

GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP  
1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 90067-4590

1 FRED A. FENSTER (SBN 50489)  
FFenster@GreenbergGlusker.com  
2 NANCY C. MORGAN (SBN 205430)  
NMorgan@GreenbergGlusker.com  
3 GREENBERG GLUSKER FIELDS CLAMAN &  
MACHTINGER LLP  
4 1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 90067-4590  
5 Telephone: 310.553.3610/Fax: 310.553.0687

6 Attorneys for Plaintiff Caltex Plastics, Inc.

7 GARY M. ANDERSON (State Bar No. 97385)  
ganderson@fulpat.com  
8 DAVID PITMAN (State Bar No. 172944)  
dpitman@fulpat.com  
9 KENYA WILLIAMS (State Bar No. 276875)  
kwilliams@fulpat.com  
10 FULWIDER PATTON LLP  
Howard Hughes Center  
11 6060 Center Drive, Tenth Floor  
Los Angeles, California 90045  
12 Telephone: (310) 824-5555/Fax: (310) 824-9696

13 Attorneys for Defendant Elkay Plastics Company

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16

17 CALTEX PLASTICS, INC., a  
18 California corporation,  
19 Plaintiff,  
20 v.  
21 ELKAY PLASTICS COMPANY, a  
22 California corporation, and DOES 1-  
10,  
23 Defendants.

Case No. 2:12-cv-10033 RSWL(JEMx)  
**PROTECTIVE ORDER**

24  
25 The Court, having reviewed the Stipulation for Protective Order executed by  
26 the parties through their respective counsel, and good cause appearing therefor,  
27

28 IT IS ORDERED:

1           1.     Discovery in this action is expected to require the production of non-  
2 public confidential information concerning the business affairs of the parties,  
3 including but not limited to pricing information, sales and revenue figures,  
4 customer identities, and materials that may constitute trade secrets. There is good  
5 cause for the entry of a protective order under Rule 26(c) of the Federal Rules of  
6 Civil Procedure with respect to such materials because the disclosure of the pricing  
7 information, sales and revenue data, customer identities, and trade secrets could  
8 result in competitive injury.

9           2.     As used herein, “Confidential Material” means: (a) non-public price  
10 lists and price quotations; (b) non-public sales, profit and revenue figures; (c) non-  
11 public information disclosing the identities of any customer of any party providing  
12 discovery, including any party to this action or any third party (a “Producing  
13 Party”); and (d) any other non-public information that any Producing Party  
14 reasonably believes, in good faith, is likely to cause competitive harm if disclosed  
15 or constitutes a trade secret under applicable law.

16           3.     “Confidential Material” does not include any information:

17               (a)    that is known to or independently developed by the party  
18 receiving the production (the “Receiving Party”);

19               (b)    that, after the disclosure to the Receiving Party by the Producing  
20 Party is revealed to the public or to the Receiving Party by a person having  
21 the unrestricted right to do so; or

22               (c)    that is acquired by the Receiving Party from any third party  
23 which lawfully possesses the information and owes no contractual duty of  
24 non-disclosure to the Producing Party.

25           4.     There shall be two categories of Confidential Material under this  
26 Protective Order:

27               (a)    “CONFIDENTIAL,” and

28               (b)    “ATTORNEYS’ EYES ONLY.”

1 The “ATTORNEYS’ EYES ONLY” category is reserved exclusively for  
2 Confidential Material that constitutes trade secrets under applicable law, or  
3 Confidential Material regarding pricing, profit or customer information that, if  
4 disclosed to the Receiving Party, would cause competitive injury to the Producing  
5 Party.

6 5. All tangible items or subject matter deemed by the Producing Party to  
7 be subject to this Protective Order shall be visibly marked as “CONFIDENTIAL”  
8 or “ATTORNEYS’ EYES ONLY” at the time of production or disclosure to be  
9 subject to this Protective Order. In order to designate an entire multi-page  
10 document as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” each page of  
11 the document must be so marked, except in the case of electronic documents  
12 produced in native format (*e.g.*, Microsoft Excel files), which may be designated by  
13 affixing the appropriate designation on the first page of the document. If not all  
14 pages of a document contain Confidential Material, then only those pages deemed  
15 in good faith to be subject to each such designation shall be so marked, except in  
16 the case of electronic documents produced in native format, which may be  
17 designated as described above. With respect to deposition testimony, blanket  
18 designations of an entire deposition transcript as “CONFIDENTIAL” or  
19 “ATTORNEYS’ EYES ONLY” should be avoided where possible, although  
20 counsel may agree, for the sake of convenience, to temporary treatment of a  
21 transcript as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” pending  
22 specific page and line designations made by the Producing Party after the  
23 deposition transcript for that deposition session or sitting is transcribed by the  
24 reporter. In connection with electronically-produced documents in non-native  
25 format, any designation as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”  
26 shall be provided in a metadata field and shall also be stamped on the electronic  
27 document itself.

