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1
2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA
4

5 GIBSON BRANDS, INC., a Delaware corporation,) Case No. CV 2:14-00609-DDP-SS
6 Plaintiff,) [Discovery Document: Referred to
7 v.) Magistrate Judge Suzanne H. Segal]
8 JOHN HORNBY SKEWES & CO. LTD., a United Kingdom Corporation;) **STIPULATED PROTECTIVE**
9 and DOES 1 through 10,) **ORDER**
10 Defendants.)
11) Complaint filed: January 27, 2014

12
13 Gibson Brands, Inc. (“Plaintiff” or “Gibson”), and its officers, directors,
14 employees, affiliates, parents, subsidiaries, agents, and representatives, and John Hornby
15 Skewes and Co., Ltd and their officers, directors, employees, affiliates, parents,
16 subsidiaries, agents, and representatives (“Defendants” or “JHS”) (collectively referred to
17 as the “Parties”), anticipate that the discovery process in this case will involve documents
18 and other information containing personal financial, medical, or credit related
19 information or trade secrets or other confidential research, development, or personal or
20 commercial information that may be subject to protection pursuant to Fed. R. Civ. P.
21 26(c).
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1 Accordingly, the Parties stipulate to the following Stipulation Governing the
2 Designation and Handling of Confidential Documents and Information and request that
3 the Court enter this Stipulation as an Order of the Court (“Stipulated Protective Order”).
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5 **IT IS HEREBY STIPULATED AND AGREED THAT:**

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7 1. A party or third party may designate any document, data compilation,
8 transcript, thing or information, including without limitation, written discovery responses
9 (collectively “Material”), in whole or in part, as “Confidential” or “Confidential –
10 Attorneys’ Eyes Only” under the terms of this Order, if counsel for such party in good
11 faith believes that such Material contains or reveals information falling within the
12 categories described below corresponding to such designations and could cause
13 substantial harm to the Producing Party (herein defined as a person who produces
14 Material in connection with this case) if disclosed to persons other than those designated
15 in paragraphs 8 and 9 below.
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19 (a) the designation “Confidential” may be used for any non-public
20 confidential, proprietary, personally sensitive, commercially-sensitive, or
21 trade secret information; and
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23 (b) the designation “Confidential – Attorneys’ Eyes Only” shall be
24 reserved for especially sensitive or confidential materials – such as mailing
25 addresses, account numbers, account information, borrower-specific
26 information, including private consumer information that contains
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1 identifying, contract or private financial information provided by a consumer
2 to a financial institution, resulting from any transaction with the consumer or
3 any service performed for the consumer, or otherwise obtained by the
4 financial institution, including any list, description, or other grouping of
5 consumers (and publicly available information pertaining to them) that is
6 derived using any nonpublic personal information, including any “nonpublic
7 personal information” such as identified by the Gramm-Leach-Bliley Act, 15
8 U.S.C. § 6801 *et seq*; and d); computer programs, databases and source
9 code; business financial information; personal financial related information;
10 personal credit or credit score related information; medical and health care
11 related information; marketing strategies; marketing expenditures; client
12 lists; business forecasts; business plans and strategies and research regarding
13 marketing and consumer behavior; and any other information the Producing
14 Party can demonstrate is sufficiently sensitive that disclosure would reveal
15 business, competitive, proprietary, personal, or financial information of the
16 Producing Party.

