

1 Daniel M. Cislo, Esq., No. 125,378
 2 *dan@cislo.com*
 3 Peter S. Veregge, Esq., No. 155,769
 4 *pveregge@cislo.com*
 5 **CISLO & THOMAS LLP**
 6 1333 2nd Street Suite 500
 7 Santa Monica, California 90401-4110
 8 Telephone: (310) 451-0647
 9 Telefax: (310) 394-4477

10 Attorneys for Plaintiff,
 11 **PETER WOLF**

12 John E. Lord (Bar No. 216111)
 13 *jlord@onellp.com*
 14 **ONE LLP**
 15 9301 Wilshire Blvd., Penthouse Suite
 16 Beverly Hills, CA 90210
 17 Phone: (310) 866-5157

18 Attorneys for Defendant,
 19 **CAPSTONE PHOTOGRAPHY, INC.**

20 **UNITED STATES DISTRICT COURT**
 21 **CENTRAL DISTRICT OF CALIFORNIA**

22 PETER WOLF, an individual,
 23
 24 Plaintiff,
 25
 26 vs.
 27
 28 CAPSTONE PHOTOGRAPHY, INC., a
 Connecticut corporation, and DOES 1-
 10, inclusive,
 Defendants.

CASE NO. CV 13-9573 CAS (PJWx)
 [PROPOSED] ORDER ENTERING
 STIPULATED PROTECTIVE
 ORDER

1 **[PROPOSED] ORDER ENTERING STIPULATED PROTECTIVE ORDER**

2 WHEREAS, it may be necessary or desirable to take discovery of
3 information which is believed to be confidential and proprietary by the holder
4 thereof; and

5 WHEREAS, the parties hereto desire to obtain a protective order to prevent
6 dissemination and unnecessary disclosure of such information on the public record;

7 IT IS HEREBY STIPULATED, and subject to the Court's approval,
8 ORDERED, pursuant to Federal Rules of Civil Procedure, Rule 26(c), that the
9 following provisions shall govern the handling of such confidential information and
10 documents in these proceedings:

11 **1. GOOD CAUSE STATEMENT**

12 The threshold issues in the pleadings center around whether plaintiff Peter H.
13 Wolf has valid patent rights in providing event photographs for inspection,
14 selection and distribution via a computer network, and whether defendant Capstone
15 Photography, Inc. has infringed those rights. Resolution of liability issues and the
16 associated damages analysis necessarily requires evidence of technical computer
17 information, flow charts, source code, marketing information, sales information,
18 cost information, vendor information, license agreements, and customer lists, at a
19 minimum, to be disclosed, at minimum, to opposing counsel. This Protective Order
20 is geared towards allowing resolution of the factual and legal issues without
21 imposing undue competitive harm on the parties.

22 Federal Rule of Civil Procedure Rule 26(c)(1)(G) permits the grant of a
23 protective order upon a showing of good cause, and provides that the protection of a
24 trade secret or other confidential commercial information is a proper basis for the
25 issuance of a protective order. The party seeking such an order must demonstrate a
26 particular and specific need for the protective order. *Gray v. Rodewald*, 133 F.R.D.
27 39, 40 (N.D. Cal. 1990).

1 A protective order that focuses on preventing disclosure of particular
2 information, *e.g.*, confidential business information, where disclosure would “likely
3 cause serious harm,” is supported by good cause. *Hayden v. Siemens Medical*
4 *Systems, Inc.*, 106 F.R.D. 551, 556, (S.D.N.Y. 1985). To support a showing of
5 good cause, however, a protective order must be sufficiently tailored in the
6 information it seeks to protect, *e.g.*, by designating certain classes or types of
7 information. *Id.*

8 A “blanket” protective order, as opposed to a broader “umbrella” protective
9 order, “permits the parties to protect documents that they in good faith believe
10 contain trade secrets or other confidential commercial information. Such protective
11 orders are routinely agreed to by the parties and approved by the courts in
12 commercial litigation, especially in cases between direct competitors.” *Bayer AG*
13 *and Miles Inc. v. Barr Laboratories, Inc.*, 162 F.R.D. 456, 465, (S.D.N.Y. 1995).