28 6. Except pursuant to a prior written consent of the Producing Party or an

1 order of the Court allowing broader disclosure, no Confidential Material which has  
2 been designated as “CONFIDENTIAL” shall be disclosed by the Receiving Party  
3 to anyone other than (a) this Court and its personnel, (b) any person indicated on  
4 the face of a document so designated to be its originator or author or a recipient of a  
5 copy thereof, or is mentioned in it, (c) counsel of record for the Receiving Party  
6 (including attorneys and employees working for such counsel), (d) experts and  
7 consultants retained or consulted in this action by the Receiving Party, (e)  
8 executives of the Receiving Party who are actively involved in working with the  
9 Receiving Party or its legal counsel in the prosecution, defense, or settlement of  
10 these proceedings, and (f) any court reporter before whom a deposition is taken in  
11 this action.

12 7. Except pursuant to a prior written consent of the Producing Party or an  
13 order of the Court allowing broader disclosure, no Confidential Material which has  
14 been designated as “ATTORNEYS’ EYES ONLY” shall be disclosed by the  
15 Receiving Party to anyone other than (a) this Court and its personnel, (b) any  
16 person indicated on the face of the document to be its originator or author or a  
17 recipient of a copy thereof, or is mentioned in it, (c) counsel of record for the  
18 Receiving Party (including attorneys and employees working for such counsel), (d)  
19 experts or consultants retained or consulted in this action by the Receiving Party,  
20 and (e) any court reporter before whom a deposition is taken in this action.

21 8. All persons to whom disclosure of Confidential Material is made under  
22 this Protective Order, other than counsel of record for the parties and the attorneys  
23 and employees who work for such counsel, shall be given a copy of the Protective  
24 Order prior to such disclosure and, prior to such disclosure, shall sign the form  
25 attached hereto as “Exhibit A” indicating that they have read this Protective Order  
26 and agree to be bound by its terms.

27 9. Confidential Material shall be handled in the manner set forth herein  
28 and shall be used solely for the purposes of the prosecution or defense of this action

1 unless and until such designation is removed by agreement of counsel for the  
2 parties or by order of the Court. This reciprocal contractual obligation shall survive  
3 the termination of this action and shall continue even after the Court loses its  
4 current jurisdiction over the parties.

5 10. Where only a portion of a particular document or tangible item  
6 furnished or produced by a Producing Party, or a portion of the transcript of any  
7 deposition, is designated as Confidential Material, counsel for the Receiving Party  
8 shall delete or redact therefrom the “CONFIDENTIAL” or “ATTORNEYS’ EYES  
9 ONLY” portions, before disclosing such information to any person other than those  
10 designated herein.

11 11. Deletions or redactions made from any material or transcript in  
12 accordance with the terms of this Protective Order shall not affect the admissibility  
13 of any such material or transcript in evidence in this action.

14 12. Nothing contained herein, including in Paragraph 7 above, shall  
15 preclude or impede the ability of the parties’ counsel to communicate with their  
16 respective clients to provide advice and counseling with respect to this action, based  
17 upon counsel’s review and analysis of Confidential Material designated as  
18 “ATTORNEYS’ EYES ONLY.” Counsel may discuss with employees and officers  
19 of their respective clients who are actively involved in the prosecution, defense, or  
20 settlement of this action, the general nature of such “ATTORNEYS’ EYES ONLY”  
21 materials, without disclosing the specifics of those materials, to the extent necessary  
22 to the effective representation of their respective clients.

23 13. If any Confidential Material is summarized, discussed, or quoted from  
24 at any deposition or at any hearing in this action, all persons other than those to  
25 whom disclosure is permitted hereunder shall be excluded from such portion of the  
26 deposition or hearing.

27 14. The parties shall endeavor to avoid filing Confidential Materials with  
28 the Court to the extent possible. If it becomes necessary to file Confidential

1 Materials with the Court, the party who wishes to file such materials shall (a) seek  
2 the consent of the Producing Party to allow such filing, or (b) if such consent is not  
3 forthcoming, shall file an application for approval to file the Confidential Materials  
4 under seal, pursuant to Local Rule 79-5.

5 15. Nothing in this Order shall prevent a Receiving Party from contending  
6 that documents or information have been improperly designated. A Receiving  
7 Party may at any time request that the Producing Party cancel or modify the  
8 designation with respect to any document or information contained therein. The  
9 designated status of any Confidential Material and any restriction on the disclosure  
10 or use of Confidential Material contained in this Protective Order may be changed  
11 only by written agreement of the Producing Party or by court order. A party shall  
12 not be obligated to challenge the propriety of any designation at the time of  
13 production, and a failure to do so shall not preclude a subsequent challenge thereto.  
14 Before filing any motion for an order changing the designated status of Confidential  
15 Material or any restriction of this Protective Order, the Receiving Party shall make  
16 a written request to the Producing Party to agree to the requested change. The  
17 parties shall promptly meet and confer to discuss the request. If after meeting and  
18 conferring, the parties cannot agree upon the resolution of the Receiving Party's  
19 request, the Receiving Party may move for an order changing the designated status  
20 of Confidential Material or otherwise relieving the Receiving Party from the  
21 restrictions of this Protective Order. Pending the decision on the motion, the  
22 involved item shall be treated in accordance with its designated status. In  
23 connection with any such motion, the Producing Party shall have the burden of  
24 establishing that the item of protected subject matter contains Confidential Material  
25 of such a nature as to justify its designated status or as to justify the restrictions  
26 from which the Receiving Party then seeks relief.

