

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

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL STARR, an individual,
Plaintiff,

v.

MICHAEL STARS, INC., a California
corporation,
Defendant.

MICHAEL STARS, INC., a California
corporation,
Counterclaimant,

v.

MICHAEL STARR, an individual,
Counter-defendant.

Case No. CV13-2070 GHK (AGR~~x~~)

PROTECTIVE ORDER

Judge: The Honorable George H. King

NOTE CHANGES MADE BY COURT

1 THE COURT, having considered the Parties' stipulated request for entry of a
2 Protective Order to expedite the flow of discovery material, facilitate the prompt
3 resolution of this case's disputes over confidentiality, protect adequately material
4 entitled to be kept confidential, and ensure that protection is afforded only to material
5 so entitled and pursuant to the Court's authority under Rule 26(c) of the Federal Rules
6 of Civil Procedure,

7 **HEREBY ORDERS AS FOLLOWS:**

8 **1.** Disclosure and discovery activity in this action are likely to involve
9 production of highly sensitive financial or business information or proprietary
10 information that has not been disseminated to the public at large, which is not readily
11 discoverable by competitors and has been the subject of reasonable efforts by the
12 respective parties to maintain its secrecy, and for which special protection from public
13 disclosure and from use for any purpose other than prosecuting this litigation would
14 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
15 enter the following Stipulated Protective Order. The parties acknowledge that this
16 Order does not confer blanket protections on all disclosures or responses to discovery
17 and that the protection it affords extends only to the limited information or items that
18 are entitled under the applicable legal principles to treatment as confidential. The
19 parties further acknowledge, as set forth in **paragraph 12**, below, that this Stipulated
20 Protective Order creates no entitlement to file confidential information under seal.

21 **2. DEFINITIONS**

22 **2.1 Party.** Any party to this action, including all of its officers, directors,
23 employees, consultants, retained experts, and outside counsel (and their support staff).

24 **2.2 Disclosure or Discovery Material.** All items or information, regardless of
25 the medium or manner generated, stored, or maintained (including, among other
26 things, testimony, transcripts, or tangible things) that are produced or generated in
27 disclosures or responses to discovery in this matter.

28

1 **2.3 Trade Secret.** Information, including a formula, pattern, compilation,
2 program, device, method, technique, or process that: (I) derives independent economic
3 value, actual or potential, from not being generally known to the public or to other
4 persons who can obtain economic value from its disclosure or use; and (ii) is the
5 subject of efforts that are reasonable under the circumstances to maintain its secrecy,
6 as set forth in California Civil Code §3426.

7 **2.4 “Confidential” Information or Items.** Comprises or contains information
8 that the Producing Party claims in good faith to constitute or relate to:

9 (1) sensitive technical information that is not publicly available and that is not
10 expressly contained in public information; and (2) sensitive business or financial
11 information that is not publicly available and that is not expressly contained in public
12 information, private personal information, or confidential research, development, or
13 commercial information.

14 "CONFIDENTIAL" Information may include, without limitation, product
15 information (including technical specifications, product composition information, and
16 design specifications), research and development information (including testing
17 documentation, market and demographic research, and product and advertising
18 development), commercial information (including business plans, business strategies,
19 negotiations, and license agreements), financial information (including budgeting,
20 accounting, sales figures and advertising expenditures), business relationship
21 information (including information pertaining to potential and/or existing customers,
22 competitors, suppliers, distributors, affiliates, subsidiaries, and parents), personnel
23 information (including compensation, evaluations and other employment information),
24 and patent prosecution information (including present or future patent applications).

25 **2.5 “Highly Confidential — Attorneys’ Eyes Only” Information or items.**
26 Comprises or contains information that the Producing Party claims in good faith to
27 constitute or relate to (1) proprietary research and development and/or highly sensitive
28 technical information that is not publicly available; (2) highly sensitive business-

1 related financial, commercial or relationship information that is not publicly available
2 and that is not expressly contained in public information; (3) trade secrets; and/or (4)
3 unpublished patent applications (including future patent applications) and patent
4 prosecution documents that are not available upon request from the United States
5 Patent and Trademark Office or any other patent office.

