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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KALOUD, INC., a California corporation,
Plaintiff,

v.

GLOBAL HOOKAH DISTRIBUTORS,
INC., a North Carolina corporation, d/b/a
SOUTH SMOKE; SHISHA
WHOLESALEERS, INC., an Illinois
corporation; and DOES 1-10, inclusive,
Defendants.

Case No. 2:15-cv-07646-MWF-MRWx
Hon. Michael R. Wilner

[DISCOVERY MATTER]

STIPULATED PROTECTIVE ORDER

[PROPOSED] STIPULATED PROTECTIVE ORDER

1 1. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential, proprietary,
4 or private information for which special protection from public disclosure and from use for
5 any purpose other than prosecuting this litigation may be warranted. Accordingly, the
6 parties hereby stipulate to and petition the Court to enter the following Stipulated
7 Protective Order. The parties acknowledge that this Order does not confer blanket
8 protections on all disclosures or responses to discovery and that the protection it affords
9 from public disclosure and use extends only to the limited information or items that are
10 entitled to confidential treatment under the applicable legal principles. The parties further
11 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does
12 not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth
13 the procedures that must be followed and the standards that will be applied when a party
14 seeks permission from the court to file material under seal.

15 1.2 GOOD CAUSE STATEMENT

16 Good cause exists for this stipulated protective order. The Parties are competitors in
17 the hookah business. They anticipate exchanging financial information as well as
18 information about sales, revenues, customer lists, distribution efforts, the manufacturing
19 process and other information that is highly sensitive and/or trade secret. Moreover, the
20 parties are competitors. Because some of the information may provide a competitive
21 advantage, the parties anticipate the need for a Highly Confidential Attorneys' Eyes Only
22 designation.

23
24 2. DEFINITIONS

25 2.1 Action: This lawsuit, Kaloud v. Global Hookah et al., 2:15-cv-07646-MWF-
26 MRW.

27 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
28 information or items under this Order.

1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
2 generated, stored or maintained) or tangible things that qualify for protection under Federal
3 Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

4 2.4 “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES ONLY Information or
5 Items: “Confidential” information as defined in Section 2.3 and party financial or personnel
6 information whose content, is likely to cause significant competitive harm to its existing or
7 prospective commercial relationships if disclosed to third parties. General examples of
8 such “Attorneys Eyes Only” information may include trade secrets, minutes of Board
9 meetings, pricing data, financial data, sales information, customer confidential information,
10 agreements or relationships with non-parties, market projections or forecasts, strategic
11 business plans, selling or marketing strategies, or information about employees. These
12 examples are provided for illustrative purposes only and do not constitute an admission of
13 the relevancy of any such materials in this litigation.

14 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as their
15 support staff).

16 2.6 Designating Party: a Party or Non-Party that designates information or items
17 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
18 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”

19 2.7 Disclosure or Discovery Material: all items or information, regardless of the
20 medium or manner in which it is generated, stored, or maintained (including, among other
21 things, testimony, transcripts, and tangible things), that are produced or generated in
22 disclosures or responses to discovery in this matter.

23 2.8 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
25 expert witness or as a consultant in this Action.

26 2.9 House Counsel: attorneys who are employees of a party to this Action. House
27 Counsel does not include Outside Counsel of Record or any other outside counsel.
28

1 2.10 Non-Party: any natural person, partnership, corporation, association, or other
2 legal entity not named as a Party to this action.

3 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
4 Action but are retained to represent or advise a party to this Action and have appeared in
5 this Action on behalf of that party or are affiliated with a law firm which has appeared on
6 behalf of that party, and includes support staff.

7 2.12 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, insurance carriers and Outside Counsel of Record
9 (and their support staffs).

10 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
11 Material in this Action.

12 2.14 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,
14 and organizing, storing, or retrieving data in any form or medium) and their employees and
15 subcontractors.

16 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”

18 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
19 Producing Party.