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24 Such designation shall be made, where practical, by marking each page of a
25 document, each separate part or component of a thing, or each separate item of other
26 information in a conspicuous manner. If it is not practical to so mark the Material itself,
27 a container for or a tag attached to the Material shall be so marked. The marking shall
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1 state: “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or a
2 substantially similar legend (hereinafter “CONFIDENTIAL” or “CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY” as applicable). Nothing in this paragraph shall be
4 construed as an express or implied agreement by the non-producing party that Material
5 designated as “Confidential” or “Confidential-Attorneys Eyes Only” is confidential.
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7 However, Material so designated shall be treated in accordance with its designation,
8 unless the non-producing party challenges the designation under Paragraph 7 below.
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11 2. In lieu of marking the original of a document or the original of other
12 Material CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY prior to
13 inspection, the producing party or its counsel may orally designate any document or other
14 material being produced for inspection by counsel for a party as CONFIDENTIAL or
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY, thereby making it, and the
16 information it contains, temporarily subject to this Order. However, each copy of such
17 document or other material must be marked by the producing party as CONFIDENTIAL
18 or CONFIDENTIAL – ATTORNEYS’ EYES ONLY as required by this Order at the
19 time it is subsequently delivered to receiving counsel in order to make the document and
20 copies subject to this Order; provided, however, that all documents shall be deemed
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY and temporarily subject to this Order
22 for ten (10) days from such delivery to permit the producing party to correct any
23 inadvertent failure to mark delivered documents.
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1 3. Information disclosed at a deposition may be designated as
2 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY under the
3 following circumstances: (a) by indicating on the record during the deposition that the
4 testimony is CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY and
5 subject to the provisions of this Order, in which case the court reporter will be directed to
6 produce a separate, confidential transcript or to indicate on the caption page of the
7 transcript that some or all of its contents are governed by this Order and by marking such
8 pages containing CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES
9 ONLY material as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY; or (b) within ten (10) days following receipt of the transcript by counsel for the
11 designating party, by notifying all parties in writing of the specific pages of the transcript
12 that are to be treated CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES
13 ONLY thereafter.

14 4. Communication With Third Parties. To the extent any documents or
15 information or discovery response, regardless of whether identified as CONFIDENTIAL
16 or CONFIDENTIAL ATTORNEYS’ EYES ONLY, or otherwise subject to this Order,
17 contains identifying and/or contact information of, without limitation, a Party’s clients,
18 customers, medical, mental, or other health care practitioners or entities, financial
19 consultants, financial advisers, bankers, accountants, tax advisers, tax consultants,
20 relatives, and family members, and/or any entity or institution related to the foregoing

1 (“Party Third Party” or “Party Third Parties”), notwithstanding the protections and
2 requirements provided under the Federal Rules of Civil Procedure, the Parties, inclusive
3 of counsel, shall not issue or serve upon, or send to, a Party’s Third Party, a deposition or
4 document subpoena, or otherwise demand a Party’s Third Party to appear to testify, or
5 provide documents, for purposes of, or relative to, this litigation, without at least five (5)
6 business days prior written notice to counsel of the Party before serving the Party Third
7 Party. Notice of the Party Third Party subpoenas contemplated in this paragraph shall be
8 effective upon receipt between 9:00 a.m. and 5:00 p.m. PST. Service upon counsel of
9 such notice by electronic mail (e-mail) shall constitute proper and sufficient service.
10 Notice and service of such Notice shall only be deemed proper and effective if the written
11 Notice includes a full and complete copy of the subpoena (with any attachments,
12 documents requests, etc.) intended to be served upon the Party Third Party.
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18 5. The inadvertent or unintentional disclosure by the producing party of
19 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY information,
20 either by way of document production or deposition testimony, regardless of whether the
21 information was so designated at the time of disclosure, shall not be deemed a waiver in
22 whole or in part of a party’s claim of confidentiality, either as to the specific information
23 disclosed or as to any other information relating thereto on the same or related subject
24 matter. Any such inadvertently or unintentionally disclosed CONFIDENTIAL or
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY information not designated as such
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1 pursuant to paragraphs 1 through 4 shall be so designated, by giving written notice to all
2 parties, as soon as reasonably possible after the producing party becomes aware of the
3 inadvertent or unintentional disclosure. Upon such notice, and receipt of substitute
4 copies bearing the appropriate confidentiality legend, the receiving party shall return said
5 documents and things and not retain copies thereof, and shall thereafter treat information
6 contained in said documents and any summaries or notes thereof as CONFIDENTIAL or
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY, as designated by the producing party,
8 except to the extent such information has already been publicly disclosed, such as in a
9 court filing.
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14 6. If, in connection with this litigation any Party discloses information subject
15 to a claim of attorney-client privilege, attorney work product protection, or any other
16 privilege or protection provided ("Protected Information"), pursuant to Federal Rule of
17 Evidence 502, the disclosure of such information shall not constitute or be deemed a
18 waiver or forfeiture of any claim of privilege or work product protection that the
19 producing party would otherwise be able to assert with respect to the Protected
20 Information and its subject matter. If a claim of privilege is made by a producing party
21 with respect to Protected Information, the receiving party shall, within five (5) business
22 days, return or destroy all copies of the Protected Information and provide a certification
23 of counsel that all such Protected Information has been returned or destroyed. If the
24 receiving party believes that it has received Protected Information, the receiving party
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1 shall notify the producing party within five (5) business days of the receipt of such
2 information. The receiving party shall, within ten (10) business days, return or destroy all
3 copies of the Protected Information and provide a certification of counsel that all such
4 Protected Information has been returned or destroyed. The receiving party may request
5 that the producing party produce a privilege log with respect to Protected Information,
6 which the producing party shall produce within ten (10) business days of any such
7 request or in a reasonable time frame if ten (10) business days is not sufficient time under
8 the circumstances. Any motion compelling production of Protected Information shall be
9 filed under seal and shall not assert as a ground for its motion the fact or circumstance of
10 the disclosure of the Protected Information. Nothing in this paragraph shall limit the
11 right of any party to petition the Court for an in camera review of Protected Information.

