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11  
 12 UNITED STATES DISTRICT COURT  
 13 CENTRAL DISTRICT OF CALIFORNIA

14 EDWARD MAKARON, on behalf of himself  
 15 and all others similarly situated,

Case No.: 2:15-CV-05145-DDP-E

16 Plaintiff,

STIPULATION AND PROTECTIVE  
 ORDER — CONFIDENTIAL AND  
 HIGHLY CONFIDENTIAL  
 DESIGNATIONS

17 v.

18 ENAGIC USA INC.,

19 Defendant.  
 20  
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22 **IT IS HEREBY STIPULATED** by and between the parties to *Edward Makaron v.*  
 23 *Enagic USA, Inc.* (the "Parties"), by and through their respective counsel of record, that in order  
 24 to facilitate the exchange of information and documents which may be subject to confidentiality  
 25 limitations on disclosure due to federal laws, state laws, and privacy rights, the Parties stipulate  
 26 as follows:  
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1           1.     In this Stipulation and Protective Order, the words set forth below shall have the  
2 following meanings:

3           a.     “Proceeding” means the above-entitled proceeding *Makaron v. Enagic*  
4 *USA, Inc.*, No. 2:15-CV-05145-DDP-E, in the United States District Court for the Central  
5 District of California.

6           b.     “Court” means the Hon. Dean D. Pregerson, or any other judge to which  
7 this Proceeding may be assigned, including Court staff participating in such proceedings.

8           c.     “Confidential” means any Documents, Testimony, or Information which  
9 is in the possession of a Designating Party who believes in good faith that such Documents,  
10 Testimony, or Information is entitled to confidential treatment under the terms of this  
11 Stipulation and Protective Order or applicable law.

12           d.     “Confidential Materials” means any Documents, Testimony, or  
13 Information designated as “Confidential” pursuant to the provisions of this Stipulation and  
14 Protective Order.

15           e.     “Highly Confidential” means any information which belongs to a  
16 Designating Party who believes in good faith that the Disclosure of such information to another  
17 Party or non-Party would create a substantial risk of serious financial or other injury that cannot  
18 be avoided by less restrictive means.

19           f.     “Highly Confidential Materials” means any Documents, Testimony, or  
20 Information, designated as “Highly Confidential” pursuant to the provisions of this Stipulation  
21 and Protective Order.

22           g.     “Designating Party” means the Party that designates Documents,  
23 Testimony, or Information, as “Confidential” or “Highly Confidential.”

24           h.     “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge, give,  
25 or make available Materials, or any part thereof, or any information contained therein.

26           i.     “Documents” means (i) any “Writing,” “Original,” and “Duplicate” as  
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1 those terms are defined by California Evidence Code Sections 250, 255, and 260, which have  
2 been produced in discovery in this Proceeding by any person or entity, and (ii) any copies,  
3 reproductions, or summaries of all or any part of the foregoing.

4 j. "Information" means the content of Documents or Testimony.

5 k. "Testimony" means all depositions, declarations, or other testimony taken  
6 or used in this Proceeding.

7  
8 2. The Designating Party shall have the right to designate as "Highly Confidential"  
9 only the non-public Documents, Testimony, or Information that the Designating Party in good  
10 faith believes would create a substantial risk of serious financial or other injury, if Disclosed to  
11 another Party or non-Party, and that such risk cannot be avoided by less restrictive means.

12 3. The entry of this Stipulation and Protective Order does not alter, waive, modify,  
13 or abridge any right, privilege, or protection otherwise available to any Party with respect to the  
14 discovery of matters, including but not limited to any Party's right to assert the attorney-client  
15 privilege, the attorney work product doctrine, or other privileges, or any Party's right to contest  
16 any such assertion.

17 4. Any Documents, Testimony, or Information to be designated as "Confidential"  
18 or "Highly Confidential" must be clearly so designated before the Document, Testimony, or  
19 Information is Disclosed or produced. The parties may agree that a case name and number are to  
20 be part of the "Highly Confidential" designation. The "Confidential" or "Highly Confidential"  
21 designation should not obscure or interfere with the legibility of the designated Information. If  
22 the Designating Party makes Highly Confidential or Confidential materials available for  
23 inspection and copying, then the party making the copies must label the copies with the "Highly  
24 Confidential" or "Confidential" designation.