6 **2.6 Receiving Party.** A Party that receives Disclosure or Discovery Material
7 from a Producing Party.

8 **2.7 Producing Party.** A Party or non-party that produces Disclosure or
9 Discovery Material in this action.

10 **2.8 Designating Party.** A Party or non-party that designates information or
11 items that it produces in disclosures or in responses to discovery as “Confidential” or
12 “Highly Confidential — Attorneys’ Eyes Only.”

13 **2.9 Protected Material.** Any Disclosure or Discovery Material that is
14 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

15 **2.10 Outside Counsel.** Attorneys who are not employees of a Party but who
16 are retained to represent or advise a Party in this action.

17 **2.11 In-House Counsel.** Attorneys who are employees of a Party and who
18 regularly provide legal advice as part of their job duties.

19 **2.12 Counsel (without qualifier).** Outside Counsel and In-House Counsel (as
20 well as their support staffs).

21 **2.13 Expert.** A person with specialized knowledge or experience in a matter
22 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
23 expert witness or as a consultant in this action and who is not a past or a current
24 employee of a Party. This definition includes a professional jury or trial consultant
25 retained in connection with this litigation.

26 **2.14 Professional Vendors.** Persons or entities that provide litigation support
27 services (e.g., photocopying; videotaping; translating; preparing exhibits or
28

1 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
2 their employees and subcontractors.

3 **3. SCOPE**

4 Any Protected Material (as defined above) may not be disseminated or
5 disclosed outside the parameters of the Order, whether that disclosure embodies the
6 entirety of a designated document or any portion or segment thereof.

7 **4. DURATION**

8 Even after the termination of this litigation, the confidentiality obligations
9 imposed by this Stipulation and Order shall remain in effect until a designating Party
10 agrees otherwise in writing or a court order otherwise directs. Nothing contained
11 herein, however, is intended to limit or prevent parties from introducing evidence at
12 trial to prove its case. The use of any Protected Material at trial, however, is not
13 addressed at this time, but may be the subject of future application to the District
14 Court Judge assigned to this matter as the need may arise. Unless otherwise ordered or
15 agreed in writing by the Producing Party, within sixty days after the final termination
16 of this action, each Receiving Party shall return all Protected Material to the
17 Producing Party, or alternatively, destroy it. If the documents were originally
18 produced without charge, they shall be returned without charge. If they were produced
19 at a charge, they shall be returned for the same cost. As used in this subdivision, “all
20 Protected Material” includes all copies, abstracts, compilations, summaries or any
21 other form of reproducing or capturing any of the Protected Material. With permission
22 in writing from the designating Party, the Receiving Party may destroy some or all of
23 the Protected material instead of returning it. Whether the Protected Material is
24 returned or destroyed, the Receiving Party must submit a written certification to the
25 Producing party (and, if not the same person or entity, to the Designating Party) by the
26 sixty day deadline that identifies (by category, where appropriate) all the Protected
27 material that was returned or destroyed and that affirms that the Receiving Party has
28 not retained any copies, abstracts, compilations, summaries or other forms of

1 reproducing or capturing any of the Protected Material. Notwithstanding this
2 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
3 papers, transcripts, legal memoranda, correspondence or attorney work product, even
4 if such materials contain Protected Material.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 **5.1 Exercise of Restraint and Reasonable Care in Designating Material for**
7 **Protection.** Each Party or non-party that designates information or items for
8 protection under this Stipulation and Order must take reasonable care to limit any such
9 designation to specific material that qualifies under the appropriate standards. A
10 Designating Party must take reasonable care to designate for protection only those
11 parts of material, documents, items, or oral or written communications that qualify –
12 so that other portions of the material, documents, items, or communications for which
13 protection is not warranted are not swept unjustifiably within the ambit of this
14 Stipulation and Order. If it comes to a Party’s or a non-party’s attention that
15 information or items that it designated for protection do not qualify for protection at
16 all, or do not qualify for the level of protection initially asserted, that Party or non-
17 party must promptly notify all other parties that it is withdrawing the mistaken
18 designation.

