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

)	Case No.: 2:14-cv-06690-BRO-JEM
MAJOR COMMUNICATIONS,)	
INC., a California corporation,)	Beverly Reid O’Connell
)	
Plaintiff,)	[PROPOSED] PROTECTIVE
)	ORDER
vs.)	
)	DISCOVERY MATTER
CLK GROUP INC. et al.,)	
)	
Defendants.)	

1 Plaintiff Major Electronics, Inc. (“Major”) and Defendants CLK Group,
2 Inc. (“CLK”), Ken Heng (“Heng”), and Tho Hai Duong aka Richie Duong
3 (“Duong”; together with CLK and Heng, “Defendants”), recognizing that each
4 may have materials containing trade secret or other confidential research,
5 technical, cost, price, sales, marketing or other commercial information, as is
6 contemplated by Federal Rule of Civil Procedure 26(c), have agreed to the terms
7 of the Protective Order (“Order”) as set forth below. The purpose of this Order
8 is to protect the confidentiality of such materials as much as practical during the
9 litigation.

10
11 GOOD CAUSE STATEMENT

12 Good cause exists for this Court to enter the Stipulated Protective Order
13 because disclosure of the parties’ confidential information could harm the
14 parties financially and allow competitors to gain unfair advantage. For example,
15 competitors could gain an unfair advantage over the parties if they learn the
16 parties’ confidential information, such as financial information, sales
17 information, business and marketing strategies, or information concerning the
18 parties’ internal business operations. Such information could allow others to
19 unfairly compete in the market and usurp the parties’ business opportunities, to
20 the detriment of the parties. Good cause further exists in that this Stipulated
21 Protective Order will allow for the parties to disclose documents that may be
22 required for the litigation of this matter without suffering an economic and
23 business detriment that would result from the disclosure of confidential
24 information to the parties’ competitors and/or to the public.

25 THEREFORE, FOR GOOD CAUSE SHOWN, IT IS HEREBY
26 ORDERED:

27 1. This Order shall apply to all information produced during
28 discovery in this action that shall be designated by the party or person producing

1 it as “Confidential” or “Confidential-Attorneys’ Eyes Only” (collectively
2 “Confidential Information”). This Order shall not apply to information that,
3 before disclosure, is properly in the possession or knowledge of the party to
4 whom such disclosure is made, or is public knowledge. The restrictions
5 contained in this Order shall not apply to information that is, or after disclosure
6 becomes, public knowledge other than by an act or omission of the party to
7 whom such disclosure is made, or that is legitimately acquired from a source not
8 subject to this Order.

9 2. This Order shall not govern the use of Confidential Information at
10 trial or at other court hearings or proceedings. Any use of Confidential
11 Information at trial or at other court hearings or proceedings shall be governed
12 by the orders of the trial judge or judicial officer conducting the proceeding at
13 the appropriate time.

14 3. The terms of this Order do not apply to the Court or Court
15 personnel, as they are subject only to the Court’s internal procedures regarding
16 the handling of material filed or lodged, including material lodged or filed under
17 seal.

18 4. If a document or thing produced in response to a document request
19 or in connection with a deposition, interrogatory answer, or admission
20 (collectively “discovery response”), or if a deposition transcript contains
21 information that in the good faith belief of a party and its counsel contains
22 confidential information, such discovery response, or deposition transcript shall
23 be designated “Confidential” or “Confidential-Attorneys’ Eyes Only” by the
24 party contending there is confidential information therein.

25 5. In connection with a discovery response, the legend “Confidential”
26 or “Confidential-Attorneys’ Eyes Only” (in such a manner as will not interfere
27 with the legibility thereof) shall be affixed before the production or service upon
28 a party.

1 6. As a general guideline, a document may be designated
2 “Confidential” when it contains confidential business, technical or other
3 information that may be reviewed by the receiving party, the parties’ experts,
4 and other representatives, but must be protected against disclosure to third
5 parties. A document may be designated “Confidential-Attorneys’ Eyes Only”
6 only when it contains the following highly sensitive information: financial
7 information; cost information; pricing information; sales information; trade
8 secret information; customer, license, supplier, and vendor information;
9 technical and development information about a party’s products; comparative
10 product test results; business plans; marketing strategies; new product plans and
11 competitive strategies; or any other information that would put the producing
12 party at a competitive disadvantage if the information became known to
13 employees of the receiving party or third parties.