25 a. For Documents (apart from transcripts of depositions or other pretrial or  
26 trial proceedings), the Designating Party must affix the legend "Confidential" or "Highly  
27 Confidential" on each page of any Document containing such designated material.  
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1           b. For Testimony given in depositions the Designating Party may either:

2               i. identify on the record, before the close of the deposition, all  
3 “Confidential” or “Highly Confidential” Testimony, by specifying all portions of the Testimony  
4 that qualify as “Confidential” or “Highly Confidential;” or

5               ii. designate the entirety of the Testimony at the deposition as  
6 “Confidential” or “Highly Confidential” (before the deposition is concluded) with the right to  
7 identify more specific portions of the Testimony as to which protection is sought within 30 days  
8 following receipt of the deposition transcript. In circumstances where portions of the deposition  
9 Testimony are designated for protection, the transcript pages containing “Confidential” or  
10 “Highly Confidential” Information may be separately bound by the court reporter, who must  
11 affix to the top of each page the legend “Confidential” or “Highly Confidential,” as instructed  
12 by the Designating Party.  
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14           c. For Information produced in some form other than Documents, and for  
15 any other tangible items, including, without limitation, compact discs or DVDs, the Designating  
16 Party must affix in a prominent place on the exterior of the container or containers in which the  
17 Information or item is stored the legend “Confidential” or “Highly Confidential.” If only  
18 portions of the Information or item warrant protection, the Designating Party, to the extent  
19 practicable, shall identify the “Confidential” or “Highly Confidential” portions.  
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21           5. The inadvertent production by any of the undersigned Parties or non-Parties to  
22 the Proceedings of any Document, Testimony, or Information during discovery in this  
23 Proceeding without a “Confidential” or “Highly Confidential” designation, shall be without  
24 prejudice to any claim that such item is “Confidential” or “Highly Confidential” and such Party  
25 shall not be held to have waived any rights by such inadvertent production. In the event that any  
26 Document, Testimony, or Information that is subject to a “Confidential” or “Highly  
27 Confidential” designation is inadvertently produced without such designation, the Party that  
28 inadvertently produced the document shall give written notice of such inadvertent production

1 within twenty (20) days of discovery of the inadvertent production, together with a further copy  
2 of the subject Document, Testimony, or Information designated as “Confidential” or “Highly  
3 Confidential” (the “Inadvertent Production Notice”). Upon receipt of such Inadvertent  
4 Production Notice, the Party that received the inadvertently produced Document, Testimony, or  
5 Information shall promptly destroy the inadvertently produced Document, Testimony, or  
6 Information and all copies thereof, or, at the expense of the producing Party, return such  
7 together with all copies of such Document, Testimony or Information to counsel for the  
8 producing Party and shall retain only the “Confidential” or “Highly Confidential” materials.  
9 Should the receiving Party choose to destroy such inadvertently produced Document,  
10 Testimony, or Information, the receiving Party shall notify the producing Party in writing of  
11 such destruction within ten (10) days of receipt of written notice of the inadvertent production.  
12 This provision is not intended to apply to any inadvertent production of any Document,  
13 Testimony, or Information protected by attorney-client or work product privileges. In the event  
14 that this provision conflicts with any applicable law regarding waiver of confidentiality through  
15 the inadvertent production of Documents, Testimony or Information, such law shall govern.  
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17 6. In the event that counsel for a Party receiving Documents, Testimony or  
18 Information in discovery designated as “Confidential” or “Highly Confidential” objects to such  
19 designation with respect to any or all of such items, said counsel shall advise counsel for the  
20 Designating Party, in writing, of such objections, the specific Documents, Testimony or  
21 Information to which each objection pertains, and the specific reasons and support for such  
22 objections (the “Designation Objections”). Counsel for the Designating Party shall have thirty  
23 (30) days from receipt of the written Designation Objections to (a) agree in writing to de-  
24 designate Documents, Testimony, or Information pursuant to any or all of the Designation  
25 Objections or (b) file a motion with the Court seeking to uphold any or all designations on  
26 Documents, Testimony, or Information addressed by the Designation Objections (the  
27 “Designation Motion”). Pending a resolution of the Designation Motion by the Court, any and  
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1 all existing designations on the Documents, Testimony, or Information at issue in such Motion  
2 shall remain in place. The Designating Party shall have the burden on any Designation Motion  
3 of establishing the applicability of its "Confidential" or "Highly Confidential" designation. In  
4 the event that the Designation Objections are neither timely agreed to nor timely addressed in  
5 the Designation Motion, then such Documents, Testimony, or Information shall be de-  
6 designated in accordance with the Designation Objection applicable to such material.  
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8 7. Access to or Disclosure of Confidential Materials shall be permitted only to the  
9 following persons or entities:

