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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEN-MAT HOLDINGS, LLC,
Plaintiff,
v.
CAO GROUP, INC.,
Defendant.

Case No: CV15-5716-PSG-JEM
DISCOVERY MATTER

**[PROPOSED] PROTECTIVE
ORDER**

Magistrate Judge John E. McDermott

1 This Order governs the handling of all information, documents, deposition
2 testimony and exhibits, discovery answers and responses, and other written,
3 recorded or graphic matter produced or provided in this lawsuit, formally or
4 informally, which are designated as "CONFIDENTIAL" (hereinafter defined)
5 pursuant to this Order. This Order also governs all notes, extracts, summaries or
6 other information derived from information designated as "CONFIDENTIAL" and
7 all pleadings, briefs, memoranda or other filings that quote or convey the substance
8 of information designated as "CONFIDENTIAL" under the terms of this Order.

9 THEREFORE, the undersigned having so stipulated, this Court, pursuant to
10 Fed. R. Civ. P. 26(c), having determined that good cause exists to enter a Protective
11 Order,

12 HEREBY ORDERS that:

13 1. For the purposes of this Order, the following definitions shall govern:

14 "CONFIDENTIAL" means the designation for product research and
15 development, commercial, financial, marketing and sales, or personnel information
16 that a party maintains in confidence and the public disclosure of which would
17 potentially harm the party's business operations or reveal a party's private
18 information;

19 "COUNSEL" means all attorneys of record in the above captioned case and
20 any lawyers employed by their law firms in connection with this litigation, but does
21 not include lawyers employed on behalf of third parties or witnesses;

22 "COURT PERSONNEL" means judges, clerks, or other members or
23 employees of any court of competent jurisdiction over proceedings in or related to
24 the litigation;

25 "DOCUMENT" shall have the same meaning as set forth by Rule
26 34(a)(1)(A) of the Federal Rules of Civil Procedure;

27 "EXPERT" means any person engaged by a party as a testifying or
28 consulting expert witness; and

1 “SUPPORT PERSONNEL” means any clerical or support staff or other
2 employee of COUNSEL or an EXPERT assisting with this litigation, specifically
3 including (i) secretarial support staff, (ii) paralegal employees, (iii) any independent
4 stenographer or videographer retained to record and transcribe testimony in this
5 action, (iv) litigation personnel or contract attorneys acting under the direction of
6 COUNSEL; (v) any in-house or independent entity retained by COUNSEL for the
7 purpose of data collection, processing, hosting, and production, and (vi) any in-
8 house or independent entity retained or used for the purpose of making photocopies
9 or other replications or duplications of material designated under this Order.

10 2. A party may designate as “CONFIDENTIAL” any DOCUMENTS,
11 information, and materials generated or produced in response to any discovery,
12 including but not limited to DOCUMENTS, things, and responses to requests for
13 documents and things, interrogatory answers, deposition testimony, answers to
14 requests for admission, expert reports, and responses to other discovery demands,
15 as well as any copies, notes, abstracts, or summaries that contain information that
16 qualifies for such designations as defined herein.

17 3. Information designated as “CONFIDENTIAL” shall be used only in
18 connection with this case and for no other purpose. Except, information produced
19 and designated “CONFIDENTIAL” by Den-Mat Holdings, LLC or CAO Group,
20 Inc. may also be used in the following pending lawsuits: *CAO Group, Inc. v. Den-*
21 *Mat Holdings, LLC*, 2:15-cv-07721-SJO-FFM (C.D. Cal), and *CAO Group, Inc. v.*
22 *Den-Mat Holdings, LLC*, 2:14-cv-413-DB (D. Utah), provided that such
23 information is treated as “CONFIDENTIAL” under this Order.

24 4. This Order also applies to any non-party who produces or receives
25 information designated as “CONFIDENTIAL” pursuant to a discovery request or
26 subpoena in this case. Accordingly, references to “party” include “non-parties.” A
27 Party requesting discovery shall serve a copy of this Order simultaneously with any
28 discovery request made to a non-party.

