

NOTE: CHANGES MADE BY THE COURT

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12  
 13 UNITED STATES DISTRICT COURT  
 14 CENTRAL DISTRICT OF CALIFORNIA

16	LAVI INDUSTRIES, a California	)	Case No. 2:15-cv-03902 JLS (PLAx)
17	corporation,	)	[Assigned to the Hon. Judge Josephine
18		)	L. Staton;
18	Plaintiff,	)	Assigned to Magistrate Judge Paul L.
19		)	Abrams]
20	vs.	)	
21	VISIONTRON CORP., a New York	)	<b>ORDER GOVERNING USE AND</b>
22	corporation,	)	<b>DISSEMINATION OF</b>
23		)	<b>CONFIDENTIAL INFORMATION</b>
23	Defendant.	)	Complaint Filed: May 22, 2015
24		)	Trial Date: August 9, 2016

1 Pursuant to the Stipulation to Entry of Order Governing Use and  
2 Dissemination of Confidential Information filed by Plaintiff Lavi Industries and  
3 Defendant Visiontron Corp., the Court hereby enters this Protective Order (the  
4 “Order”) to protect confidential information and material that may be produced or  
5 otherwise disclosed by the parties or third parties during the course of discovery in  
6 this case and in order to facilitate the exchange of information and documents that  
7 may be subject to confidentiality limitations on disclosure due to federal laws, state  
8 laws, and privacy rights

9 IT IS HEREBY ORDERED that:

10 1. No person subject to this Order may disclose information of any kind  
11 produced or disclosed in the course of discovery or settlement discussions in this  
12 action (hereinafter “Discovery Material”) which a Party has designated as  
13 “Confidential” or “Confidential Attorneys Eyes Only” (hereinafter “Confidential  
14 AEO”) pursuant to this Order to anyone else except as this Order expressly  
15 permits.

16 2. The Party or person producing or disclosing Discovery Material  
17 (hereinafter “Producing Party”) may designate as “Confidential” only the portion  
18 of such material that it reasonably and in good faith believes consists of:

- 19 (a) previously non-disclosed financial information (including  
20 without limitation profitability reports or estimates, percentage  
21 fees, royalty rates, minimum guarantee payments, sales reports,  
22 and sale margins);
- 23 (b) previously non-disclosed material relating to ownership or  
24 control of any non-public company;
- 25 (c) previously non-disclosed business plans, product- development  
26 information, or marketing plans;
- 27 (d) any information of a personal or intimate nature regarding any  
28 individual;

- 1 (e) information related to previously non-disclosed and/or sensitive  
2 information regarding suppliers, manufacturers, or other entities  
3 with which either Party has business relations;
- 4 (f) any information that any Party reasonably and in good faith  
5 believes would give a direct competitor an unfair business  
6 advantage by virtue of disclosure of that information; or
- 7 (g) any other category of information this Court subsequently  
8 affords confidential status.

9 3. A Producing Party may designate as “Confidential AEO” only the  
10 portion of Discovery Material that it reasonably and in good faith believes consists  
11 of highly sensitive and/or commercially competitive Discovery Material.

12 4. A Producing Party or its counsel may designate the confidential  
13 portion of any Discovery Material other than deposition transcripts and exhibits as  
14 “Confidential” or “Confidential AEO” by stamping or otherwise clearly marking  
15 as “Confidential” or “Confidential AEO” the protected portion in a manner that  
16 will not interfere with legibility or audibility.