10 a. the Court;

11 b. (1) Attorneys of record in the Proceeding and their affiliated attorneys,  
12 paralegals, clerical and secretarial staff employed by such attorneys who are actively involved  
13 in the Proceeding and are not employees of any Party; (2) In-house counsel to the undersigned  
14 Parties and the paralegal, clerical and secretarial staff employed by such counsel. Provided,  
15 however, that each non-lawyer given access to Confidential Materials shall be advised that such  
16 materials are being Disclosed pursuant to, and are subject to, the terms of this Stipulation and  
17 Protective Order and that they may not be Disclosed other than pursuant to its terms;

18 c. those officers, directors, partners, members, employees and agents of all  
19 non-designating Parties that counsel for such Parties deems necessary to aid counsel in the  
20 prosecution and defense of this Proceeding; provided, however, that prior to the Disclosure of  
21 Confidential Materials to any such officer, director, partner, member, employee or agent,  
22 counsel for the Party making the Disclosure shall deliver a copy of this Stipulation and  
23 Protective Order to such person, shall explain that such person is bound to follow the terms of  
24 such Order, and shall secure the signature of such person on a statement in the form attached  
25 hereto as Exhibit A, a copy of which must be provided to Designating Party within 21 days of  
26 execution;  
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1 d. court reporters in this Proceeding (whether at depositions, hearings, or  
2 any other proceeding);

3 e. any deposition, trial, or hearing witness in the Proceeding who previously  
4 has had access to the Confidential Materials, or who is currently or was previously an officer,  
5 director, partner, member, employee or agent of an entity that has had access to the Confidential  
6 Materials;

7 f. any deposition or non-trial hearing witness in the Proceeding who  
8 previously did not have access to the Confidential Materials; provided, however, that each such  
9 witness given access to Confidential Materials shall be advised that such materials are being  
10 Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective Order and  
11 that they may not be Disclosed other than pursuant to its terms;

12 g. mock jury participants, provided, however, that prior to the Disclosure of  
13 Confidential Materials to any such mock jury participant, counsel for the Party making the  
14 Disclosure shall deliver a copy of this Stipulation and Protective Order to such person, shall  
15 explain that such person is bound to follow the terms of such Order, and shall secure the  
16 signature of such person on a statement in the form attached hereto as Exhibit A, a copy of  
17 which must be provided to Designating Party within 21 days of execution.

18 h. outside experts or expert consultants consulted by the undersigned Parties  
19 or their counsel in connection with the Proceeding, whether or not retained to testify at any oral  
20 hearing; provided, however, that prior to the Disclosure of Confidential Materials to any such  
21 expert or expert consultant, counsel for the Party making the Disclosure shall deliver a copy of  
22 this Stipulation and Protective Order to such person, shall explain its terms to such person, and  
23 shall secure the signature of such person on a statement in the form attached hereto as Exhibit  
24 A. It shall be the obligation of counsel, upon learning of any breach or threatened breach of this  
25 Stipulation and Protective Order by any such expert or expert consultant, to promptly notify  
26 counsel for the Designating Party of such breach or threatened breach; and  
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1 i. any other person or entity that the Designating Party agrees to in writing.