14 As direct competitors, the parties’ Protective Order was drafted specifically
15 to protect the disclosure of each party’s commercially sensitive sales information
16 and other confidential business information, as set forth above and below.
17 Confidential information under this agreement is specifically defined below. Such
18 information, under the Protective Order, may be designated CONFIDENTIAL or
19 CONFIDENTIAL ATTORNEY EYES ONLY, and is open to challenge by either
20 party, any third party, or the public.

21 The parties acknowledge that this Order does not confer blanket protections
22 on all disclosures or responses to discovery and that the protection it affords
23 extends only to the limited information or items that are entitled under the
24 applicable legal principles to treatment as confidential. The parties further
25 acknowledge, as set forth in Section 14.4, below, that this Order creates no
26 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets
27 forth the procedures that must be followed when a party seeks permission from the
28 court to file material under seal.

1 Based on the foregoing demonstration of good cause in support of this
2 [Proposed] Protective Order, this [Proposed] Order should be granted by the Court
3 to protect the parties' confidential business information.

4 **2. DEFINITIONS**

5 2.1 Challenging Party: a Party or Non-Party that challenges the
6 designation of information or items under this Order.

7 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
8 how it is generated, stored or maintained) or tangible things that qualify for
9 protection under Federal Rule of Civil Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record and House
11 Counsel (as well as their support staff).

12 2.5 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
15 ONLY".

16 2.6 Disclosure or Discovery Material: all items or information, regardless
17 of the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced
19 or generated in disclosures or responses to discovery in this matter.

20 2.7 Expert: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who (1) has been retained by a Party or its counsel to
22 serve as an expert witness or as a consultant in this action, (2) is not a past or
23 current employee of a Party or of a Party's competitor, and (3) at the time of
24 retention, is not anticipated to become an employee of a Party or of a Party's
25 competitor.

26 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
27 Information or Items: extremely sensitive "Confidential Information or Items,"
28

1 disclosure of which to another Party or Non-Party would create a substantial risk of
2 serious harm that could not be avoided by less restrictive means.

3 2.9 House Counsel: attorneys who are employees of a party to this action.
4 House Counsel does not include Outside Counsel of Record or any other outside
5 counsel.

6 2.10 Non-Party: any natural person, partnership, corporation, association, or
7 other legal entity not named as a Party to this action.

8 2.11 Outside Counsel of Record: attorneys who are not employees of a
9 party to this action but are retained to represent or advise a party to this action and
10 have appeared in this action on behalf of that party or are affiliated with a law firm
11 which has appeared on behalf of that party.

12 2.12 Party: any party to this action, including all of its officers, directors,
13 employees, consultants, retained experts, and Outside Counsel of Record (and their
14 support staffs).

15 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this action.

17 2.14 Professional Vendors: persons or entities that provide litigation
18 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
19 demonstrations, and organizing, storing, or retrieving data in any form or medium)
20 and their employees and subcontractors.

21 2.15 Protected Material: any Disclosure or Discovery Material that is
22 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
23 ATTORNEYS’ EYES ONLY.”

24 2.16 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 **3. SCOPE**

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
2 compilations of Protected Material; and (3) any testimony, conversations, or
3 presentations by Parties or their Counsel that might reveal Protected Material.
4 However, the protections conferred by this Stipulation and Order do not cover the
5 following information: (a) any information that is in the public domain at the time
6 of disclosure to a Receiving Party or becomes part of the public domain after its
7 disclosure to a Receiving Party as a result of publication not involving a violation
8 of this Order, including becoming part of the public record through trial or
9 otherwise; and (b) any information known to the Receiving Party prior to the
10 disclosure or obtained by the Receiving Party after the disclosure from a source
11 who obtained the information lawfully and under no obligation of confidentiality to
12 the Designating Party. Any use of Protected Material at trial shall be governed by a
13 separate agreement or order.