19 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
20 Stipulation and Order (see, e.g., second paragraph of section 5.2(a), below), or as
21 otherwise stipulated or ordered, material that qualifies for protection under this
22 Stipulation and Order must be clearly so designated before the material is disclosed or
23 produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (apart from transcripts of depositions
26 or other pretrial or trial proceedings), that the Producing party affix the legend
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –ATTORNEYS’ EYES ONLY”
28 conspicuously on each page that contains Protected material. If only a portion or

1 portions of the material on a page qualifies for protection, the Producing Party also
2 must clearly identify the protected portion(s)(e.g., by making appropriate markings in
3 the margins) and must specify, for each portion, the level of protection being asserted
4 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY”).

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

22 (b) for testimony given in deposition or in other proceedings, that the Party or
23 non-party offering or sponsoring the testimony identifies on the record as protected
24 under the terms of this Stipulation and Order, that Party or nonparty shall, before the
25 close of the deposition, hearing, or other proceeding, specify all protected testimony
26 and shall further specify the level of protection asserted concerning each portion of
27 protected testimony, be it “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL —
28 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each

1 portion of testimony that is entitled to protection, and when it appears that substantial
2 portions of the testimony may qualify for protection, the Party or non-party that
3 sponsors, offers, or gives the testimony may invoke on the record (before the
4 deposition or proceeding is concluded) a right to have up to 30 days after the date of
5 mailing of the final transcript to identify the specific portions of the testimony as to
6 which protection is sought and to specify the level of protection being asserted
7 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES
8 ONLY”). Only those portions of the testimony that are appropriately designated for
9 protection within the 30 day period shall be covered by the provisions of this
10 Stipulated Protective order.

11 Where, in good faith, it is anticipated by counsel for the Party or non-party who
12 is testifying that the response to a question or series of questions could qualify as
13 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” protection, then, on
14 the record, counsel for the testifying Party or non-party shall ask all Party
15 representatives or non-parties to leave the deposition room during such testimony.

16 Upon the completion of the questioning that is believed to qualify for
17 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” protection, all Party
18 representatives or non-parties shall be allowed to reenter the deposition room.
19 Transcript pages containing Protected Material shall be separately bound by the court
20 reporter, who shall affix to conspicuously on each such page the legend
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES
22 ONLY,” as instructed by the Party or nonparty offering or sponsoring the witness or
23 presenting the testimony.

24 (c) for information produced in some form other than documentary, and for any
25 other tangible items, that the Producing Party affix, in a prominent place on the
26 exterior of the container or containers in which the information or item is stored, the
27 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL —ATTORNEYS’ EYES
28 ONLY.” If only portions of the information or item warrant protection, the Producing

1 Party, to the extent practicable, shall identify the protected portions, specifying
2 whether they qualify as “Confidential” or as “Highly Confidential —Attorneys’ Eyes
3 Only.”