2 8. Access to or Disclosure of Highly Confidential Materials shall be permitted only  
3 to the following persons or entities:

4 a. Trial Counsel for the Parties, their partners and associates, and staff and  
5 supporting personnel of such attorneys, such as paralegal assistants, secretarial, stenographic  
6 and clerical employees, and outside copying services, who are working on this Proceeding  
7 under the direction of such attorneys and to whom it is necessary that the Highly Confidential  
8 Materials be Disclosed for purposes of this Proceeding. Such employees, assistants and third  
9 parties, to whom such access is permitted or Disclosure is made shall, prior to such access or  
10 Disclosure, be advised of, and become subject to, the provisions of this Protective Order;

11 b. outside experts or expert consultants consulted by the undersigned Parties  
12 or their counsel in connection with the Proceeding, whether or not retained to testify at any oral  
13 hearing; provided, however, that prior to the Disclosure of Highly Confidential Materials to any  
14 such expert or expert consultant, counsel for the Party making the Disclosure shall deliver a  
15 copy of this Stipulation and Protective Order to such person, shall explain its terms to such  
16 person, and shall secure the signature of such person on a statement in the form attached hereto  
17 as Exhibit A prior to the Disclosure of Highly Confidential Materials. A copy of said Exhibit A  
18 must be provided to Designating Party within 21 days of execution. Trial Counsel, upon  
19 learning of any breach or threatened breach of this Stipulation and Protective Order by any such  
20 expert or expert consultant must promptly notify Trial Counsel for the Designating Party of  
21 such breach or threatened breach;

22 c. any person who authored or received the Documents, Testimony, or  
23 Information or thing designated "Highly Confidential";

24 d. court reporters in this Proceeding (whether at depositions, hearings, or  
25 any other proceeding); and

26 e. the Court.  
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1 f. The parties agree that the improper disclosure of Highly Confidential  
2 Materials will result in irreparable harm to the Designating Party and that the Court shall impose  
3 such sanctions as it deems appropriate including but not limited to dismissal of the lawsuit or  
4 referral of the violation to appropriate bar associations or other disciplinary bodies.

5 9. Confidential Materials and Highly Confidential Materials shall be used by the  
6 persons or entities receiving them only for the purposes of preparing for, conducting,  
7 participating in the conduct of, prosecuting or defending the Proceeding, and not for any  
8 business or other purpose whatsoever.

9 10. Any Party to the Proceeding (or other person subject to the terms of this  
10 Stipulation and Protective Order) may ask the Court, after appropriate notice to the other Parties  
11 to the Proceeding, to modify or grant relief from any provision of this Stipulation and Protective  
12 Order.

13 11. Entering into, agreeing to, or complying with the terms of this Stipulation and  
14 Protective Order shall not:

15 a. operate as an admission by any person that any particular Document,  
16 Testimony, or Information marked "Confidential" or "Highly Confidential" contains or reflects  
17 trade secrets, proprietary, confidential or competitively sensitive business, commercial,  
18 financial or personal information; or

19 b. prejudice in any way the right of any Party (or any other person subject to  
20 the terms of this Stipulation and Protective Order):

21 i. to seek a determination by the Court of whether any particular  
22 Confidential Materials or Highly Confidential Materials should be subject to protection under  
23 the terms of this Stipulation and Protective Order; or

24 ii. to seek relief from the Court on appropriate notice to all other  
25 Parties to the Proceeding from any provision(s) of this Stipulation and Protective Order, either  
26 generally or as to any particular Document, Material or Information.  
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1           12. Any Party to the Proceeding who has not executed this Stipulation and Protective  
2 Order as of the time it is presented to the Court for signature may thereafter become a Party to  
3 this Stipulation and Protective Order by its counsel's signing and dating a copy thereof and  
4 filing the same with the Court, and serving copies of such signed and dated copy upon the other  
5 Parties to this Stipulation and Protective Order.  
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7           13. Any Information that may be produced by a non-Party witness in discovery in  
8 the Proceeding pursuant to subpoena or otherwise may be designated by such non-Party as  
9 "Confidential" or "Highly Confidential" under the terms of this Stipulation and Protective  
10 Order, and any such designation by a non-Party shall have the same force and effect, and create  
11 the same duties and obligations, as if made by one of the undersigned Parties hereto. Any such  
12 designation shall also function as consent by such producing non-Party to the authority of the  
13 Court in the Proceeding to resolve and conclusively determine any motion or other application  
14 made by any person or Party with respect to such designation, or any other matter otherwise  
15 arising under this Stipulation and Protective Order.  
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17           14. If any person subject to this Stipulation and Protective Order who has custody of  
18 any Confidential Materials or Highly Confidential Materials receives a subpoena or other  
19 process ("Subpoena") from any government or other person or entity demanding production of  
20 such materials, the recipient of the Subpoena shall promptly give notice of the same by  
21 electronic mail transmission, followed by either express mail or overnight delivery to counsel of  
22 record for the Designating Party, and shall furnish such counsel with a copy of the Subpoena.  
23 Upon receipt of this notice, the Designating Party may, in its sole discretion and at its own cost,  
24 move to quash or limit the Subpoena, otherwise oppose production of the Confidential Materials  
25 or Highly Confidential Materials, or seek to obtain confidential treatment of such materials from  
26 the subpoenaing person or entity to the fullest extent available under law. The recipient of the  
27 Subpoena may not produce any Confidential Materials or Highly Confidential Materials  
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1 pursuant to the Subpoena without first providing a copy of the Subpoena to the Designating  
2 Party and prior to the date specified for production on the Subpoena.