14 **4. DURATION**

15 Even after final disposition of this litigation, the confidentiality obligations
16 imposed by this Order shall remain in effect until a Designating Party agrees
17 otherwise in writing or a court order otherwise directs. Final disposition shall be
18 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
19 or without prejudice; and (2) final judgment herein after the completion and
20 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
21 including the time limits for filing any motions or applications for extension of time
22 pursuant to applicable law.

23 **5. DESIGNATING PROTECTED MATERIAL**

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.

25 Each Party or Non-Party that designates information or items for protection under
26 this Order must take care to limit any such designation to specific material that
27 qualifies under the appropriate standards. To the extent it is practical to do so, the
28 Designating Party must designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify – so that other
2 portions of the material, documents, items, or communications for which protection
3 is not warranted are not swept unjustifiably within the ambit of this Order.

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

9 If it comes to a Designating Party’s attention that information or items that it
10 designated for protection do not qualify for protection at all or do not qualify for the
11 level of protection initially asserted, that Designating Party must promptly notify all
12 other parties that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in
14 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
15 stipulated or ordered, Disclosure or Discovery

16 Material that qualifies for protection under this Order must be clearly so
17 designated before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

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

27 A Party or Non-Party that makes original documents or materials available
28 for inspection need not designate them for protection until after the inspecting Party

1 has indicated which material it would like copied and produced. During the
2 inspection and before the designation, all of the material made available for
3 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY.” After the inspecting Party has identified the documents it wants copied
5 and produced, the Producing Party must determine which documents, or portions
6 thereof, qualify for protection under this Order. Then, before producing the
7 specified documents, the Producing Party must affix the appropriate legend
8 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
9 ONLY”) to each page that contains Protected Material. If only a portion or portions
10 of the material on a page qualifies for protection, the Producing Party also must
11 clearly identify the protected portion(s) (e.g., by making appropriate markings in
12 the margins) and must specify, for each portion, the level of protection being
13 asserted.

14 (b) for testimony given in deposition or in other pretrial or trial
15 proceedings, that the Designating Party identify on the record, before the close of
16 the deposition, hearing, or other proceeding, all protected testimony and specify the
17 level of protection being asserted. When it is impractical to identify separately each
18 portion of testimony that is entitled to protection and it appears that substantial
19 portions of the testimony may qualify for protection, the Designating Party may
20 invoke on the record (before the deposition, hearing, or other proceeding is
21 concluded) a right to have up to 21 days to identify the specific portions of the
22 testimony as to which protection is sought and to specify the level of protection
23 being asserted. Only those portions of the testimony that are appropriately
24 designated for protection within the 21 days shall be covered by the provisions of
25 this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
26 the deposition or up to 21 days afterwards if that period is properly invoked, that
27 the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

1 Parties shall give the other parties notice if they reasonably expect a
2 deposition, hearing or other proceeding to include Protected Material so that the
3 other parties can ensure that only authorized individuals who have signed the
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
5 proceedings. The use of a document as an exhibit at a deposition shall not in any
6 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
7 – ATTORNEYS’ EYES ONLY.”

8 Transcripts containing Protected Material shall have an obvious legend on
9 the title page that the transcript contains Protected Material, and the title page shall
10 be followed by a list of all pages (including line numbers as appropriate) that have
11 been designated as Protected Material and the level of protection being asserted by
12 the Designating Party. The Designating Party shall inform the court reporter of
13 these requirements. Any transcript that is prepared before the expiration of a 21-
14 day period for designation shall be treated during that period as if it had been
15 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its
16 entirety unless otherwise agreed. After the expiration of that period, the transcript
17 shall be treated only as actually designated.

18 (c) for information produced in some form other than documentary and
19 for any other tangible items, that the Producing Party affix in a prominent place on
20 the exterior of the container or containers in which the information or item is stored
21 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY”. If only a portion or portions of the information or item warrant
23 protection, the Producing Party, to the extent practicable, shall identify the
24 protected portion(s) and specify the level of protection being asserted.