4 (d) Inadvertent Failures to Designate. If any Producing Party discovers that it
5 has inadvertently failed to designate and mark any Disclosure or Discovery Material
6 as either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL– ATTORNEYS' EYES
7 ONLY", the Producing Party may subsequently inform the Receiving Party of the
8 confidential nature of the disclosed Protected Material, and the Receiving Party shall
9 treat the disclosed Disclosure or Discovery Material as either "CONFIDENTIAL" or
10 "HIGHLY CONFIDENTIAL – ATTORNEYS 'EYES ONLY" upon receipt of written
11 notice from the Producing Party, to the extent the Receiving Party has not disclosed
12 this Disclosure or Discovery Material. Disclosure of such Disclosure or Discovery
13 Material to persons not authorized to receive that material prior to receipt of the
14 confidentiality designation shall not be deemed a violation of this Order. However, in
15 the event the material has been distributed in a manner inconsistent with the
16 categorical designation, the Receiving Party must take the steps necessary to conform
17 distribution to the categorical designation, i.e., by retrieving all copies of the
18 Disclosure or Discovery Material, or notes or extracts thereof, in the possession of the
19 persons not authorized under this Order to possess such Disclosure or Discovery
20 Material and advising the person to whom disclosure was made that the material is
21 confidential and must be treated as provided in the Order. Inadvertent failure to
22 designate, if corrected, does not waive the Designating Party’s rights to secure
23 protection under this Order for such material.

24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 **6.1 Meet and Confer.** Any party may contest a claim of confidentiality. Any
26 party objecting to the designation of any Disclosure or Discovery Material as either
27 "CONFIDENTIAL", "HIGHLY CONFIDENTIAL –ATTORNEYS' EYES ONLY",
28 or as set forth in Paragraph 7.3(f), must give Outside Counsel for the Producing Party

1 written notice of its reasons for the objection. The Producing Party will then have 10
2 days after receipt of this notice to change the designation or respond in writing why
3 the designation is appropriate. Failing resolution after service of the written notice of
4 its reasons for the objection, the Party objecting may, on a duly noticed motion,
5 subject to L. R. 37 and in compliance with L.R. 79-5, if applicable, seek an order
6 changing or removing the designation. The Producing Party asserting confidentiality
7 has the burden of showing that the designation is appropriate. The information
8 designated as either "CONFIDENTIAL", "HIGHLY CONFIDENTIAL –
9 ATTORNEYS' EYES ONLY", or as set forth in Paragraph 7.3(f), shall remain as such
10 until the matter is resolved by Court order or agreement of the Producing Party.

11 **6.2 No Waiver.** No Party to this action shall be obligated to challenge the
12 propriety of any designation by any Producing Party, and a failure to do so shall not
13 constitute a waiver or in any way preclude a subsequent challenge in this or any other
14 action to the propriety of such designation.

15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a non-party in connection with this case
18 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
19 Material may be disclosed only to the categories of persons and under the conditions
20 described in this Order. Following final resolution of the litigation, a Receiving Party
21 shall comply with the provisions of section 11, below (FINAL DISPOSITION).
22 Protected Material shall be maintained by the Receiving Party at a location and under
23 circumstances reasonably designed to ensure compliance with this Order. The
24 Receiving Party shall protect the confidentiality of Protected Material using
25 procedures that are no less stringent than the measures used to protect the Receiving
26 Parties' own Protected Material or similar confidential material.

1 **7.2** Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the Court or permitted in writing by the Designating Party, a Receiving
3 Party may disclose any information or item designated CONFIDENTIAL only to:
4 (a) the Receiving Party’s Outside Counsel of record in this action (Ezra
5 Brutzkus Gubner LLP for defendant and Howard Leib, Esq, PC for plaintiff),
6 employees, co-counsel, and substitute or successor counsel of said Outside Counsel to
7 whom it is reasonably necessary to disclose the information for this litigation;
8 (b) the officers, directors, and employees (including In-house Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this litigation;
10 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure
11 is reasonably necessary for this litigation and who have signed the “Agreement to Be
12 Bound by Protective Order” (Exhibit A);
13 (d) the Court and its personnel;
14 (e) court reporters, their staffs, and other persons involved in recording or
15 transcribing hearings, trial testimony, or deposition testimony in this action;
16 (f) during their depositions, witnesses in the action to whom disclosure is
17 reasonably necessary. Pages of transcribed deposition testimony or exhibits to
18 depositions that reveal Protected Material shall be separately bound by the court
19 reporter and may not be disclosed to anyone except as permitted under this Stipulated
20 Protective Order. Any party seeking to use CONFIDENTIAL information during a
21 deposition shall obtain a statement on the record that the deponent and any other
22 persons in attendance have agreed to abide by the terms of this Stipulated Protective
23 Order. If the deponent refuses to agree, disclosure of such information to the witness
24 during the deposition shall not constitute a waiver of confidentiality, provided that,
25 under such circumstances, the witness shall be asked to read and sign the original
26 deposition transcript in the presence of the court reporter, and no copy of the transcript
27 or related exhibits shall be given to the deponent. The terms of this Stipulated
28 Protective Order shall apply to those persons in attendance at depositions and shall