14 7. All Confidential Information that has been obtained from a party
15 during the course of this proceeding shall be used only for the purpose of this
16 litigation and not for any other business, proceeding, litigation, or other purpose
17 whatsoever. Further, such information may not be disclosed to anyone except
18 as provided in this Order. Counsel for a party may give advice and opinions to
19 their client based on evaluation of information designated as Confidential
20 Information produced by the other party. For information designated
21 “Confidential-Attorneys’ Eyes Only,” such rendering of advice and opinions
22 shall not reveal the content of such information except by prior agreement with
23 opposing counsel.

24 8. All documents, or any portion thereof, produced for inspection only
25 (*i.e.*, copies have not yet been provided to the receiving party) shall be deemed
26 “Confidential-Attorneys Eyes Only.” If a copy of any such document is
27 requested after inspection, the document shall be deemed “Confidential” or
28 “Confidential-Attorneys Eyes Only” only if labeled or marked in conformity

1 with paragraph 4, with access and dissemination limited as set forth in
2 paragraphs 12-14.

3 9. Information disclosed at a deposition may be designated as
4 “Confidential” or “Confidential-Attorneys’ Eyes Only” at the time of the
5 deposition, or within fourteen (14) days following receipt of the final transcript,
6 and upon designation shall be subject to the provisions of this Order. Additional
7 information disclosed during a deposition may be designated as “Confidential”
8 or “Confidential-Attorneys’ Eyes Only” by notifying the other party, in writing,
9 within fourteen (14) days after receipt of the final transcript, of the specific
10 pages of the transcript that should also be so designated. Upon designation, the
11 transcript shall not be disclosed by a non-designating party to persons other than
12 those persons named or approved according to paragraphs 12-14 to review
13 documents or materials designated “Confidential-Attorneys’ Eyes Only” on
14 behalf of that non-designating party.

15 10. In accordance with Local Rule 79-5.1, if any papers to be filed with
16 the Court contain information and/or documents that have been designated as
17 “Confidential” or “Confidential-Attorneys’ Eyes Only,” the proposed filing
18 shall be accompanied by an application to file the papers or the portion thereof
19 containing the designated information or documents (if such portion is
20 segregable) under seal; and the application shall be directed to the judge to
21 whom the papers are directed.

22 11. As used in this Order, “Trial Counsel” refers to the following:

23 (a) For Plaintiff: The attorneys, paralegals, agents, and support staff of
24 Leech Tishman Fuscaldo & Lampl (or its successor), but shall not include any
25 current or former officer, director, or employee of Major.

26 (b) For Defendant: The attorneys, paralegals, agents, and support staff
27 of Lynberg & Watkins (or its successor), but shall not include any current or
28 former officer, director, or employee of any Defendant.

1 (a) Others: Such additional attorneys as may be ordered by the Court,
2 or subsequently may be agreed upon by the parties, such agreement not to be
3 unreasonably withheld.

4 12. Material designated as “Confidential-Attorneys’ Eyes Only” that
5 has been obtained from a party or non-party during the course of this proceeding
6 may be disclosed or made available only to the persons designated below,
7 subject to paragraph 14:

8 (a) the Court and court personnel;

9 (b) court reporters employed in this action;

10 (c) Trial Counsel for either party;

11 (d) agents of Trial Counsel needed to perform various services such as,
12 for example, copying, drafting of exhibits, and support and management
13 services, including vendors retained for the purpose of encoding, loading into a
14 computer and storing and maintaining for information control and retrieval
15 purposes, transcripts of depositions, hearings, trials, pleadings, exhibits marked
16 by a party, or attorneys' work product, all of which may contain Confidential
17 Information;

18 (e) independent experts or consultants (together with their clerical
19 staff) retained by Trial Counsel to assist in the prosecution, defense, or
20 settlement of this action;

21 (f) authors and prior recipients of any Confidential Information;

22 (g) witnesses during any deposition or other proceeding in this action
23 (i) who are the author or recipient of the Confidential Information, (ii) who,
24 based on evidence, have seen the material in the past, or (iii) who counsel for a
25 party reasonably believes have knowledge of the contents of the document or
26 the specific events, transactions, discussions, or data reflected in the document,
27 and upon the witness being advised of the need and agreeing to keep the records
28 confidential; and

1 (h) any other persons as to whom the parties agree in writing.