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
26 failure to designate qualified information or items does not, standing alone, waive
27 the Designating Party’s right to secure protection under this Order for such
28 material. Upon timely correction of a designation, the Receiving Party must make

1 reasonable efforts to assure that the material is treated in accordance with the
2 provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
5 designation of confidentiality at any time. Unless a prompt challenge to a
6 Designating Party's confidentiality designation is necessary to avoid foreseeable,
7 substantial unfairness, unnecessary economic burdens, or a significant disruption or
8 delay of the litigation, a Party does not waive its right to challenge a confidentiality
9 designation by electing not to mount a challenge promptly after the original
10 designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
12 resolution process by providing written notice of each designation it is challenging
13 and describing the basis for each challenge. To avoid ambiguity as to whether a
14 challenge has been made, the written notice must recite that the challenge to
15 confidentiality is being made in accordance with this specific paragraph of the
16 Protective Order. The parties shall attempt to resolve each challenge in good faith
17 and must begin the process by conferring directly (in voice to voice dialogue; other
18 forms of communication are not sufficient) within 14 days of the date of service of
19 notice. In conferring, the Challenging Party must explain the basis for its belief that
20 the confidentiality designation was not proper and must give the Designating Party
21 an opportunity to review the designated material, to reconsider the circumstances,
22 and, if no change in designation is offered, to explain the basis for the chosen
23 designation. A Challenging Party may proceed to the next stage of the challenge
24 process only if it has engaged in this meet and confer process first or establishes
25 that the Designating Party is unwilling to participate in the meet and confer process
26 in a timely manner.

27 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
28 court intervention, the Designating Party shall file and serve a motion to retain

1 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
2 79-5, if applicable) within 21 days of the initial notice of challenge or within 14
3 days of the parties agreeing that the meet and confer process will not resolve their
4 dispute, whichever is earlier. Each such motion must be accompanied by a
5 competent declaration affirming that the movant has complied with the meet and
6 confer requirements imposed in the preceding paragraph. Failure by the
7 Designating Party to make such a motion including the required declaration within
8 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
9 designation for each challenged designation. In addition, the Challenging Party
10 may file a motion challenging a confidentiality designation at any time if there is
11 good cause for doing so, including a challenge to the designation of a deposition
12 transcript or any portions thereof. Any motion brought pursuant to this provision
13 must be accompanied by a competent declaration affirming that the movant has
14 complied with the meet and confer requirements imposed by the preceding
15 paragraph.

16 The burden of persuasion in any such challenge proceeding shall be on the
17 Designating Party. Frivolous challenges and those made for an improper purpose
18 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
19 expose the Challenging Party to sanctions. Unless the Designating Party has
20 waived the confidentiality designation by failing to file a motion to retain
21 confidentiality as described above, all parties shall continue to afford the material in
22 question the level of protection to which it is entitled under the Producing Party's
23 designation until the court rules on the challenge.

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

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a Non-Party in connection with this
27 case only for prosecuting, defending, or attempting to settle this litigation. Such
28 Protected Material may be disclosed only to the categories of persons and under the

1 conditions described in this Order. When the litigation has been terminated, a
2 Receiving Party must comply with the provisions of section 15 below (FINAL
3 DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a
5 location and in a secure manner¹ that ensures that access is limited to the persons
6 authorized under this Order.

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
8 otherwise ordered by the court or permitted in writing by the Designating Party, a
9 Receiving Party may disclose any information or item designated
10 “CONFIDENTIAL” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this action, as
12 well as employees of said Outside Counsel of Record to whom it is reasonably
13 necessary to disclose the information for this litigation and who have signed the
14 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
15 A;

16 (b) the officers, directors, and employees (including House Counsel) of
17 the Receiving Party to whom disclosure is reasonably necessary for this litigation
18 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
19 A);

20 (c) Experts (as defined in this Order) of the Receiving Party to whom
21 disclosure is reasonably necessary for this litigation and who have signed the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (d) the court and its personnel;

24 (e) court reporters and their staff, professional jury or trial consultants,
25 and Professional Vendors to whom disclosure is reasonably necessary for this
26

27 _____
28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any
electronic Protected Material in password-protected form.