1 require the exclusion of persons not subject to the terms of the Stipulated Protective
2 Order from attending that portion of the deposition at which Confidential or
3 Attorneys' Eyes Only information is discussed. And, as set forth in Section 5.2(b)
4 above, prior to the disclosure of Attorneys' Eyes Only information or testimony in the
5 deposition, counsel for the testifying Party or non-party shall ask all Party
6 representatives or non-parties to leave the deposition room during such testimony;

7 (g) the author and named recipients of the document, persons who have
8 previously had access to the documents or Confidential Information other than
9 through discovery or disclosures in the litigation, and the original source of the
10 information;

11 (h) jury or trial consultants retained by a Party in this action, providing that any
12 such consultant is not an employee of a party nor anticipated to become an employee
13 in the near future;

14 (i) mock jurors engaged by the Parties and/or their consultants in preparation
15 for trial, provided that (i) no Party will use any mock juror who knows any person
16 employed or affiliated with either party to this action; and (ii) mock jurors will not be
17 allowed to retain any tangible materials that contain or disclose any Protected
18 Material, and (iii) mock jurors first agree in writing to maintain the confidentiality of
19 any materials and information provided to them in connection with being a mock
20 juror; and

21 (j) Professional Vendors, but only to the extent necessary for the particular
22 litigation support services being rendered for this action and in accordance with the
23 vendor's ordinary operating procedure.

24 **7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES**
25 **ONLY"** Information or Items. Unless otherwise ordered by the Court or permitted in
26 writing by the Designating Party, a Receiving Party may disclose any information or
27 item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only
28 to:

1 (a) the Receiving Party’s Outside Counsel of record in this action (Ezra
2 Brutzkus Gubner LLP for defendant and Howard Leib, Esq, PC for plaintiff),
3 employees, co-counsel, and substitute or successor counsel of said Outside Counsel to
4 whom it is reasonably necessary to disclose the information for this litigation;

5 (b) Experts (as defined in this Order) to whom disclosure is reasonably
6 necessary for this litigation and who have signed the “Agreement to Be Bound by
7 Protective Order” (Exhibit A);

8 (c) the Court and its personnel;

9 (d) court reporters, their staffs, and other persons involved in recording or
10 transcribing hearings, trial testimony, or deposition testimony in this action;

11 (e) any person who authored and/or was an identified original recipient of the
12 particular "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" sought to be
13 disclosed to that person, or any deponent when the examining attorney has a good
14 faith basis to believe the deponent is the author and/or was an identified original
15 recipient of the particular "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
16 ONLY" sought to be disclosed to that deponent;

17 (f) Professional Vendors, but only to the extent necessary for the particular
18 litigation support services being rendered for this action and in accordance with the
19 vendor's ordinary operating procedure;

20 (g) jury or trial consultants retained by a party in this action, providing that any
21 such consultant is not an employee of a Party nor anticipated to become an employee
22 in the near future; and

23 (h) mock jurors engaged by the Parties and/or their consultants in preparation
24 for trial, provided that (i) no Party will use any mock juror who knows any person
25 employed or affiliated with either Party to this action; and (ii) mock jurors will not be
26 allowed to retain any tangible materials that contain or disclose any Protected
27 Material, and (iii) mock jurors first agree in writing to maintain the confidentiality of
28

1 any materials and information provided to them in connection with being a mock
2 juror.