2 13. Material designated as “Confidential” that has been obtained from
3 a party or nonparty during the course of this proceeding may be disclosed or
4 made available only to those persons identified in paragraph 12 and to the
5 persons designated below, subject to paragraph 14:

6 (a) No more than three officers, directors, or designated employees of
7 a party deemed necessary by Trial Counsel to aid in the prosecution, defense, or
8 settlement of this action.

9 14. Each person identified under paragraphs 12(d)-(g) and 13(a),
10 before having access to the Confidential Information, shall agree not to disclose
11 to anyone not exempted by this Order any Confidential Information and not to
12 make use of any such Confidential Information other than solely for purpose of
13 this litigation, and shall acknowledge in writing by signing the Agreement to be
14 Bound by Protective Order in the form of Exhibit A (the “Acknowledgement”
15 attached hereto, that he or she is fully conversant with the terms of this Order
16 and agrees to comply with it and be bound by it. Counsel shall retain in his/her
17 file until at least the conclusion of this litigation the original of each such signed
18 Acknowledgement.

19 15. For the purpose of this Order, an independent expert or consultant
20 shall be defined as a person, who has not been and is not an employee of a party
21 or scheduled to become an employee in the near future, and who is retained or
22 employed as a consultant or expert for purposes of this litigation, either full or
23 part-time, by or at the direction of counsel of a party.

24 16. Any Confidential Information may be used in the course of any
25 deposition taken of the party producing such Confidential Information or its
26 employees without consent, or otherwise used in any deposition with the
27 consent of the party producing such Confidential Information, subject to the
28 condition that when such Confidential Information is so used, the party who

1 made the designation may notify the reporter that the portion of the deposition
2 in any way pertaining to such Confidential Information or any portion of the
3 deposition relevant thereto is being taken pursuant to this Order. Further,
4 whenever any Confidential Information is to be discussed or disclosed in a
5 deposition, any party claiming such confidentiality may exclude from the room
6 any person not entitled to receive such Confidential Information pursuant to the
7 terms of this Order.

8 17. A receiving party who objects to the designation of any document,
9 discovery response, or deposition or other testimony as “Confidential” or
10 “Confidential-Attorneys’ Eyes Only” shall state the objection by letter (or by
11 means of an electronic communication such as email) which complies with the
12 requirements of Local Rule 37-1 to counsel for the producing party. Pursuant to
13 Local Rule 37-1, counsel for the parties shall confer within seven (7) days
14 following receipt of the letter stating the objection. If the objection is not
15 resolved through the parties’ meeting pursuant to Local Rule 37-1, the receiving
16 party may move the Court to determine whether the document, discovery
17 response or deposition or other testimony at issue qualifies for treatment as
18 “Confidential” or “Confidential-Attorneys’ Eyes Only.” The receiving party’s
19 motion must be accompanied by a written stipulation of the parties as required
20 by Local Rule 37-2. If the receiving party files such a motion, the document,
21 discovery response, or deposition or other testimony at issue will continue to be
22 entitled to the protections accorded by this Order until and unless the Court
23 rules otherwise. If the receiving party files such a motion, the designating party
24 shall bear the burden of establishing that the document, discovery response or
25 deposition or other testimony at issue qualifies for treatment as “Confidential”
26 or “Confidential-Attorneys’ Eyes Only.” Nothing herein shall operate as an
27 admission by any party that any particular document, discovery response, or
28 deposition or other testimony contains “Confidential” or “Confidential-

1 Attorneys' Eyes Only" Information for purposes of determining the merits of
2 the claims in this litigation.

3 18. A party shall not be obligated to challenge the propriety of the
4 designation of any document, discovery response or deposition or other
5 testimony at the time such designation is made; failure to do so shall not
6 preclude a subsequent challenge within a reasonable time. Further, a party's
7 failure to challenge a designation during pretrial discovery shall not preclude a
8 subsequent challenge of such designation at trial or in connection with the
9 submission of any document, discovery response or deposition or other
10 testimony to the Court for any purpose.