1 litigation and who have signed the “Acknowledgment and Agreement to Be
2 Bound” (Exhibit A);

3 (f) during their depositions, witnesses in the action to whom disclosure
4 is reasonably necessary and who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
6 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits
7 to depositions that reveal Protected Material must be separately bound by the court
8 reporter and may not be disclosed to anyone except as permitted under this
9 Stipulated Protective Order.

10 (g) the author or recipient of a document containing the information or
11 a custodian or other person who otherwise possessed or knew the information.

12 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
13 ONLY” Information or Items. Unless otherwise ordered by the court or permitted
14 in writing by the Designating Party, a Receiving Party may disclose any
15 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
16 EYES ONLY” only to:

17 (a) the Receiving Party’s Outside Counsel of Record in this action, as
18 well as employees of said Outside Counsel of Record to whom it is reasonably
19 necessary to disclose the information for this litigation and who have signed the
20 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
21 A;

22 (b) Experts of the Receiving Party (1) to whom disclosure is
23 reasonably necessary for this litigation, (2) who have signed the “Acknowledgment
24 and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set
25 forth in paragraph 7.4(a)(2), below, have been followed];

26 (c) the court and its personnel;

27 (d) court reporters and their staff, professional jury or trial consultants,
28 and Professional Vendors to whom disclosure is reasonably necessary for this

1 litigation and who have signed the “Acknowledgment and Agreement to Be
2 Bound” (Exhibit A); and

3 (e) the author or recipient of a document containing the information or
4 a custodian or other person who otherwise possessed or knew the information.

5 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to
7 Experts.

8 (a) Unless otherwise ordered by the court or agreed to in writing by the
9 Designating Party, a Party that seeks to disclose to an Expert (as defined in this
10 Order) any information or item that has been designated “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c)
12 first must make a written request to the Designating Party that (1) identifies the
13 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY” information that the Receiving Party seeks permission to disclose to the
15 Expert, (2) sets forth the full name of the Expert and the city and state of his or her
16 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies
17 the Expert’s current employer(s), (5) identifies each person or entity from whom the
18 Expert has received compensation or funding for work in his or her areas of
19 expertise or to whom the expert has provided professional services, including in
20 connection with a litigation, at any time during the preceding five years,² and (6)
21 identifies (by name and number of the case, filing date, and location of court) any
22 litigation in connection with which the Expert has offered expert testimony,
23
24
25

26 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-
27 party, then the Expert should provide whatever information the Expert believes can be disclosed
28 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
shall be available to meet and confer with the Designating Party regarding any such engagement.

1 including through a declaration, report, or testimony at a deposition or trial, during
2 the preceding five years.³

3 (b) A Party that makes a request and provides the information
4 specified in the preceding respective paragraphs may disclose the subject Protected
5 Material to the identified Designated House Counsel or Expert unless, within 14
6 days of delivering the request, the Party receives a written objection from the
7 Designating Party. Any such objection must set forth in detail the grounds on
8 which it is based.

9 (c) A Party that receives a timely written objection must meet and
10 confer with the Designating Party (through direct voice to voice dialogue) to try to
11 resolve the matter by agreement within seven days of the written objection. If no
12 agreement is reached, the Party seeking to make the disclosure to Designated House
13 Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in
14 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the
15 court to do so. Any such motion must describe the circumstances with specificity,
16 set forth in detail the reasons why the disclosure to Designated House Counsel or
17 the Expert is reasonably necessary, assess the risk of harm that the disclosure would
18 entail, and suggest any additional means that could be used to reduce that risk. In
19 addition, any such motion must be accompanied by a competent declaration
20 describing the parties' efforts to resolve the matter by agreement (i.e., the extent
21 and the content of the meet and confer discussions) and setting forth the reasons
22 advanced by the Designating Party for its refusal to approve the disclosure.