27 16. Inadvertent or unintentional production of documents or things  
28 containing Confidential Material, but which are not properly designated as such at

1 the time of production, shall not be deemed a waiver in whole or in part of a claim  
2 for confidential treatment. Any Producing Party who inadvertently produces  
3 Confidential Material without designating it as such in accordance with this  
4 Protective Order shall immediately notify the Receiving Party after discovery of  
5 such inadvertent production. The material so designated shall thereafter be treated  
6 as Confidential Material under this Protective Order, unless the designation is  
7 changed pursuant to Paragraph 15 of this Protective Order. The Producing Party  
8 will also provide replacement pages bearing the appropriate confidentiality legend  
9 or legends upon discovery of the error.

10 17. If information subject to a claim of attorney-client privilege, work  
11 product doctrine, or other privilege, doctrine, right, or immunity is nevertheless  
12 inadvertently or unintentionally produced, such production shall in no way  
13 prejudice or otherwise constitute a waiver or estoppel as to any such privilege,  
14 doctrine, right or immunity. Any Producing Party who produces material without  
15 intending to waive a claim of privilege or protection of trial preparation materials  
16 with respect thereto shall immediately on discovery of the error identify the  
17 material or information produced and state the privilege or other protection  
18 asserted. After the Producing Party makes that identification, the Receiving Party  
19 must promptly return, sequester or destroy the specified material or information and  
20 any copies thereof and otherwise follow the procedures set forth in Federal Rule of  
21 Civil Procedure 26(b)(5)(B). The Receiving Party may thereafter seek a ruling  
22 from the Court as to the merits of the claim of privilege or protection of trial  
23 preparation materials; the Producing Party must preserve the information until the  
24 claim is resolved.

25 18. All Confidential Material shall be retained by the Receiving Party or  
26 its counsel of record during the pendency of these proceedings, except that experts  
27 and consultants retained or consulted by a Receiving Party, and other persons noted  
28 herein or permitted by other agreement, may have custody of one copy of any

1 Confidential Material during the pendency of this proceeding.

2 19. Neither the taking of any action in accordance with the provisions of  
3 this Protective Order, nor the failure to object thereto, shall be construed as a  
4 waiver of any claim or defense in this action. Moreover, the failure to designate  
5 information in accordance with this Protective Order and the failure to object to a  
6 designation at a given time shall not preclude the filing of a motion at a later date  
7 seeking to impose such designation or challenging the propriety thereof as of or  
8 after any such later date. The entry of this Protective Order shall not be construed  
9 as a waiver of any right to object to the disclosure of information in response to  
10 discovery and, except as expressly provided, shall not relieve any party of the  
11 obligation of producing information in the course of discovery.

12 20. A nonparty producing information or material voluntarily or pursuant  
13 to a subpoena or a court order may designate such material or information as  
14 CONFIDENTIAL or ATTORNEYS' EYES ONLY, pursuant to the terms of this  
15 Protective Order. Any party seeking to challenge the designation of non-party  
16 information as CONFIDENTIAL or ATTORNEYS' EYES ONLY or who is  
17 seeking to use such information in proceedings where it may become a part of the  
18 public record, shall follow the procedures set forth above and provide notice to the  
19 non-party in sufficient time to allow the non-party to appear and seek continued  
20 protection of its information as designated.

21 20. Upon termination or settlement of these proceedings, including all  
22 appeals, each party shall either: (a) return to the Producing Party all  
23 "CONFIDENTIAL" and "ATTORNEYS' EYES ONLY" materials produced in  
24 discovery, including all copies, summaries, or abstracts not containing attorney  
25 work product or information covered by the attorney-client privilege; or (b) destroy,  
26 and certify such destruction in writing to the other party or to third parties, as the  
27 case may be, all "CONFIDENTIAL" and "ATTORNEYS' EYES ONLY" materials  
28 produced in discovery, including all copies, summaries, or abstracts not containing



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

attorney work product or information covered by the attorney-client privilege;  
provided, however, that each party’s counsel may keep one paper archival copy and  
one electronic archival copy of all pleadings, discovery responses, and produced  
documents that contain “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”  
materials.

Dated: February 04, 2013

/s/John E. McDermott

United States Magistrate Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

**ACKNOWLEDGEMENT OF RECEIPT OF PROTECTIVE ORDER AND  
AGREEMENT TO BE BOUND THEREBY**

I, \_\_\_\_\_, acknowledge that I have received a copy of the Protective Order entered by the United States District Court for the Central District of California in *Caltex Plastics, Inc. v. Elkay Plastics Company et al*, Case No. CV 12-10033 RSWL (JEMx). I agree to be bound by the terms of that Protective Order and submit to the jurisdiction of the United States District Court for the Central District of California with respect to any proceedings to enforce my obligations thereunder.

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

Signature

**GREENBERG GLUSKER FIELDS CLAMAN  
& MACHTINGER LLP**  
1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 90067-4590