3 Nothing herein, however, is intended to prohibit or proscribe the ability of
4 outside counsel to provide to its client informed and meaningful advice, or to prevent
5 counsel from aggregating and generally summarizing counsel's interpretation of the
6 implications of such information as it relates to the litigation, so long as it will not
7 reveal or disclose the specific contents of any document or information designated as
8 "Attorneys' Eyes Only".

9 **8. PROCEDURE FOR DISCLOSURES TO OTHER PERSONS**

10 If it becomes necessary for a Receiving Party's Outside Counsel to seek the
11 assistance of any person, other than those persons referred to in Paragraph 7, and to
12 disclose Protected Material to such person to properly prepare this litigation for trial,
13 the following procedures shall be employed:

14 (a) Outside Counsel of the Receiving Party shall notify, in writing, Outside
15 Counsel for the Producing Party, stating therein the specific Protected Material to be
16 disclosed and the name, address and position of the person(s) to whom such disclosure
17 is to be made;

18 (b) If no objection to such disclosure is made by Outside Counsel for the
19 Producing Party within ten (10) business days of such notification, Outside Counsel
20 for the Receiving Party shall be free to make such disclosure to the designated
21 person(s); provided, however, that Outside Counsel for the Receiving Party shall serve
22 upon outside counsel for the Producing Party, prior to disclosure, an Acknowledgment
23 and Agreement to be Bound in the form shown in Exhibit A, whereby such person
24 agrees to comply with and be bound by this Order. The acknowledgment shall be
25 retained by Outside Counsel for the Receiving Party, with a copy forwarded to the
26 other side, distributed upon final disposition of this action as set forth in Paragraph 4;

27 (c) If, within ten (10) business days, Outside Counsel for the Producing Party
28 objects, in writing, to such disclosure, no disclosure shall be made, except by order of

1 the Court upon a regularly noticed motion brought by the Receiving Party. Before
2 filing such a motion, Outside Counsel for the Receiving Party shall meet and confer
3 with Outside Counsel for the Producing Party in a good faith effort to resolve their
4 differences.

5 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
6 **PRODUCED IN OTHER LITIGATION**

7 If a Receiving Party is served with a subpoena or an order issued in other
8 litigation or Court proceedings that require disclosure of any information or items
9 designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—
10 ATTORNEYS’ EYES ONLY,” the Receiving Party shall notify the Designating
11 Party, in writing by e-mail promptly and in no event more than four court days after
12 receiving the subpoena or order but before the scheduled date for production. Such
13 notification shall include a copy of the subpoena or court order.

14 The Receiving Party shall also immediately inform in writing the Party who
15 caused the subpoena or order to issue in the other litigation or proceeding that some or
16 all the material covered by the subpoena or order is the subject to this Protective
17 Order. In addition, the Receiving Party must deliver a copy of this Stipulated
18 Protective Order promptly to the Party in the other action that caused the subpoena or
19 order to issue.

20 The purpose of imposing these duties is to alert the interested parties to the
21 existence of this Protective Order and to afford the Designating Party in this case an
22 opportunity to try to protect its confidentiality interests in the court from which the
23 subpoena or order issued. The Designating Party shall bear the burden and the expense
24 of seeking protection in that court of its confidential material — and nothing in these
25 provisions should be construed as authorizing or encouraging a Receiving Party in this
26 action to disobey a lawful directive from another court.

1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If Protected Material, or any portion thereof, is disclosed by the Receiving
3 Party, through inadvertence or otherwise, to any person or party not authorized to
4 receive such Protected Material under this Protective Order, then the Receiving Party
5 shall use its best efforts to retrieve immediately all copies of such Protected Material,
6 and to bind such person to the terms of this Order. In such event, the Receiving Party
7 shall also (a) promptly inform such person of all the provisions of this Order; (b)
8 identify such person immediately to the Producing Party; and (c) request such person
9 to execute the Acknowledgment and Agreement to be Bound in the form shown in
10 Exhibit A.