17 5. A Producing Party or its counsel may designate deposition exhibits or  
18 portions of deposition transcripts as Confidential Discovery Material or  
19 Confidential AEO Discovery Material either by: (a) indicating on the record during  
20 the deposition that a question calls for Confidential or Confidential AEO  
21 information, in which case the reporter will bind the transcript of the designated  
22 testimony in a separate volume and mark it as “Confidential” or “Confidential  
23 AEO” and will indicate “Information Governed by Protective Order” or (b)  
24 notifying the reporter and all counsel of record, in writing, within this thirty (30)  
25 days after receiving a transcript of the deposition, of the specific pages and lines of  
26 the transcript that are to be designated “Confidential” or “Confidential AEO,” in  
27 which case all counsel receiving the transcript will be responsible for marking the  
28 copies of the designated transcript in their possession or under their control as

1 directed by the Producing Party or that person's counsel. During the thirty (30)  
2 day period following the Parties' receipt of transcripts of the deposition, all Parties  
3 will treat the entire deposition transcript as if it had been designated  
4 "Confidential."

5 6. If at any time before the ~~trial~~ **close of the discovery period** in this  
6 action a Producing Party realizes that it should have designated as "Confidential"  
7 or "Confidential AEO" some portion or portion(s) of Discovery Material that it  
8 previously produced without limitation, the Producing Party may so designate such  
9 material by so apprising all prior recipients in writing. Thereafter, all persons  
10 subject to this Order will treat such designated portion(s) of the Discovery Material  
11 as "Confidential" or "Confidential AEO."

12 7. Nothing contained in this Order will be construed as: (a) a waiver by a  
13 Party or person of its right to object to any discovery request; (b) a waiver of any  
14 privilege or protection; or (c) a ruling regarding the admissibility at trial of any  
15 document, testimony or other evidence.

16 8. Where a Producing Party has designated Discovery Material as  
17 "Confidential," other persons subject to this Order may disclose such information  
18 only to the following persons:

- 19 (a) the Parties to this action, their insurers, and counsel to their  
20 insurers;
- 21 (b) counsel retained specifically for this action, including any  
22 paralegal, clerical, or other assistant that such outside counsel  
23 employs and assigns to this matter;
- 24 (c) outside vendors or service providers (such as copy service  
25 providers and document management consultants) that counsel  
26 hire and assign to this matter, provided such persons or entities  
27 have first been notified of this Confidentiality Agreement and  
28 Protective Order;

- 1 (d) any mediator or arbitrator that the Parties engage in this matter  
2 or that this Court appoints, provided such person has first  
3 executed a Nondisclosure Agreement;
- 4 (e) as to any document, its author, its addressee, and any other  
5 person indicated on the face of the document as having received  
6 a copy;
- 7 (f) any witness who counsel for a Party in good faith believes may  
8 be called to testify at trial or deposition in this action, provided  
9 such person has first executed a Nondisclosure Agreement;
- 10 (g) any person a Party retains to serve as an expert witness or to  
11 otherwise provide specialized advice to counsel or a Party in  
12 connection with this action and/or settlement of this action  
13 (through a potential business arrangement or otherwise),  
14 including but not limited to outside counsel, consultants,  
15 accountants and other financial professionals, provided such  
16 person has first executed a Nondisclosure Agreement;
- 17 (h) stenographers engaged to transcribe depositions the Parties  
18 conduct in this action; and
- 19 (i) this Court, including any appellate court, its support personnel,  
20 and court reporters.

21 9. Where a Producing Party has designated Discovery Material as  
22 “Confidential AEO,” other persons subject to this Order may disclose such  
23 information only to the following persons:

- 24 (a) a Parties’ in-house or inside legal counsel;
- 25 (b) counsel retained specifically for this action, including any  
26 paralegal;
- 27 (c) outside vendors or service providers (such as copy service  
28 providers and document management consultants) that counsel

1 hire and assign to this matter, provided such persons or entities  
2 have first been notified of this Confidentiality Agreement and  
3 Protective Order;

- 4 (d) any mediator or arbitrator that the Parties engage in this matter  
5 or that this Court appoints, provided such person has first  
6 executed a Nondisclosure Agreement;
- 7 (e) as to any document, its author, its addressee, and any other  
8 person indicated on the face of the document as having received  
9 a copy;
- 10 (f) any person a Party retains to serve as an expert witness or to  
11 otherwise provide specialized advice to counsel or a Party in  
12 connection with this action and/or settlement of this action  
13 (through a potential business arrangement or otherwise),  
14 including but not limited to outside counsel, consultants,  
15 accountants and other financial professionals, provided such  
16 person has first executed a Nondisclosure Agreement;
- 17 (g) stenographers engaged to transcribe depositions the Parties  
18 conduct in this action; and
- 19 (h) this Court, including any appellate court, its support personnel,  
20 and court reporters.