1 5. A producing party shall stamp or mark any DOCUMENT, material,
2 information, or thing, or portion thereof, as "CONFIDENTIAL" prior to disclosure.
3 Unless otherwise agreed or ordered by the Court, the producing party shall retain
4 the originals of all documents and legible copies shall be produced in lieu thereof.
5 If, however, a party elects to produce for inspection original documents or other
6 material that is not marked or stamped, the producing party may designate the
7 documents or materials under this Order by notifying the receiving parties at the
8 time of production. After selection by the inspecting party of specified materials or
9 documents for copying, the copies shall be designated by placing, if possible, the
10 "CONFIDENTIAL" designation on the copies.

11 6. "CONFIDENTIAL" material disclosed by non-parties shall be
12 stamped or marked "CONFIDENTIAL" by any party if not so designated by the
13 producing non-party within ten (10) business days of the receipt of the materials or
14 documents from the producing non-party. Such designation shall be made in
15 writing to all COUNSEL of record and the producing non-party (or, if applicable,
16 the producing non-party's counsel). Until expiration of the 10 day period, any
17 document or thing that is produced or disclosed shall be treated as
18 "CONFIDENTIAL."

19 7. "CONFIDENTIAL" material disclosed during a deposition (including
20 but not limited to the transcript, exhibits, or videotape) by parties or non-parties
21 may be so designated on the record at the deposition by COUNSEL, the non-party,
22 or, if applicable, the non-party's counsel, and unless otherwise agreed, the Court
23 Reporter shall be instructed to transcribe such testimony with each page thereof
24 clearly marked as "CONFIDENTIAL." At any deposition conducted in this case,
25 COUNSEL shall attempt in good faith preliminarily to identify and designate
26 "CONFIDENTIAL" material in testimony and exhibits without prejudice to their
27 right to designate other testimony or exhibits or to withdraw such designations after
28 receipt of the final (non-rough) deposition transcript. Alternatively,

1 “CONFIDENTIAL” material disclosed during a deposition may be designated as
2 such within ten (10) business days following receipt by COUNSEL of the final
3 (non-rough) deposition transcript prepared by the Court Reporter. Such designation
4 shall be made in writing to (i) all COUNSEL of record, (ii) if applicable, to the non-
5 party deponent (or the non-party’s counsel), and (iii) the Court Reporter, and shall
6 request that the Court Reporter reissue corrected copies of the final deposition
7 transcript reflecting the designations. Following receipt of corrected transcripts
8 from the Court Reporter, all parties in possession of the non-designated transcript
9 promptly shall destroy all such non-designated copies. Until expiration of the 10-
10 day designation period, any deposition testimony shall be treated as
11 “CONFIDENTIAL.” If the parties or non-parties fail timely to designate any
12 testimony from a deposition as “CONFIDENTIAL” none of the deposition
13 testimony shall be treated as such under this Order; provided, however, that to the
14 extent that documents or other materials marked as deposition exhibits bear a
15 “CONFIDENTIAL” designation, such materials will retain their designation
16 notwithstanding the failure to designate the corresponding deposition testimony.

17 8. Nothing contained herein shall preclude the receiving party from
18 contesting a confidentiality designation under this Order. A receiving party is not
19 obligated to challenge a designation of “CONFIDENTIAL” at the time such a
20 designation is made, and any failure to do so will not waive that party’s right to
21 contest the designation at a later time. If a receiving party reasonably believes that
22 information marked “CONFIDENTIAL” is not properly designated, that party shall
23 notify the producing party or entity, in writing, specifically identifying the
24 information and the reasons why they believe it is not subject to this Order.
25 Thereafter, the parties must meet and confer within five (5) business days in good
26 faith to attempt to resolve the dispute. If an agreement is not reached, after the
27 parties use reasonable efforts to resolve their disagreement, then, consistent with
28 Civil Local Rules 37-1 and 37-2, either the producing or receiving party may move

1 the Court for a determination as to whether the designation is appropriate. During
2 the pendency of such a motion, the designated document shall maintain its original
3 designation of "CONFIDENTIAL."