11 **11. UNINTENTIONAL DISCLOSURE OF ATTORNEY-CLIENT OR**
12 **WORK PRODUCT MATERIAL**

13 If a Producing Party through inadvertence produces or provides discovery that it
14 believes is subject to a claim of attorney-client privilege or work-product immunity,
15 such action shall not constitute a waiver of the attorney-client privilege and/or work
16 product immunity. The Producing Party may give written notice to the Receiving
17 Party that the document is subject to a claim of attorney-client privilege or work
18 product immunity and request that the document be returned to the Producing Party,
19 pursuant to Fed. R. Civ. P. 26(b)(5)(B). Upon receiving written notice, the Receiving
20 Party shall return to the Designating Party all copies of such document and shall return
21 or destroy all excerpts thereof within three (3) business days of receiving such written
22 notice.

23 The Producing Party shall be obligated to keep in a sealed envelope or similar
24 sealed container, all inadvertently produced discovery returned by the Receiving Party
25 that it believes is subject to a claim of attorney-client privilege or work product
26 immunity until the end of this action, including all appeals. Return of the document by
27 the Receiving Party shall not constitute an admission or concession, or permit any
28 inference, that the returned document is, in fact, properly subject to a claim of

1 attorney-client privilege or work product immunity, nor shall it foreclose the
2 Receiving Party from moving for an order that such document has been improperly
3 designated as subject to a claim of attorney-client privilege or work product immunity
4 or should be produced for reasons other than a waiver caused merely by the
5 inadvertent production. The Receiving Party shall be entitled to prepare a record for
6 its own use containing the date, the author, address(es), and topic of the document and
7 other such information as is reasonably necessary to identify the document and
8 describe its nature to the Court in any motion to compel production of the document.
9 Such a record of the identity and nature of a document may not be used for any
10 purposes other than preparing a motion to compel production of that document in this
11 action. After the return of the document(s), the Receiving Party may challenge the
12 Producing Party's claim(s) of privilege or work product by making a motion to the
13 Court. Unless previously waived, the inadvertent disclosure of any privileged or
14 immune documents shall not be deemed a waiver of that privilege or immunity as to
15 any other documents, testimony, or evidence.

16 **12. FILING PROTECTED MATERIAL**

17 In the event that counsel for any party decides to file with or submit to the
18 Court any Protected Material, counsel shall provide written notice to the other party
19 and shall take appropriate steps to ensure the continuing confidentiality of the
20 Protected Material. Counsel for the party seeking to file or submit the Protected
21 Material to the Court shall request that the portion(s) of the document(s) containing
22 the Protected Materials be filed under seal by way of a written application and
23 proposed order, along with the portion(s) of the document(s) submitted for filing
24 under seal, in accordance with the Local Rules. Pending the ruling on the application,
25 the papers or portions thereof subject to the sealing application shall be lodged under
26 seal.

1 **13. MISCELLANEOUS**

2 **13.1 Right to Further Relief.** Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

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

9 **13.3 Effect of Designation on Authenticity and Admissibility.** The placing of
10 any confidentiality designation or a production identification label on the face of any
11 document shall not affect the document’s authenticity or admissibility in this action.

12 **13.4 Continuing Jurisdiction.** All provisions of this Stipulated Protective Order
13 shall continue to be binding after the conclusion of this action in its entirety, unless
14 subsequently modified by agreement between the parties or order of the Court,~~and the~~
15 ~~Court shall retain jurisdiction of this matter for the purpose of enforcing this~~
16 ~~Stipulated Protective Order.~~

17 **13.5 Counsel's Right to Provide Advice.** Nothing in this Order shall bar or
18 otherwise restrict Counsel herein from rendering advice to the Counsel's party-client
19 with respect to this action, and in the course thereof, relying upon an examination of
20 Protected Material, provided, however, that in rendering such advice and in otherwise
21 communicating with the party-client, Counsel shall not disclose any Protected
22 Material, nor the source of any Protected Material, to anyone not authorized to receive
23 such Protected Material pursuant to the terms of this Order.

