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 BOILING POINT GROUP, INC.

8

9

UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES

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BOILING POINT GROUP, INC.,
 a California corporation,

Case No. 2:16-cv-01672-RGK-JEM

12

Plaintiff,

PROTECTIVE ORDER

13

v.

14

FONG WARE CO. LTD.,
 FONGWARE LLC, FONG WARE
 INDUSTRIAL CO., LTD, and
 16 KEN-ZUEI LIU,

17

Defendants.

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FONG WARE CO. LTD., a California
 corporation,

19

Cross-Complainant,

20

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v.

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BOILING POINT GROUP, INC.,
 a California corporation,

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Cross-Defendant.

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PROTECTIVE ORDER

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1 The Court recognizes that many of the documents and much of the
2 information (“**Materials**” as defined herein) being sought through discovery in the
3 above-captioned action are normally kept confidential by the parties. The Materials
4 to be exchanged throughout the course of the litigation between the parties may
5 contain trade secret or other confidential research, development, or commercial
6 information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G).
7 This Protective Order (“**Order**”) shall remain in effect unless modified pursuant to
8 the terms contained in this Order.

9 **IT IS THEREFORE ORDERED THAT,**

10 The following Definitions shall apply in this Order:

11 A. The term “**Confidential Information**” will mean and include
12 information contained or disclosed in any materials, including documents, portions
13 of documents, answers to interrogatories, responses to requests for admissions, trial
14 testimony, deposition testimony, and transcripts of trial testimony and depositions,
15 including data, summaries, and compilations derived therefrom that is deemed to be
16 Confidential Information by any party to which it belongs. The scope of such
17 material that is designated as Confidential Information shall be limited to materials
18 containing trade secret or other confidential research, development, or commercial
19 information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G).
20 The terms “**Party**” or “**party**” is defined as a party to this litigation.

21 B. The term “**Materials**” will include, but is not limited to: documents,
22 correspondence, memoranda, financial information, email, specifications, marketing
23 plans, marketing budgets, customer information, materials that identify customers or
24 potential customers, price lists or schedules or other matter identifying pricing,
25 minutes, letters, statements, cancelled checks, contracts, invoices, drafts, books of
26 account, worksheets, forecasts, notes of conversations, desk diaries, appointment
27 books, expense accounts, recordings, photographs, motion pictures, sketches,
28 drawings, videos, notes of discussions with third parties, other notes, business

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1 reports, instructions, disclosures, other writings, records of website development,
2 and internet archives.

3 C. The term “Counsel” will mean in-house counsel as well as outside
4 counsel of record, and other attorneys, paralegals, secretaries, externs, and other
5 support staff employed or otherwise engaged in the following law firms: Atkinson,
6 Andelson, Loya, Ruud & Romo, P.C., and Continental Law Firm, APLC.

7 The following provisions shall apply in this litigation

8 1. Each party to this litigation, or third party from whom documents are
9 requested, that produces or discloses any Materials, answers to interrogatories,
10 responses to requests for admission, trial testimony, deposition testimony, and
11 transcripts of trial testimony and depositions, or information that the producing party
12 believes should be subject to this Protective Order may designate the same as
13 “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY.”

14 a. Designation as “CONFIDENTIAL”: Any party may designate
15 information as “CONFIDENTIAL” only if, in the good faith belief of such party and
16 its Counsel, the unrestricted disclosure of such information could be harmful to the
17 business or operations of such party.

18 b. Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”:
19 Any party may designate information as “CONFIDENTIAL – FOR COUNSEL
20 ONLY” only if, in the good faith belief of such party and its Counsel, the
21 information is among that considered to be most sensitive by the party, including but
22 not limited to trade secret or other confidential contracts, research, development,
23 financial, customer related data or other commercial information.

24 2. In the event the producing party elects to produce Materials for
25 inspection, no marking need be made by the producing party in advance of the
26 initial inspection. For purposes of the initial inspection, all Materials produced will
27 be considered as “CONFIDENTIAL – FOR COUNSEL ONLY” and must be
28 treated as such pursuant to the terms of this Order. Thereafter, upon selection of

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1 specified Materials for copying by the inspecting party, the producing party must,
2 within a reasonable time prior to producing those Materials to the inspecting party,
3 mark the copies of those Materials that contain Confidential Information with the
4 confidentiality marking.

5 3. Whenever a deposition taken of any party involves the disclosure of
6 Confidential Information of any party:

7 a. The depositions or portions of the deposition must be designated
8 as containing Confidential Information subject to the provisions of this Order; such
9 designations must be made on the record whenever possible, but a party may
10 designate portions of depositions as containing Confidential Information after
11 transcription of the proceedings; a party will have until thirty (30) days after receipt
12 of the deposition transcript to inform the other party or parties to the action of the
13 portions of the transcript to be designated "CONFIDENTIAL" or
14 "CONFIDENTIAL – FOR COUNSEL ONLY."

15 b. The disclosing party will have the right to exclude from
16 attendance at the deposition, during such time as the Confidential Information is to
17 be disclosed, any person other than the deponent, Counsel (including their staff and
18 associates), Parties, the court reporter, and the person(s) agreed upon pursuant to
19 paragraphs 5 and 6, below; and

20 c. The originals of the deposition transcripts and all copies of the
21 deposition must bear the legend "CONFIDENTIAL" or "CONFIDENTIAL – FOR
22 COUNSEL ONLY", as appropriate, and the original or any copy ultimately
23 presented to a court for filing must not be filed unless it can be accomplished under
24 seal, identified as being subject to this Order, and protected from being opened
25 except by order of this Court.