23 In any such proceeding, the Party opposing disclosure to Designated House
24 Counsel or the Expert shall bear the burden of proving that the risk of harm that the
25

26 _____
27 ³ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain
28 limited work prior to the termination of the litigation that could foreseeably result in an improper
use of the Designating Party's "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
information.

1 disclosure would entail (under the safeguards proposed) outweighs the Receiving
2 Party’s need to disclose the Protected Material to its Designated House Counsel or
3 Expert.

4 **8. PROSECUTION BAR**

5 Absent written consent from the Producing Party, any individual who
6 receives access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
7 information shall not be involved in the prosecution of patents or patent
8 applications relating to a process for providing event photographs for inspection,
9 selection and distribution via a website on the internet, including without limitation
10 the patents asserted in this action and any patent or application claiming priority to
11 or otherwise related to the patents asserted in this action, before any foreign or
12 domestic agency, including the United States Patent and Trademark Office (“the
13 Patent Office”). For purposes of this paragraph, “prosecution” includes directly or
14 indirectly drafting, amending, advising, or otherwise affecting the scope or
15 maintenance of patent claims.⁴ To avoid any doubt, “prosecution” as used in this
16 paragraph does not include representing a party challenging a patent before a
17 domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte*
18 reexamination or *inter partes* reexamination). This Prosecution Bar shall begin
19 when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
20 information is first received by the affected individual and shall end two (2) years
21 after final termination of this action.

22
23 **9. [THIS SECTION INTENTIONALLY OMITTED]**

24
25
26
27 _____
28 ⁴ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena, valid discovery request, or a court order
4 issued in other litigation that compels disclosure of any information or items
5 designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY” that Party must:

7 (a) promptly notify in writing the Designating Party. Such notification
8 shall include a copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or
10 order to issue in the other litigation that some or all of the material covered by the
11 subpoena or order is subject to this Protective Order. Such notification shall
12 include a copy of this Stipulated Protective Order; and

13 (c) cooperate with respect to all reasonable procedures sought to be
14 pursued by the Designating Party whose Protected Material may be affected.⁵

15 If the Designating Party timely seeks a protective order, the Party served with
16 the subpoena or court order shall not produce any information designated in this
17 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
18 EYES ONLY” before a determination by the court from which the subpoena or
19 order issued, unless the Party has obtained the Designating Party’s permission. The
20 Designating Party shall bear the burden and expense of seeking protection in that
21 court of its confidential material – and nothing in these provisions should be
22 construed as authorizing or encouraging a Receiving Party in this action to disobey
23 a lawful directive from another court.

24
25
26
27 ⁵ The purpose of imposing these duties is to alert the interested parties to the existence of this
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect
its confidentiality interests in the court from which the subpoena or order issued.

1 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced
4 by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced
6 by Non-Parties in connection with this litigation is protected by the remedies and
7 relief provided by this Order. Nothing in these provisions should be construed as
8 prohibiting a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery
10 request, to produce a Non-Party’s confidential information in its possession, and the
11 Party is subject to an agreement with the Non-Party not to produce the Non-Party’s
12 confidential information, then the Party shall:

- 13 1. promptly notify in writing the Requesting Party and the Non-
14 Party that some or all of the information requested is subject to a confidentiality
15 agreement with a Non-Party;
- 16 2. promptly provide the Non-Party with a copy of the Stipulated
17 Protective Order in this litigation, the relevant discovery request(s), and a
18 reasonably specific description of the information requested; and
- 19 3. make the information requested available for inspection by the
20 Non-Party.

21 (c) If the Non-Party fails to object or seek a protective order from
22 this court within 14 days of receiving the notice and accompanying information, the
23 Receiving Party may produce the Non-Party’s confidential information responsive
24 to the discovery request. If the Non-Party timely seeks a protective order, the
25 Receiving Party shall not produce any information in its possession or control that
26 is subject to the confidentiality agreement with the Non-Party before a
27
28

1 determination by the court.⁶ Absent a court order to the contrary, the Non-Party
2 shall bear the burden and expense of seeking protection in this court of its Protected
3 Material.