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4 15. Nothing in this Stipulation and Protective Order shall be construed to preclude  
5 either Party from asserting in good faith that certain Confidential Materials or Highly  
6 Confidential Materials require additional protection. The Parties shall meet and confer to agree  
7 upon the terms of such additional protection.

8  
9 16. If, after execution of this Stipulation and Protective Order, any Confidential  
10 Materials or Highly Confidential Materials submitted by a Designating Party under the terms of  
11 this Stipulation and Protective Order is Disclosed by a non-Designating Party to any person  
12 other than in the manner authorized by this Stipulation and Protective Order, the non-  
13 Designating Party responsible for the Disclosure shall bring all pertinent facts relating to the  
14 Disclosure of such Confidential Materials or Highly Confidential Materials to the immediate  
15 attention of the Designating Party.

16  
17 17. This Stipulation and Protective Order is entered into without prejudice to the  
18 right of any Party to knowingly waive the applicability of this Stipulation and Protective Order  
19 to any Confidential Materials or Highly Confidential Materials designated by that Party. If the  
20 Designating Party uses Confidential Materials or Highly Confidential Materials in a non-  
21 Confidential manner, then the Designating Party shall advise that the designation no longer  
22 applies.

23  
24 18. Where any Confidential Materials or Highly Confidential Materials, or  
25 Information derived therefrom, is included in any motion or other proceeding governed by  
26 California Rules of Court, Rules 2.550 and 2.551, the Parties and any involved non-party shall  
27 follow those rules. With respect to discovery motions or other proceedings not governed by  
28 California Rules of Court, Rules 2.550 and 2.551, the following shall apply: If Confidential  
Materials, Highly Confidential Materials, or Information derived therefrom are submitted to or  
otherwise disclosed to the Court in connection with discovery motions and proceedings, the

1 same shall be separately filed under seal with the clerk of the Court in an envelope marked:  
2 “CONFIDENTIAL — FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER AND  
3 WITHOUT ANY FURTHER SEALING ORDER REQUIRED.”  
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5 19. The Parties shall meet and confer regarding the procedures for use of any  
6 Confidential Materials or Highly Confidential Materials at trial and shall move the Court for  
7 entry of an appropriate order.

8 20. Nothing in this Stipulation and Protective Order shall affect the admissibility into  
9 evidence of Confidential Materials or Highly Confidential Materials, or abridge the rights of  
10 any person to seek judicial review or to pursue other appropriate judicial action with respect to  
11 any ruling made by the Court concerning the issue of the status of any Confidential Materials or  
12 Highly Confidential Materials.

13 21. This Stipulation and Protective Order shall continue to be binding after the  
14 conclusion of this Proceeding and all subsequent proceedings arising from this Proceeding,  
15 except that a Party may seek the written permission of the Designating Party or may move the  
16 Court for relief from the provisions of this Stipulation and Protective Order. The Court shall  
17 retain jurisdiction to enforce, modify, or reconsider this Stipulation and Protective Order, even  
18 after the Proceeding is terminated.

