidence 502(e), and upon  
2 adoption by the Court a court order within the meaning of Federal Rule of  
3 Evidence 502(d), and thus supersedes any inconsistent provisions of Federal Rule  
4 of Evidence 502(b).

5       **13. Conclusion of Action.** This Protective Order, insofar as it restricts  
6 the communication and use of Confidential Information, shall continue to be  
7 binding throughout and after the conclusion of this action, including any appeals.  
8 At the conclusion of this action, including appeals, counsel for each Party shall  
9 either return to the Producing Person or destroy all Protected Materials, and shall  
10 designate in writing that all such materials have in fact been returned or destroyed.  
11 Notwithstanding the foregoing, counsel for the Parties need not return or destroy  
12 any Protected Material that becomes a part of the Court record in this action, by use  
13 as a trial exhibit, inclusion in a court filing, inclusion in any record on appeal, or  
14 otherwise.

15       **14. Inadmissibility.** This Protective Order, the fact of its adoption or  
16 entry, and any provision of this Protective Order or attached form shall not be  
17 admissible for any purpose of this litigation, except to the extent necessary to  
18 enforce its terms. In any such enforcement proceeding, the prevailing party shall  
19 recover its reasonable attorneys' fees and expenses in maintaining such proceeding.

20       **15. Reservation of Objections to Production.** Nothing in this Protective  
21 Order shall be construed as an agreement to produce any Material, or as a waiver of  
22 any objections to the production of that Material.

23       **16. Miscellaneous.** Nothing in this Protective Order shall preclude any  
24 party from making any claim of privilege as to any information requested by

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1 another party. Failure to designate Material as Protected Material shall not  
2 constitute a waiver of any other claim of privilege.

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4 IT IS SO ORDERED.

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7 Dated: September 11, 2012



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Paul L. Abrams  
U.S. MAGISTRATE JUDGE