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17 7. Nothing in this Order shall be construed to prevent a party to this action at
18 any time from opposing the designation of materials as CONFIDENTIAL or
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY. A party opposing the designation of
20 materials as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY
21 shall serve a written objection, including a statement of the grounds for the objection, on
22 the designating party. The designating party will have ten (10) days following the receipt
23 of the objection to withdraw its CONFIDENTIAL or CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY designation. If the CONFIDENTIAL or
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY designation is not withdrawn, the
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1 objecting party may move the Court, pursuant to the applicable requirements of Local
2 Rules 7-19 or 37, for an order removing the CONFIDENTIAL or CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY designation. The designating party has the burden of proof
4 to establish the confidentiality of the CONFIDENTIAL or CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY information.
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8 8. “Confidential” Material – Material designated “Confidential” may only be
9 disclosed, summarized, described, or otherwise communicated or made available in
10 whole or in part, for the purposes set forth above, to the following persons:
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12 a. attorneys of Bates & Bates, LLP, Buche & Associates, PC and
13 Bienstock & Michael, LLC;
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15 b. no more than three (3) employees of each of the parties (“Party
16 Representative”), as necessary to provide assistance in the conduct and
17 evaluation of this Action, provided that each Party Representative shall be
18 identified by delivering to the Producing Party the name and position of the
19 Party Representative in writing at least five (5) business days prior to such
20 disclosure. If, within five (5) business days following receipt of such written
21 identification, the Producing Party objects to such disclosure, the Party
22 seeking disclosure must seek relief from the Court, pursuant to the
23 applicable requirements of Local Rule 7-19 or Local Rule 37. No disclosure
24 shall be made to that Party Representative until the Court has ruled.
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1 c. The employees of counsel listed in 8(a) above (including partners,
2 associates, paralegals, secretaries, legal assistants, and clerks) actually
3 assisting such counsel in preparation of this case; provided, however, that
4 such employees may have access to CONFIDENTIAL material only to the
5 extent necessary to perform their duties;
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8 d. Non-party experts or consultants retained to assist counsel of record in
9 this case, subject to compliance with paragraph 10(a) below;
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11 e. Court reporters involved in transcribing depositions or other
12 proceedings in this litigation, provided that they agree to be subject to the
13 terms of this Order and provided that they are provided CONFIDENTIAL
14 information only to the extent necessary to perform the transcription;
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16 f. Persons who were the author of or are shown to have lawfully
17 received a copy of the Confidential information;
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19 g. The Court;
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21 h. Court personnel involved with this case;
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23 i. Witnesses bound by the confidentiality restrictions set forth herein
24 and
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26 j. Members of the jury, if any, in this case.
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28 9. “Confidential – Attorneys’ Eyes Only” Material. Material designated

“Confidential – Attorneys’ Eyes Only” may be disclosed to only persons qualifying under