21 10. Before disclosing any “Confidential” or “Confidential AEO”  
22 Discovery Material to any person referred to in subparagraphs 8(d), (f), or (g), or  
23 9(d) or (f), counsel must provide a copy of this Order to such person, who must  
24 sign the Nondisclosure Agreement attached hereto as Exhibit “A” stating that he or  
25 she has read this Order and agrees to be bound by its terms. Said counsel must  
26 retain each signed Nondisclosure Agreement, hold it in escrow, and produce it to  
27 opposing counsel either before such person is permitted to testify (at deposition or  
28 trial) or at the conclusion of the case, whichever comes first.

1           11. This Court retains discretion as to whether to afford confidential  
2 treatment to any Discovery Material designated as “Confidential” or “Confidential  
3 AEO” and submitted to the Court in connection with any motion, application, or  
4 proceeding that may result in an order and/or decision by the Court.

5           12. In filing “Confidential” or “Confidential AEO” Discovery Material  
6 with this Court, or filing portions of any pleadings, motions, or other papers that  
7 disclose such “Confidential” or “Confidential AEO” Discovery Material  
8 (“Confidential Court Submission”), the Parties shall publicly file a redacted copy  
9 of the Confidential Court Submission via the Electronic Case Filing System. The  
10 Parties shall file an unredacted copy of the Confidential Court Submission under  
11 seal with the Clerk of this Court. Such Confidential Court Submission shall be  
12 accompanied by an application to file the papers under seal, which application  
13 must demonstrate good cause for the under seal filing. The Parties shall serve this  
14 Court and opposing counsel with unredacted courtesy copies of the Confidential  
15 Court Submission.

16           13. Any Party who objects to any designation of confidentiality may at  
17 any time within the discovery period established by the District Judge to which this  
18 action is assigned, serve upon counsel for the Producing Party a written notice  
19 stating with particularity the grounds of the objection. If the Parties cannot reach  
20 agreement promptly, counsel for all affected Parties will address their dispute to  
21 this Court pursuant to the procedure set forth in Central District of California Local  
22 Rule 37.

23           14. Recipients of “Confidential” or “Confidential AEO” Discovery  
24 Material under this Order may use such material solely for the prosecution and  
25 defense of this action and any appeals thereto, and for the purpose of assessing  
26 settlement of this action, and not for any business, commercial, or competitive  
27 propose or in any other litigation proceeding. Nothing contained in this Order,  
28 however, will affect or restrict the rights of any Party with respect to its own

1 documents or information produced in this action.

2 15. Nothing in this Order will prevent any Party from producing any  
3 “Confidential” or “Confidential AEO” Discovery Material in its possession in  
4 response to a lawful subpoena or other compulsory process, or if required to  
5 produce it by law or by any government agency having jurisdiction, provided that  
6 such Party gives written notice to the Producing Party as soon as reasonably  
7 possible, and if permitted by the time allowed under the request, at least ten (10)  
8 days before any disclosure. Upon receiving such notice, the Producing Party will  
9 bear the burden to oppose compliance with the subpoena, other compulsory  
10 process, or other legal notice if the Producing Party deems it appropriate to do so.

11 16. Each person who has access to Discovery Material designated as  
12 “Confidential” or “Confidential AEO” pursuant to this Order must take all due  
13 precautions to prevent the unauthorized or in advertent disclosure of such material.