11 19. Notwithstanding anything contrary herein, if a party or non-party
12 through inadvertence or mistake produces any Confidential Information without
13 marking it with the legend "Confidential" or "Confidential-Attorneys' Eyes
14 Only," or by designating it with an incorrect level of confidentiality, the
15 producing party may give written notice to the receiving party that the
16 document, discovery response, or deposition or other testimony contains
17 Confidential Information and should be treated as such in accordance with the
18 provisions of this Order. Upon receipt of such notice, and upon receipt of
19 properly marked materials, the receiving party shall return said unmarked
20 materials and not retain copies thereof, and must treat such documents,
21 discovery responses, or deposition or other testimony as Confidential
22 Information and shall cooperate in restoring the confidentiality of such
23 Confidential Information. The inadvertent or unintentional disclosure by a party
24 of Confidential Information, regardless of whether the information was so
25 designated at the time of disclosure, shall not be deemed a waiver in whole or in
26 part of a party's claim of confidentiality either as to the specific information
27 disclosed or as to any other information relating thereto or on the same or
28 related subject matter, provided that the non-producing party is notified and

1 properly marked documents are supplied as provided herein. The receiving
2 party shall not be responsible for the disclosure or other distribution of belatedly
3 designated Confidential Information as to such disclosure or distribution that
4 may occur before the receipt of such notification of a claim of confidentiality
5 and such disclosure or distribution shall not be deemed to be a violation of this
6 Order.

7 20. If, after producing documents or materials in the litigation, a
8 producing party discovers that the documents or materials include information
9 that is properly subject to protection under the attorney-client privilege or the
10 attorney work product doctrine, the producing party shall promptly provide
11 written notice to the receiving party that the documents or materials were
12 inadvertently produced and properly subject to protection under the attorney-
13 client privilege or the attorney work product doctrine. Upon receiving such
14 written notice from the producing party that privileged information or attorney
15 work product material has been inadvertently produced, all such information,
16 and all copies thereof, either shall be promptly returned to the producing party,
17 or shall be destroyed and the receiving party shall promptly provide the
18 producing party with notice that all such documents have been destroyed. If the
19 receiving party disagrees with the designation of any such documents or
20 materials as privileged or otherwise protected after conferring with the
21 producing party in good faith, the receiving party shall nonetheless return such
22 documents or materials to the producing party as specified above, but may move
23 the Court for production of the returned documents or materials. The producing
24 party shall retain all returned documents or materials for further disposition but
25 shall make them available to the Court, if necessary, to enable the Court to
26 decide any such motion. This provision is not intended to modify whatever
27 procedure may be established in an e-discovery order that provides for
28

1 production without prior privilege review pursuant to Federal Rule of Evidence
2 502(d) and (e).

3 21. All Confidential Information must be held in confidence by those
4 inspecting or receiving it, and must be used only for purposes of this action.
5 Counsel for each party, and each person receiving Confidential Information
6 must take reasonable precautions to prevent the unauthorized or inadvertent
7 disclosure of such information. If Confidential Information is disclosed to any
8 person other than a person authorized by this Order, the party responsible for the
9 unauthorized disclosure must immediately bring all pertinent facts relating to
10 the unauthorized disclosure to the attention of the other parties and, without
11 prejudice to any rights and remedies of the other parties, make every effort to
12 prevent further disclosure by the party and by the person(s) receiving the
13 unauthorized disclosure.

14 22. Documents and things produced or made available for inspection
15 may be subject to redaction, in good faith by the producing party, of sensitive
16 material that is subject to the attorney-client privilege or to work-product
17 immunity. Each such redaction, regardless of size, will be clearly labeled. This
18 paragraph shall not be construed as a waiver of any party's right to seek
19 disclosure of redacted information.

20 23. Neither the taking or the failure to take any action to enforce the
21 provisions of this Order, nor the failure to object to any designation or any such
22 action or omission, shall constitute a waiver of any signatory's right to seek and
23 obtain protection or relief, with respect to any claim or defense in this action or
24 any other action including, but not limited to, the claim or defense that any
25 information is or is not proprietary to any party, is or is not entitled to particular
26 protection or that such information embodies trade secret or other confidential
27 information of any party. The procedures set forth herein shall not affect the
28 rights of the parties to object to discovery on grounds other than those related to

1 trade secrets or other confidential information claims, nor shall it relieve a party
2 of the necessity of proper responses to discovery requests.