1 paragraphs 8(a), 8(c), 8(d), 8(e), 8(f), 8(g), 8(h), or 8(i). Party Representatives designated
2 in paragraph 8(b) shall not receive access to or disclosure of CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY material, absent the written consent of the producing party
4 or order of the Court.
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7 10. (a) Prior to disclosing any material designated as CONFIDENTIAL or
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY to any person described in Paragraph
9 8(d) and 8(f) above, a party shall provide a written identification of any such person to
10 the opposing party, setting forth the name of the person, his or her occupation, business
11 address, and a curriculum vitae. The parties shall be allowed to disclose materials
12 designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY to
13 such persons unless, within ten (10) days after the identification of the retained person
14 has been provided to the opposing party, the opposing party objects to the disclosure of
15 materials designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY to the particular person. If objection to disclosure is made within the ten (10)
17 days, the objecting party shall, no later than five (5) days after objection, comply with
18 either Local Rule 7-19 or Local Rule 37 for purposes of seeking an order from the Court
19 regarding the disclosure and the objecting party’s objection thereto. If an objection is
20 made and the objecting party proceeds pursuant to Local Rule 7-19 or Local Rule 37 to
21 move the Court for an order prohibiting the disclosure at issue, no materials designated as
22 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY shall be made
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1 available to the particular person until after the Court rules that disclosure can be made.
2 If the objecting party fails to timely proceed pursuant to Local Rule 7-19 or Local Rule
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4 37 to move the Court for an order prohibiting the disclosure at issue, then materials
5 designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY
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7 may be made available to the particular person, however the parties shall nevertheless
8 continue to treat and deem such material as CONFIDENTIAL or CONFIDENTIAL-
9 ATTORNEYS’-EYES-ONLY, as the case may be. Notwithstanding anything contained
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11 in this Order, discovery of experts will be governed by Federal Rule of Civil Procedure
12 26(b)(4).

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14 (b) All persons authorized by Paragraph 8(d), 8(e), or 8(f) above to have access
15 to material designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’
16 EYES ONLY must sign an Undertaking in the form of Exhibit A attached to this Order
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18 before gaining access to such material or information.

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20 11. Each recipient of the CONFIDENTIAL or CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY material shall maintain such material in a secure, safe area
22 and shall exercise the same standard of care with respect to the storage, custody, use and
23 dissemination of such material as is exercised by the recipient with respect to its own
24 confidential and proprietary material. CONFIDENTIAL - ATTORNEYS' EYES ONLY
25 material stored at the Parties is to be segregated from other produced documents,
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1 password protected, and only accessible to the Party Representatives or counsel as
2 identified in Paragraph 8(a).

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4 12. Except upon consent of the designating party or upon order of the Court, any
5 and all CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY materials
6 produced, served or otherwise made available by the designating party to another party
7 during the course of this action, together with all reproductions, copies, abstracts, indices,
8 or summaries of those materials, shall be used only for preparation and presentation of
9 this action and for no other purpose whatsoever.
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12 13. Any papers filed with or presented to the Court that contain or reveal
13 materials designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY shall be filed with an application to have the documents filed under seal in
15 accordance with the procedures outlined in the Local Rules and shall not be publicly
16 disclosed, or shall be appropriate redacted to ensure that no CONFIDENTIAL or
17 CONFIDENTIAL-ATTORNEYS’-EYES-ONLY information is disclosed to the public
18 or any third party, except upon consent of the designating party or upon further order of
19 the Court.
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23 14. Within sixty (60) days after final determination of this action, all materials
24 designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY
25 that have been served or otherwise made available by the designating party to another
26 party during the course of this action, together with all reproductions, copies, abstracts,
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1 indices, summaries or any other embodiment of those materials, shall be destroyed or
2 delivered to counsel for the designating party. Notwithstanding the above or the
3
4 Undertaking in Exhibit A, counsel designated under paragraph 8(a) above may retain one
5 copy of such material to maintain a complete file of the litigation; provided, however,
6 that all further copies of CONFIDENTIAL and CONFIDENTIAL – ATTORNEYS’
7 EYES ONLY documents of the designating party shall be destroyed or delivered to
8 counsel for the designating party.
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11 15. If material or information designated CONFIDENTIAL or
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY is disclosed to any person other than
13 in the manner authorized by this Order, the party responsible for the disclosure must
14 immediately bring all pertinent facts relating to such disclosure to the attention of the
15 opposing party and the designating party, and without prejudice to the rights and
16 remedies of the designating party, make every effort to prevent further unauthorized
17 disclosure on its own part or on the part of the recipient of such information or material.
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21 16. In the event that a Party to this Protective Order receives a discovery
22 request, subpoena, order or other form of compulsory process from a third-party who is
23 not a party to this proceeding (the “Demand”), requiring that Party (the “Subpoenaed
24 Party”) to produce documents that have been designated as “Confidential” or “For
25 Counsel Only” (or “Attorneys’ Eyes Only”) by the other Party (the “Designating Party”),
26 the Subpoenaed Party shall promptly notify the Designating Party of the Demand. If the
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1 Designating Party elects to resist production of the documents, the Designating Party
2 shall promptly notify the Subpoenaed Party. The Subpoenaed Party shall have no
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4 obligation to assist in the protection of the documents except to delay production until the
5 dispute is resolved by the Designating Party.