20
21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only Protected
23 Material (as defined above), but also (1) any information copied or extracted from
24 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
25 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
26 that might reveal Protected Material.

27 Any use of Protected Material at trial shall be governed by the orders of the trial
28 judge. This Order does not govern the use of Protected Material at trial.

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations imposed
3 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or
4 a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
5 dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final
6 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,
7 trials, or reviews of this Action, including the time limits for filing any motions or
8 applications for extension of time pursuant to applicable law.

9
10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
12 Party or Non-Party that designates information or items for protection under this Order
13 must take care to limit any such designation to specific material that qualifies under the
14 appropriate standards. The Designating Party must designate for protection only those parts
15 of material, documents, items, or oral or written communications that qualify so that other
16 portions of the material, documents, items, or communications for which protection is not
17 warranted are not swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
19 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
20 unnecessarily encumber the case development process or to impose unnecessary expenses
21 and burdens on other parties) may expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it
23 designated for protection do not qualify for protection, that Designating Party must
24 promptly notify all other Parties that it is withdrawing the inapplicable designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this
26 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
27 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
28 must be clearly so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents, but
3 excluding transcripts of depositions or other pretrial or trial proceedings), that the
4 Producing Party affix at a minimum, the legend “CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” (hereinafter “CONFIDENTIAL
6 legend”), to each page that contains protected material. If only a portion or portions of the
7 material on a page qualifies for protection, the Producing Party also must clearly identify
8 the protected portion(s) (e.g., by making appropriate markings in the margins).

9 A Party or Non-Party that makes original documents available for inspection need
10 not designate them for protection until after the inspecting Party has indicated which
11 documents it would like copied and produced. During the inspection and before the
12 designation, all of the material made available for inspection shall be deemed
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”
14 After the inspecting Party has identified the documents it wants copied and produced, the
15 Producing Party must determine which documents, or portions thereof, qualify for
16 protection under this Order. Then, before producing the specified documents, the Producing
17 Party must affix the “CONFIDENTIAL legend” to each page that contains Protected
18 Material. If only a portion or portions of the material on a page qualifies for protection, the
19 Producing Party also must clearly identify the protected portion(s) (e.g., by making
20 appropriate markings in the margins).

21 (b) for testimony given in depositions that the Designating Party identify the
22 Disclosure or Discovery Material on the record, before the close of the deposition all
23 protected testimony.

24 (c) for information produced in some form other than documentary and for any other
25 tangible items, that the Producing Party affix in a prominent place on the exterior of the
26 container or containers in which the information is stored the legend “CONFIDENTIAL”
27 or “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES ONLY.” If only a portion or
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1 portions of the information warrants protection, the Producing Party, to the extent
2 practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the Designating
5 Party's right to secure protection under this Order for such material. Upon timely correction
6 of a designation, the Receiving Party must make reasonable efforts to assure that the
7 material is treated in accordance with the provisions of this Order.

8
9 6. CHALLENGING CONFIDENTIALITY OR ATTORNEYS' EYES ONLY
10 DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
12 confidentiality at any time that is consistent with the Court's Scheduling Order.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
14 process (and, if necessary, file a discovery motion) under Local Rule 37.1 et seq.

15 6.3 The burden of persuasion in any such challenge proceeding shall be on the
16 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
17 harass or impose unnecessary expenses and burdens on other parties) may expose the
18 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
19 confidentiality or Highly Confidential Attorney's Eyes Only designation, all parties shall
20 continue to afford the material in question the level of protection to which it is entitled
21 under the Producing Party's designation until the Court rules on the challenge.