4 9. It is the general intent of the parties to limit disclosure of information
5 designated as "CONFIDENTIAL" to the smallest number of persons possible,
6 consistent with the needs of this litigation. Disclosure by the receiving party of any
7 information and materials designated "CONFIDENTIAL" under this Order is
8 limited to (i) COUNSEL, (ii) COURT PERSONNEL, (iii) EXPERTS, (iv)
9 SUPPORT PERSONNEL, (v) the producing party, including its current employees,
10 and any indicated author or recipient of the information designated as
11 "CONFIDENTIAL"; (vi) persons testifying in depositions or court proceedings
12 (including, without limitation, persons preparing to testify in such depositions or
13 court proceedings) and their counsel to the extent the information designated as
14 "CONFIDENTIAL" was authored by, addressed to, or received by the person
15 testifying; (vii) in-house attorneys of parties who have a need to use such
16 information for the purposes of this litigation; and (viii) any other person agreed to
17 in writing by the producing party or by further order of the Court.

18 10. The receiving party shall be permitted to disclose "CONFIDENTIAL"
19 material to (i) EXPERTS, (ii) in-house attorneys of parties, and (iii) any other
20 person agreed to in writing by the producing party or by further order of the Court,
21 only after such persons have executed an Undertaking in the form attached as
22 Exhibit A to this Order. Prior to disclosure of any "CONFIDENTIAL" material to
23 EXPERTS, a copy of the EXPERT's executed Undertaking must be provided to the
24 producing party. If the producing party does not object within five (5) business
25 days, the non-producing party may thereafter disclose the "CONFIDENTIAL
26 material to the EXPERT. If the producing party does object, the parties agree to
27 meet and confer within three (3) business days to resolve the issue. If no resolution
28 is reached between the parties, the producing party shall bring the matter to the

1 Court's attention within five (5) business days. No "CONFIDENTIAL" material
2 shall be disclosed until resolution of the matter by the Court. For avoidance of
3 doubt, the receiving party's COUNSEL and any EXPERT shall be permitted to
4 disclose "CONFIDENTIAL" material to SUPPORT PERSONNEL without the
5 need for a written Undertaking from such SUPPORT PERSONNEL, provided each
6 individual is instructed to maintain such information in strict confidence and then
7 only to the extent necessary to assist in the litigation.

8 11. Notwithstanding paragraph 10, and subject to the producing party's
9 consent, which shall not be unreasonably withheld, information designated as
10 "CONFIDENTIAL" may also be disclosed by a receiving party to a deposition or
11 trial witness who is not indicated as an author or recipient of the information, and, if
12 applicable, the counsel representing the witness at deposition or trial, provided that
13 the receiving party has a good faith basis to believe that the witness would have
14 seen or otherwise been given access to the designated information in the ordinary
15 course of the witness's business, and provided further that the witness executes an
16 Undertaking in the form attached as Exhibit A to this Order or agrees on the record
17 to be bound by the provisions of the Undertaking. However, nothing in this
18 provision shall permit a receiving party to disclose information designated as
19 "CONFIDENTIAL" to a deposition or trial witness who would not already have
20 access to such information under this Order, or to such witness's counsel, prior to,
21 or in preparation for, testimony.

22 12. If a receiving party receives a subpoena or other compulsory process
23 by any court, administrative agency, legislative body, or other person or entity
24 commanding production of any information designated by a producing party as
25 "CONFIDENTIAL," the receiving party shall immediately provide notice thereof
26 to the designating party and its COUNSEL. Nothing in this Order shall be
27 construed as authorizing a party to disobey a lawful subpoena issued in another
28 action.