19 22. Upon written request made within thirty (30) days after the settlement or other  
20 termination of the Proceeding, the undersigned Parties shall have thirty (30) days to either (a)  
21 promptly return to counsel for each Designating Party all Confidential Materials and Highly  
22 Confidential Materials, and all copies thereof (except that counsel for each Party may maintain  
23 in its files, in continuing compliance with the terms of this Stipulation and Protective Order, all  
24 work product, and one copy of each pleading filed with the Court, (b) agree with counsel for the  
25 Designating Party upon appropriate methods and certification of destruction or other disposition  
26 of such materials, or (c) as to any Documents, Testimony, or other Information not addressed by  
27 sub-paragraphs (a) and (b), file a motion seeking a Court order regarding proper preservation of  
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1 such Materials. To the extent permitted by law the Court shall retain continuing jurisdiction to  
2 review and rule upon the motion referred to in sub-paragraph (c) herein.

3  
4 23. After this Stipulation and Protective Order has been signed by counsel for all  
5 Parties, it shall be presented to the Court for entry. Counsel agree to be bound by the terms set  
6 forth herein with regard to any Confidential Materials or Highly Confidential Materials that  
7 have been produced before the Court signs this Stipulation and Protective Order.

8  
9 24. The Parties and all signatories to the Certification attached hereto as Exhibit A  
10 agree to be bound by this Stipulation and Protective Order pending its approval and entry by the  
11 Court. In the event that the Court modifies this Stipulation and Protective Order, or in the event  
12 that the Court enters a different Protective Order, the Parties agree to be bound by this  
13 Stipulation and Protective Order until such time as the Court may enter such a different Order.  
14 It is the Parties' intent to be bound by the terms of this Stipulation and Protective Order pending  
15 its entry so as to allow for immediate production of Confidential Materials and Highly  
16 Confidential Materials under the terms herein.

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18 This Stipulation and Protective Order may be executed in counterparts.

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AGREED AS TO FORM AND SUBSTANCE:

*/s/ Tom Wheeler*  
\_\_\_\_\_  
Tom Wheeler  
Attorneys for Plaintiff

*/s/ Dwight M. Francis*  
\_\_\_\_\_  
Dwight M. Francis  
Attorneys for Defendant

Date: November 26, 2017

Date: November 26, 2017

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**ORDER**

**GOOD CAUSE APPEARING**, the Court hereby approves this Stipulation and Protective Order.

**IT IS SO ORDERED.**

Dated: 11/27/17



THE HONORABLE CHARLES F. EICK  
UNITED STATES MAGISTRATE JUDGE

**EXHIBIT A**

**CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS**

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6 I hereby acknowledge that I, \_\_\_\_\_ [NAME],  
7 \_\_\_\_\_ [POSITION AND EMPLOYER], am  
8 about to receive Confidential Materials or Highly Confidential Materials supplied in connection  
9 with the Proceeding, *Makaron v. Enagic USA, Inc.*, No. 2:15-CV-05145-DDP-E, in the United  
10 States District Court for the Central District of California. I certify that I understand that the  
11 Confidential Materials or Highly Confidential Materials provided to me are subject to the terms  
12 and restrictions of the Stipulation and Protective Order filed in this Proceeding. I have been  
13 given a copy of the Stipulation and Protective Order; I have read it; and I agree to be bound by  
14 its terms.

15 I understand that the Confidential Materials and Highly Confidential Materials, as  
16 defined in the Stipulation and Protective Order, including any notes or other records that may be  
17 made regarding any such materials, shall not be Disclosed to anyone except as expressly  
18 permitted by the Stipulation and Protective Order. I will not copy or use, except solely for the  
19 purposes of this Proceeding, any Confidential Materials or Highly Confidential Materials  
20 obtained pursuant to this Stipulation and Protective Order, except as provided therein or  
21 otherwise ordered by the Court in the Proceeding.

22 I further understand that I am to retain all copies of all Confidential Materials and  
23 Highly Confidential Materials provided to me in the Proceeding in a secure manner, and that all  
24 copies of such materials are to remain in my personal custody until termination of my  
25 participation in this Proceeding, whereupon the copies of such materials will be returned to  
26 counsel who provided me with such materials.  
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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this \_\_\_\_ day of \_\_\_\_, 20\_\_, at \_\_\_\_\_.

DATED: \_\_\_\_\_

BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
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