24 **13.6 No Contract.** This Stipulation is agreed upon by the Parties as a means of
25 facilitating discovery in this matter and to serve as a basis for entry by the Court of a
26 formal Protective Order. The Parties' stipulation shall not be construed to create a
27 contract between the Parties or between the Parties and their respective Counsel.
28

1 **13.7 Additional Relief.** No party is prevented from seeking relief not provided
2 by this Order, or otherwise seeking relief from the United States District Court for the
3 Central District of California, as may be appropriate to protect its interests or
4 otherwise prepare this matter for trial. To the extent that there are any disputes
5 relating to the Protective Order, such as the designation of confidential documents,
6 L.R. 37 governs the procedure for resolving such disputes unless otherwise provided
7 herein, subject to the Judge’s Rules and Orders. In making or opposing any motion
8 relating to the designation of Confidential Information, the party seeking to maintain a
9 document under the Protective Order shall bear the burden of showing specific
10 prejudice or harm if the information sought to be protected is disclosed to the public.
11 See e.g., *Byrd v. Gen’l Motors Corp.*, 307 F. 3d 1206, 1210-1211 (9th Cir. 2002).

12 **13.8 Modification.** Any party to this action may, at any time, request the
13 modification of this Stipulated Protective Order. Such a request may be granted by
14 the Court only after due notice and hearing, and upon a showing of good cause. In the
15 event any party seeks a modification of this Stipulated Protective Order, the parties
16 shall comply with L.R. 37 to obtain a decision from the Court, subject to the Judge’s
17 Rules. If the parties wish to file the Joint Stipulation required by L.R. 37 under seal,
18 the parties may file a stipulation requesting an order to that effect pursuant to L.R. 79,
19 subject to the Judge’s Rules, or the moving party may file an ex parte application
20 making the appropriate request, upon a showing of good cause in the stipulation or ex
21 parte application.

22 **13.9 Effective Date.** This Order shall be effective on the date of its execution
23 by Counsel for the Parties after which the Parties may produce documents and
24 information and designate the material as either “CONFIDENTIAL” or "HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such material shall be treated in
26 accordance with this Order by the Parties upon its execution. In the event that the
27 Court enters a Protective Order other than this stipulated and proposed Order, the
28

1 Parties shall comply with the terms of this Order until it is superseded by any
2 Protective Order or ruling by the Court.

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

IT IS SO ORDERED.



Dated: May 21, 2013

Alicia G. Rosenberg
Magistrate Judge

1 **EXHIBIT A**

2 **UNDERTAKING TO BE BOUND BY PROTECTIVE ORDER**
3 **REGARDING CONFIDENTIALITY OF DOCUMENTS**

4
5 I, _____ (print or type full name) of,
6 _____ (print or type full address),
7 **declare that I have read in its entirety and understand the Protective Order that**
8 **was issued by the United States District Court for the Central District of**
9 **California in the case of *Michael Starr, an individual v. Michael Stars, Inc., a***
10 ***California Corporation*, Case No. CV13-2070 GHK (AGRx). I agree to comply with**
11 **and to be bound by all the terms of this Protective Order and I understand and**
12 **acknowledge that failure to so comply could expose me to sanctions and punishment**
13 **in the nature of contempt. I solemnly promise that I will not disclose in any manner**
14 **any information or item that is subject to this Protective Order to any person or entity**
15 **except in strict compliance with the provisions of this Order.**

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

20
21 Dated: _____

22 City and State where signed: _____

23
24 Signed: _____

25 [Print Name]

26 [Signature]