1 13. All transcripts, exhibits, discovery responses, and any other
2 documents filed with the Court prior to trial that have been designated as
3 “CONFIDENTIAL” shall be filed and served consistent with the process required
4 by the United States District Court for the Central District of California. The
5 producing party shall be deemed to consent to any motions to seal that a receiving
6 party must file in order to file the designating party’s “CONFIDENTIAL” as part of
7 any brief, motion, letter, or other filing with the Court. If at any time during the
8 pendency of an action, material being maintained by the Court under seal no longer
9 meets the legal and factual criteria for continued maintenance under seal, either
10 party may file a request with the Court that the filings be unsealed.

11 14. The inadvertent or unintentional disclosure by a party of information
12 it believes constitutes “CONFIDENTIAL” without the proper designation or
13 marking at the time of the disclosure shall not constitute a waiver of a claim of
14 confidentiality either as to the specific information disclosed or as to any other
15 information relating thereto or on the same or related subject matter, provided that
16 the receiving party is notified in writing and that properly marked or designated
17 materials or documents are provided pursuant to this Order. Once such a
18 designation has been made, the relevant documents or materials shall be treated as
19 “CONFIDENTIAL” in accordance with this Order as if they had been initially so
20 designated, provided, however, that if the discovery material that was inadvertently
21 not designated had been filed with the Court on the public record prior to its
22 designation, the producing party that failed to make the designation shall move for
23 appropriate relief. The receiving party shall not be responsible for the disclosure or
24 other distribution of “CONFIDENTIAL” material belatedly designated in
25 accordance with this Order as to such disclosure or distribution that may have
26 occurred before the receipt of such written notification or a claim of confidentiality,
27 and such disclosure or distribution shall not be deemed to be a violation of this
28 Order. However, to the extent any document which was subsequently marked as

1 "CONFIDENTIAL" had been distributed to persons unauthorized to view material
2 designated as "CONFIDENTIAL" prior to the designation, counsel for the
3 receiving party shall notify such persons that they must return or destroy all copies
4 of the newly-designated documents.

5 15. Pursuant to Federal Rule of Evidence 502, the inadvertent or
6 unintentional disclosure of a communication or information protected by the
7 attorney-client privilege or work product protection will not operate as a waiver of
8 such privilege or protection. Further, inadvertent or unintentional disclosure of
9 privileged or protected communications or information in the present lawsuit shall
10 not operate as a waiver in any other federal or state court proceeding. This
11 provision applies to the parties to this lawsuit, the parties' representatives,
12 employees and agents, and COUNSEL, including any lawyers or EXPERTS
13 specifically employed by them in connection with this lawsuit and SUPPORT
14 PERSONNEL. Upon discovery by a producing party (or upon receipt of notice
15 from a receiving party) that it may have inadvertently produced privileged
16 information, the producing party shall, within ten (10) calendar days of such
17 discovery, request the return of such information in writing by specifically
18 identifying the information and stating the basis for withholding it. After being
19 notified, any receiving party shall return such requested information within ten (10)
20 calendar days. If a receiving party disputes the inadvertent production and/or
21 privilege claim, the receiving party may retain a single copy of the disputed
22 information for the sole purpose of resolving the dispute. The receiving party shall
23 notify the producing party of the dispute and the basis therefore in writing within
24 ten (10) calendar days of receipt of the request for the return of the information.
25 The producing party and receiving party thereafter shall meet and confer in good
26 faith regarding the disputed claim within ten calendar (10) days. In the event that
27 the producing party and receiving party do not resolve their dispute, either of them
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1 may bring a motion for a determination of whether a privilege applies. The
2 producing party must preserve the information until the claim is resolved.