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7 17. Nothing in this Order shall be construed as requiring disclosure of privileged
8 materials, materials subject to protection under the work product doctrine, or materials
9 that are otherwise beyond the scope of permissible discovery.

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11 18. Nothing in this Order shall be construed to prevent a party or third party
12 from seeking such further protective provisions regarding confidentiality, as may be
13 appropriate.

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15 19. Nothing in this Order shall be construed as a waiver by a party of any
16 objections that might be raised as to the admissibility at trial of any evidentiary materials.

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18 20. Nothing in this Order shall be construed to restrict a designating party in its
19 use of its own CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY
20 materials.

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22 21. **GOOD CAUSE STATEMENT:** This action is likely to involve trade
23 secrets, customer and pricing lists and other valuable research, development, commercial,
24 financial, technical and/or proprietary information for which special protection from
25 public disclosure and from use for any purpose other than prosecution of this action is
26 warranted. Such confidential and proprietary materials and information consist of, among
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1 other things, confidential business or financial information, information regarding
2 confidential business practices, or other confidential research, development, or
3 commercial information (including information implicating privacy rights of third
4 parties), information otherwise generally unavailable to the public, or which may be
5 privileged or otherwise protected from disclosure under state or federal statutes, court
6 rules, case decisions, or common law. Accordingly, to expedite the flow of information,
7 to facilitate the prompt resolution of disputes over confidentiality of discovery materials,
8 to adequately protect information the parties are entitled to keep confidential, to ensure
9 that the parties are permitted reasonable necessary uses of such material in preparation
10 for and in the conduct of trial, to address their handling at the end of the litigation, and
11 serve the ends of justice, a protective order for such information is justified in this matter.
12 It is the intent of the parties that information will not be designated as confidential for
13 tactical reasons and that nothing be so designated without a good faith belief that it has
14 been maintained in a confidential, non-public manner, and there is good cause why it
15 should not be part of the public record of this case.

22 22. This Order shall remain in effect after the final determination of this action,
23 unless otherwise ordered by the Court.

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1 **IT IS SO STIPULATED.**

2
3 Dated: _____, 2015

BATES & BATES, LLC

4 By: /s/ Andrea E. Bates
5 Andrea E. Bates
6 *Attorneys for Plaintiff*

7
8 Dated: _____, 2015

BUCHE & ASSOCIATES, P.C.

9
10 By: /s/ John K. Buche
11 John K. Buche
12 *Attorneys for Defendant*

13
14 Dated: _____, 2015

BIENSTOCK & MICHAEL, LLC

15
16 By: /s/ Brent Davis
17 Brent Davis
18 *Attorneys for Defendant*

19 I hereby attest that the content of this documents has been approved by all parties
20 indicated by a conformed signature (/S/) within this e-filed document.
21

22 /s/ John K. Buche
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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: March 26, 2015

/S/

Honorable Suzanne H. Segal
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

I, _____, declare and say that:

1. I am employed as [state position] _____ by [state name and address of employer] _____.

2. I have read the Protective Order entered in _____ and a copy of Protective Order has been given to me.

3. I agree to be bound by the terms of the Protective Order and agree that any CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY material within the meaning of the Protective Order will be used by me only in connection with the furtherance of the above-referenced litigation.

4. I agree that I will not disclose or discuss CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY material with anyone other than the persons allowed access to such CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY material as set forth in Paragraphs 8 and 9 of the Order.

5. I understand that any disclosure or use of CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY material in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of the Court’s Order.

6. I agree to return all CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY material to counsel who provided it to me upon the conclusion of this action.

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1 7. I agree to be subject in person to the rules and jurisdiction of this Court in
2 connection with any proceeding relating to the enforcement of the Protective Order.

3 I declare under penalty of perjury that the foregoing is true and correct, and that
4 this Declaration was executed this _____ day of _____ 20__, at
5 _____ [location].

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9 [NAME]
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