4 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

13 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
14 **PROTECTED MATERIAL**

15 When a Producing Party gives notice to Receiving Parties that certain
16 inadvertently produced material is subject to a claim of privilege or other
17 protection, the obligations of the Receiving Parties are those set forth in Federal
18 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
19 whatever procedure may be established in an e-discovery order that provides for
20 production without prior privilege review. Pursuant to Federal Rule of Evidence
21 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
22 of a communication or information covered by the attorney-client privilege or work
23 product protection, the parties may incorporate their agreement in the stipulated
24 protective order submitted to the court.

25
26
27

⁶ The purpose of this provision is to alert the interested parties to the existence of confidentiality
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this court.

1 **14. MISCELLANEOUS**

2 14.1 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 14.2 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
7 this Stipulated Protective Order. Similarly, no Party waives any right to object on
8 any ground to use in evidence of any of the material covered by this Protective
9 Order.

10 14.3 Export Control. Disclosure of Protected Material shall be subject to all
11 applicable laws and regulations relating to the export of technical data contained in
12 such Protected Material, including the release of such technical data to foreign
13 persons or nationals in the United States or elsewhere. The Producing Party shall
14 be responsible for identifying any such controlled technical data, and the Receiving
15 Party shall take measures necessary to ensure compliance.

16 14.4 Filing Protected Material. Without written permission from the
17 Designating Party or a court order secured after appropriate notice to all interested
18 persons, a Party may not file in the public record in this action any Protected
19 Material. A Party that seeks to file under seal any Protected Material must comply
20 with Civil Local Rule 79-5. Protected Material may only be filed under seal
21 pursuant to a court order authorizing the sealing of the specific Protected Material
22 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
23 request establishing that the Protected Material at issue is privileged, protectable as
24 a trade secret, or otherwise entitled to protection under the law.

25 **15. FINAL DISPOSITION**

26 Within 60 days after the final disposition of this action, as defined in
27 paragraph 4, each Receiving Party must return all Protected Material to the
28 Producing Party or destroy such material. As used in this subdivision, “all

CISLO & THOMAS LLP
Attorneys at Law
SUITE 500
1333 2nd Street
SANTA MONICA, CALIFORNIA 90401-4110
Telephone: (310) 451-0647 Facsimile: (310) 394-4477

1 Protected Material” includes all copies, abstracts, compilations, summaries, and any
2 other format reproducing or capturing any of the Protected Material. Whether the
3 Protected Material is returned or destroyed, the Receiving Party must submit a
4 written certification to the Producing Party (and, if not the same person or entity, to
5 the Designating Party) by the 60-day deadline that (1) identifies (by category,
6 where appropriate) all the Protected Material that was returned or destroyed and (2)
7 affirms that the Receiving Party has not retained any copies, abstracts,
8 compilations, summaries or any other format reproducing or capturing any of the
9 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
10 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
11 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
12 reports, attorney work product, and consultant and expert work product, even if
13 such materials contain Protected Material. Any such archival copies that contain or
14 constitute Protected Material remain subject to this Protective Order as set forth in
15 Section 4 (DURATION).

16
17
18 **PURSUANT TO THE STIPULATION OF THE PARTIES THROUGH**
19 **THEIR COUNSEL OF RECORD, IT IS SO ORDERED.**
20

21
22 DATED: July 8, 2014



Hon. Patrick J. Walsh
United States Magistrate Judge

CISLO & THOMAS LLP
Attorneys at Law
SUITE 500
1333 2nd Street
SANTA MONICA, CALIFORNIA 90401-4110
Telephone: (310) 451-0647 Facsimile: (310) 394-4477

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

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 in the
case of Peter H. Wolf v. Capstone Photography, Inc. et al., Case No. CV 13-9573 CAS (PJWx).

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: _____
Signature: _____