22
23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this Action
26 only for prosecuting, defending, or attempting to settle this Action. Such Protected Material
27 may be disclosed only to the categories of persons and under the conditions described in
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1 this Order. When the Action has been terminated, a Receiving Party must comply with the
2 provisions of section 13 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location
4 and in a secure manner that ensures that access is limited to the persons authorized under
5 this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
7 by the court or permitted in writing by the Designating Party, a Receiving Party may
8 disclose any information or item designated “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to
11 disclose the information for this Action;

12 (b) the officers, directors, and employees (including House Counsel) of the
13 Receiving Party to whom disclosure is reasonably necessary for this Action;

14 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
15 reasonably necessary for this Action and who have signed the “Acknowledgment and
16 Agreement to Be Bound” (Exhibit A);

17 (d) the Court and its personnel;

18 (e) court reporters and their staff;

19 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
20 whom disclosure is reasonably necessary for this Action and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (g) the author or recipient of a document containing the information or a custodian or
23 other person who otherwise possessed or knew the information;

24 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to
25 whom disclosure is reasonably necessary provided: (1) the deposing party requests that the
26 witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to
27 keep any confidential information unless they sign the “Acknowledgment and Agreement
28 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by

1 the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
2 Protected Material may be separately bound by the court reporter and may not be disclosed
3 to anyone except as permitted under this Stipulated Protective Order; and

4 (i) any mediator or settlement officer, and their supporting personnel, mutually
5 agreed upon by any of the parties engaged in settlement discussions.

6 7.3 Disclosure of “or “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES
7 ONLY” information or items. Unless otherwise ordered by the court or permitted in writing
8 by the Designating Party, a Receiving Party may disclose any information or item
9 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

10 (a) The Receiving Party’s Outside Counsel of record in this action, as well as
11 employees of said Counsel to whom it is reasonably necessary to disclosure the information
12 for this litigation;

13 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
14 necessary for this litigation, and (2) who have signed the “Agreement to Be Bound by
15 Protective Order” (Exhibit A);

16 (c) The Court and its personnel (who are expressly excluded from any
17 requirement to sign the “Agreement to Be Bound by Protective Order” (Exhibit A));

18 (d) Court reporters, their staffs, and Professional Vendors to whom disclosure is
19 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound
20 by Protective Order” (Exhibit A); and

21 (e) The author of the document or the original source of the information.
22

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
24 OTHER LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation that
26 compels disclosure of any information or items designated in this Action as
27 “CONFIDENTIAL,” that Party must:
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1 (a) promptly notify in writing the Designating Party. Such notification shall include a
2 copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to issue in
4 the other litigation that some or all of the material covered by the subpoena or order is
5 subject to this Protective Order. Such notification shall include a copy of this Stipulated
6 Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
8 Designating Party whose Protected Material may be affected.

9 If the Designating Party timely seeks a protective order, the Party served with the
10 subpoena or court order shall not produce any information designated in this action as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY”
12 before a determination by the court from which the subpoena or order issued, unless the
13 Party has obtained the Designating Party’s permission. The Designating Party shall bear the
14 burden and expense of seeking protection in that court of its confidential material and
15 nothing in these provisions should be construed as authorizing or encouraging a Receiving
16 Party in this Action to disobey a lawful directive from another court.

17
18 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
19 THIS LITIGATION

20 (a) The terms of this Order are applicable to information produced by a Non-Party in
21 this Action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
22 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection
23 with this litigation is protected by the remedies and relief provided by this Order. Nothing
24 in these provisions should be construed as prohibiting a Non-Party from seeking additional
25 protections.

26 (b) In the event that a Party is required, by a valid discovery request, to produce a
27 Non-Party’s confidential information in its possession, and the Party is subject to an
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1 agreement with the Non-Party not to produce the Non-Party's confidential information,
2 then the Party shall:

3 (1) promptly notify in writing the Requesting Party and the Non-Party that some
4 or all of the information requested is subject to a confidentiality agreement with a Non-
5 Party;

6 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
7 Order in this Action, the relevant discovery request(s), and a reasonably specific
8 description of the information requested; and

9 (3) make the information requested available for inspection by the Non-Party, if
10 requested.