3 16. Nothing herein shall be construed as a waiver of any party's right to
4 object to the production or admissibility of any evidence or testimony produced or
5 based upon any grounds other than confidentiality. Moreover, nothing herein shall
6 be construed as a limitation on the producing party's right to use or disclose its own
7 information as it sees fit without the prior consent of the opposing party or this
8 Court notwithstanding its designation as "CONFIDENTIAL" for this matter.

9 17. Notwithstanding any other provision of this Order, the Parties shall
10 confer and attempt to agree before any Court trial or hearing on the procedures to
11 be included in a protective order pursuant to which "CONFIDENTIAL" material
12 may be used or introduced into evidence at such trial or hearing. A party intending
13 to use information designated as "CONFIDENTIAL" during such hearing or trial
14 shall give reasonable notice to all other parties of such intended use. At the request
15 of the party who designated the material as "CONFIDENTIAL" pursuant to this
16 Order, the Court may restrict attendance at that portion of the proceeding where
17 said material is to be discussed as the Court deems appropriate, including the
18 sealing of the transcript.

19 18. Any information designated as "CONFIDENTIAL" and submitted by
20 any party via a pleading or motion or offered into evidence at a hearing or trial shall
21 maintain its confidentiality designation until such time as the Court rules to the
22 contrary.

23 19. Within sixty (60) calendar days of termination of this litigation,
24 whether by final judgment and appeal, or by settlement, all materials and
25 documents designated as "CONFIDENTIAL," as well as all copies, summaries, and
26 abstracts thereof, shall be returned to the producing party or destroyed. If the
27 receiving party elects to destroy "CONFIDENTIAL" materials, it shall certify the
28 completion of destruction to the producing party. Notwithstanding the foregoing,

1 COUNSEL for the parties may retain copies of all documents that reflect attorney
2 work product, all documents that have been filed with the Court, deposition and
3 trial transcripts, and all exhibits thereto, interrogatory responses, and responses to
4 requests for admission.

5 20. This Order shall remain in full force and effect indefinitely until
6 modified, superseded, or terminated by executed written agreement of the parties or
7 by order of the Court. This Court shall retain continuing jurisdiction, beyond the
8 conclusion of this litigation, including without limitation, during any appeal, over
9 all persons and parties bound by this Stipulated Protected Order to enforce the
10 provisions of this Order pursuant to its contempt powers and with all other powers
11 provided for in this Order.

12 21. This Order is without prejudice to the right of any party to seek relief
13 from the Court from any of the provisions or restrictions provided in this Order.
14 Moreover, nothing in this Order shall affect the right of any party to seek additional
15 protections against the disclosure of any documents or materials.

16 22. Nothing contained in this Order shall be construed as an admission or
17 agreement that any document or information, or any testimony relating to such
18 document or information, is or would be subject to discovery or admissible as
19 evidence in this litigation or any other proceeding.

20 23. This Order shall apply to and shall bind present or subsequently added
21 parties to this lawsuit.

22 Any person may apply to this Court at any time, upon proper notice, for the
23 modification or vacation of this Order. Moreover, this Order may be amended by
24 the Court, and in making any amendments, the Court shall be guided by the purpose
25 of this Order, which is to provide adequate protection for material that is truly
26 confidential without unreasonably interfering with the efficient prosecution and
27 defense of this action or the interests of the public.
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1 **IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.**

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3 DATED: June 28, 2016

PERKINS COIE LLP

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By: /s/Lara J. Dueppen
Lara J. Dueppen

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DATED: June 28, 2016

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DATED: June 28, 2016

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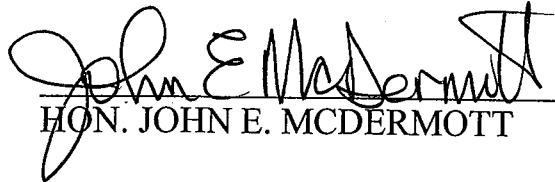
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: June 29, 2016


HON. JOHN E. MCDERMOTT