14 17. Within sixty (60) days of the final disposition of this action -including  
15 all appeals- all recipients of “Confidential” or “Confidential AEO” Discovery  
16 Material must either return the material – including all copies thereof-to the  
17 Producing Party, or, upon permission of the Producing Party, destroy such  
18 material-including all copies thereof, and provide evidence of such destruction to  
19 the Producing Party. In either event, by the sixty (60) day deadline, the recipient  
20 must certify its return or destruction by submitting a written certification to the  
21 Producing Party that affirms that it has not retained any copies, abstracts,  
22 compilations, summaries, or other forms of reproducing or capturing any of the  
23 “Confidential” or “Confidential AEO” Discovery Material. Notwithstanding this  
24 provision, the attorneys that the Parties have specifically retained for this action  
25 may retain an archival copy of all pleadings, motion papers, transcripts, expert  
26 reports, legal memoranda, correspondence, or attorney work product, even if such  
27 materials contain “Confidential” or “Confidential AEO” Discovery Material. Any  
28 such archival copies that contain or constitute “Confidential” or “Confidential



1 AEO” Discovery Material remain subject to this Order.

2 18. ~~The Parties agree and acknowledge that~~ The terms of this Order will  
3 continue throughout trial of this matter **only if the District Judge finds**  
4 **compelling reasons to maintain specific information as confidential.** ~~and shall~~  
5 ~~survive the termination of the litigation, notwithstanding the Court's lack of~~  
6 ~~jurisdiction from the date of commencement of trial.~~

7 19. The Parties acknowledge that any disclosure or exchange of  
8 “Confidential” or “Confidential AEO” Discovery Material that has occurred prior  
9 to the date of entry of this Order is subject to this Agreement.

10 20. This Court will retain jurisdiction over all persons subject to this  
11 Order to the extent necessary to enforce any obligations arising hereunder or to  
12 impose sanctions for any contempt thereof.

13 Good Cause being found, IT IS SO ORDERED.

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15 Dated: January 7, 2016

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Paul L. Abrams  
United States Magistrate Judge

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1 **Attachment “A”**

2 **NONDISCLOSURE AGREEMENT**

3 I, \_\_\_\_\_, state that:

4 1. My address is

5 \_\_\_\_\_

6 2. My present employer is

7 \_\_\_\_\_

8 3. My present occupation or job description is

9 \_\_\_\_\_

10 4. I have received a copy of the Protective Order entered in the case of *Lavi*  
11 *Industries v. Visiontron Corp.*, United States District Court – Central District of  
12 California Case No. 2:15-cv-03902-JLS-PLAx.

13 5. I have read and understand the Order Governing Use and Dissemination  
14 of Confidential Information (the “Order”). I hereby agree to comply with all of the  
15 terms of the Order, including holding in confidence and not disclosing to any  
16 unqualified person all documents, things, or information designated  
17 “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS EYES ONLY.”

18 6. I hereby expressly covenant that I will only use the documents, things, or  
19 information designated as “CONFIDENTIAL” or “CONFIDENTIAL  
20 ATTORNEYS EYES ONLY” in connection with the above-referenced litigation  
21 and that I will not use such documents, things, or information for any other  
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1 purpose. Further, I expressly covenant that I will not use such documents, things,  
2 or information for the benefit of myself or any other person or entity.

3  
4 7. Within sixty (60) days of notice by any Party that this litigation is over,  
5 or that my involvement is no longer deemed necessary, I expressly covenant that I  
6 will return all information and materials provided to me with the designation of  
7  
8 “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS EYES ONLY.” I will  
9 also provide a Declaration, submitted under penalty of perjury, which identifies by  
10 Bates Number, the information and materials that I am returning.

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12 8. I hereby consent to the jurisdiction of the United States District Court –  
13 Central District of California for the purpose of enforcing the Order and this  
14 agreement to be bound thereby.

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

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Signature

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Print Name

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