11 (c) If the Non-Party fails to seek a protective order from this court within 14 days of
12 receiving the notice and accompanying information, the Receiving Party may produce the
13 Non-Party's confidential information responsive to the discovery request. If the Non-Party
14 timely seeks a protective order, the Receiving Party shall not produce any information in its
15 possession or control that is subject to the confidentiality agreement with the Non-Party
16 before a determination by the court. Absent a court order to the contrary, the Non-Party
17 shall bear the burden and expense of seeking protection in this court of its Protected
18 Material.

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20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
22 Protected Material to any person or in any circumstance not authorized under this
23 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the
24 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
25 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
26 unauthorized disclosures were made of all the terms of this Order, and (d) request such
27 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
28 attached hereto as Exhibit A.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of
5 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
6 This provision is not intended to modify whatever procedure may be established in an e-
7 discovery order that provides for production without prior privilege review. Pursuant to
8 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
9 effect of disclosure of a communication or information covered by the attorney-client
10 privilege or work product protection, the parties may incorporate their agreement in the
11 stipulated protective order submitted to the court.

12
13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
15 to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
17 Order no Party waives any right it otherwise would have to object to disclosing or
18 producing any information or item on any ground not addressed in this Stipulated
19 Protective Order. Similarly, no Party waives any right to object on any ground to use in
20 evidence of any of the material covered by this Protective Order.

21 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
22 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
23 under seal pursuant to a court order authorizing the sealing of the specific Protected
24 Material at issue. If a Party's request to file Protected Material under seal is denied by the
25 court, then the Receiving Party may file the information in the public record unless
26 otherwise instructed by the court.

1 13. FINAL DISPOSITION

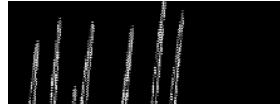
2 After the final disposition of this Action, as defined in paragraph 4, within 60 days of
3 a written request by the Designating Party, each Receiving Party must return all Protected
4 Material to the Producing Party or destroy such material. As used in this subdivision, “all
5 Protected Material” includes all copies, abstracts, compilations, summaries, and any other
6 format reproducing or capturing any of the Protected Material. Whether the Protected
7 Material is returned or destroyed, the Receiving Party must submit a written certification to
8 the Producing Party (and, if not the same person or entity, to the Designating Party) by the
9 60 day deadline that (1) identifies (by category, where appropriate) all the Protected
10 Material that was returned or destroyed and (2) affirms that the Receiving Party has not
11 retained any copies, abstracts, compilations, summaries or any other format reproducing or
12 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
13 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
14 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
15 reports, attorney work product, and consultant and expert work product, even if such
16 materials contain Protected Material. Any such archival copies that contain or constitute
17 Protected Material remain subject to this Protective Order as set forth in Section 4
18 (DURATION).

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20 14. Any willful violation of this Order may be punished by civil or criminal contempt
21 proceedings, financial or evidentiary sanctions, reference to disciplinary authorities, or
22 other appropriate action at the discretion of the Court.

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1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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3 Dated: March 24, 2016

4  A black rectangular box redacting the signature of the judge.

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6 Hon. Michael R. Wilner
7 United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [full name], of _____ [full
5 address], declare under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for the
7 Central District of California on [date] in the case of _____ [insert case name and
8 number]. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose
10 me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
11 not disclose in any manner any information or item that is subject to this Stipulated
12 Protective Order to any person or entity except in strict compliance with the provisions of
13 this Order. I further agree to submit to the jurisdiction of the United States District Court
14 for the Central District of California for the purpose of enforcing the terms of this
15 Stipulated Protective Order, even if such enforcement proceedings occur after termination
16 of this action. I hereby appoint _____ [full name] of
17 _____ [full address and telephone number] as
18 my California agent for service of process in connection with this action or any proceedings
19 related to enforcement of this Stipulated Protective Order.

20
21 Date: _____

22
23 City and State where signed: _____

24
25 Printed name: _____

26
27 Signature: _____