3 24. This Order shall not abrogate or diminish any contractual,
4 statutory, or other legal obligation or right of any party to this Order, as to any
5 third party, with respect to any Confidential Information. The fact that
6 Information is designated “Confidential” or “Confidential-Attorneys’ Eyes
7 Only” under this Order shall not be deemed to be determinative of what a trier
8 of fact may determine to be confidential or proprietary. This Order shall be
9 without prejudice to the right of any party to bring before the Court the question
10 of:

11 (a) whether any particular information is or is not Confidential
12 Information;

13 (b) whether any particular information is or is not entitled to a greater
14 or lesser degree of protection than provided hereunder; or

15 (c) whether any particular information is or is not relevant to any issue
16 in this case, provided that in doing so the party complies with the foregoing
17 procedures.

18 25. The terms of the Order are applicable to Confidential Information
19 produced by a non-party, and Confidential Information produced by a non-party
20 in connection with this litigation is protected by the remedies and relief
21 provided by the Order. To protect its own Confidential Information, a party
22 may ask a non-party to execute the Acknowledgement in the form of Exhibit A.

23 26. Within thirty (30) days following the termination of this action,
24 including all appeals, each party shall: (1) return to opposing counsel all
25 documents and materials designated by the opposing party as “Confidential” or
26 “Confidential-Attorneys’ Eyes Only” and all copies of such documents and
27 materials, and also shall destroy all abstracts, digests and analyses thereof,
28 however stored or reproduced; or (2) destroy all documents and materials

1 designated by the opposing party as “Confidential” or “Confidential-Attorneys’
2 Eyes Only” and all copies of such documents and materials, destroy all
3 abstracts, digests and analyses thereof, however stored or reproduced, and
4 provide certification to opposing counsel that all such documents and materials
5 have been destroyed. Notwithstanding the foregoing, counsel for each party
6 may retain all pleadings, briefs, memoranda, motions, and other documents filed
7 with the Court that refer to or incorporate Confidential Information, and will
8 continue to be bound by this Order with respect to all such retained information.

9 27. Nothing in this Order is intended or should be construed as
10 authorizing a party to disobey a lawful subpoena issued in another action or any
11 other lawful request (such as one under the Patriots Act) by a governmental
12 agency.

13 28. Transmission by electronic mail is acceptable for all notification
14 purposes within this Order.

15 29. The restrictions provided for above shall not terminate upon the
16 conclusion of this lawsuit. This Order is without prejudice to the right of a party
17 hereto to seek relief from the Court, upon good cause shown, from any of the
18 provisions or restrictions provided herein.

19 **IT IS SO ORDERED.**

20
21
22 Dated: December 15, 2015



Hon. John E. McDermott
United States Magistrate Judge

1 **EXHIBIT A**

2 **AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

3 I, _____, declare:

4 1. I am employed as _____ by

5 _____.

6 2. I have read the Stipulated Protective Order in *Major*
7 *Communications, Inc. v. CLK Group, Inc. et al.*, Case No. 2:14-cv-06690-BRO-
8 JEM, pending in the United States District Court for the Central District of
9 California, and have received a copy of the Stipulated Protective Order
10 (“Protective Order”). I hereby agree to comply with and be bound by the terms
11 and conditions of that Order unless and until modified by court order.

12 3. I promise that I will use any and all “Confidential” or
13 “Confidential-Attorneys’ Eyes Only” information, as defined in the Protective
14 Order, given to me only in a manner authorized by the Protective Order, and
15 only to assist counsel in the litigation of this matter.

16 4. I promise that I will not disclose or discuss such “Confidential” or
17 “Confidential-Attorneys’ Eyes Only” information with anyone other than the
18 persons authorized in accordance with paragraphs 12-13 of the Protective Order.

19 5. When I have completed my assigned or legal duties relating to this
20 litigation, I will return or destroy all confidential documents and things that
21 come into my possession, or that I have prepared relating to such documents and
22 things, to counsel for the party by whom I am employed or retained. I
23 acknowledge that such return or the subsequent destruction of such materials
24 shall not relieve me from any of the continuing obligations imposed on me by
25 the Protective Order.

26 6. I acknowledge that, by signing this agreement, I am subjecting
27 myself to the jurisdiction of the United States District Court for the Central
28 District of California with respect to enforcement of the Protective Order.

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7. I understand that any disclosure or use of “Confidential” or “Confidential – Attorneys’ Eyes Only” information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this ____ day of _____, 20__ at _____.

Signature

Printed Name