26 4. All Confidential Information designated as "CONFIDENTIAL" or
27 "CONFIDENTIAL – FOR COUNSEL ONLY" must not be disclosed by the
28 receiving party to anyone other than those persons designated within this Order and

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1 must be handled in the matter set forth below, and in any event, must not be used for
2 any purpose other than in connection with this litigation, unless and until such
3 designation is removed either by agreement of the parties, or by order of the Court.

4 5. Information designated "CONFIDENTIAL – FOR COUNSEL ONLY"
5 may be viewed only by:

6 a. Counsel (as defined in paragraph C, above) of the receiving
7 party;

8 b. Independent experts and stenographic and clerical employees
9 associated with such experts. Such experts shall include a person(s) with
10 specialized knowledge or experience in a matter pertinent to the litigation who has
11 been retained by a Party or its counsel to serve as an expert witness or as a
12 consultant in this action. Prior to receiving any Confidential Information of the
13 producing party, the expert must execute a copy of the "Agreement to Be Bound by
14 Stipulated Protective Order" attached hereto as Exhibit A. Counsel for the receiving
15 party must retain executed copies of such exhibits;

16 c. The Court and any Court staff and administrative personnel;

17 d. Any court reporter employed in this litigation and acting in that
18 capacity; and

19 e. Any person indicated on the face of the document to be its author
20 or co-author, or any person identified on the face of the document as one to whom a
21 copy of such document was sent before its production in this action.

22 6. Information designated "CONFIDENTIAL" may be viewed only by:

23 a. Counsel (as defined in paragraph C, above) of the receiving
24 party;

25 b. Independent experts and stenographic and clerical employees
26 associated with such experts. Such experts shall include a person(s) with
27 specialized knowledge or experience in a matter pertinent to the litigation who has
28 been retained by a Party or its counsel to serve as an expert witness or as a

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1 consultant in this action. Prior to receiving any Confidential Information of the
2 producing party, the expert must execute a copy of the "Agreement to Be Bound by
3 Stipulated Protective Order" attached hereto as Exhibit A. Counsel for the receiving
4 party must retain executed copies of such exhibits;

5 c. The Court and any Court staff and administrative personnel;

6 d. Any court reporter employed in this litigation and acting in that
7 capacity;

8 e. Any person indicated on the face of the document to be its author
9 or co-author, or any person identified on the face of the document as one to whom a
10 copy of such document was sent before its production in this action;

11 f. Party principals or executives who are required to participate in
12 policy decisions with reference to this action;

13 g. Technical personnel of the parties with whom Counsel for the
14 parties find it necessary to consult, in the discretion of such Counsel, in preparation
15 for trial of this action; and

16 h. Stenographic and clerical employees associated with the
17 individuals identified above.

18 7. All information that has been designated as "CONFIDENTIAL – FOR
19 COUNSEL ONLY" by the producing or disclosing party, and any and all
20 reproductions of that information, must be retained in the custody of the Counsel for
21 the receiving party, except that independent experts authorized to view such
22 information under the terms of this Order may retain custody of copies such as are
23 necessary for their participation in this litigation, but only during the course of this
24 litigation. The principals, employees, or other agents of the parties who received
25 information prior to and apart from this litigation that was subsequently disclosed in
26 this litigation as being either "CONFIDENTIAL" or "CONFIDENTIAL – FOR
27 COUNSEL ONLY" may also retain copies of that information as is necessary for
28 use in their respective businesses.

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1 8. Filing Material Designated as “CONFIDENTIAL” or
2 “CONFIDENTIAL – FOR COUNSEL ONLY”. A party that seeks to file under seal
3 any material designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR
4 COUNSEL ONLY” (collectively “**Protected Material**”) must comply with Local
5 Civil Rule 79-5. Protected Material may only be filed under seal pursuant to a court
6 order authorizing the sealing of the specific Protected Material at issue. Further, no
7 portion of the trial of the matter shall be conducted under seal.

8 9. Confidential Information and Materials designated “CONFIDENTIAL”
9 or “CONFIDENTIAL – FOR COUNSEL ONLY” shall be used solely for the
10 prosecution, settlement, or defense in this action. A party who wishes to use
11 Confidential Information and/or Materials designated “CONFIDENTIAL” or
12 “CONFIDENTIAL – FOR COUNSEL ONLY” for a purpose other than the
13 prosecution or defense of this action must request permission, in writing, from
14 Counsel for the producing party. The request must identify the Confidential
15 Information and/or Materials designated “CONFIDENTIAL” or “CONFIDENTIAL
16 – FOR COUNSEL ONLY” that the receiving party wishes to use, and identify the
17 purpose for which it wishes to use Confidential Information and/or Materials
18 designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY”.
19 If the parties cannot resolve the question of whether the receiving party can use
20 Confidential Information and/or Materials designated “CONFIDENTIAL” or
21 “CONFIDENTIAL – FOR COUNSEL ONLY” for a purpose other than the
22 prosecution or defense of this action within fourteen (14) days of the producing
23 party’s receipt of such a request, the receiving party may move the Court for a ruling
24 on the receiving party’s request. In the event any party files a motion seeking to use
25 Confidential Information and/or Materials designated “CONFIDENTIAL” or
26 “CONFIDENTIAL – FOR COUNSEL ONLY” for a purpose other than the
27 prosecution or defense of this action, Confidential Information and/or Materials
28 designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY”

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1 shall be submitted to the Court, under seal, for an in-camera inspection. Any
2 Confidential Information and/or Materials designated "CONFIDENTIAL" or
3 "CONFIDENTIAL - FOR COUNSEL ONLY" at issue must be treated as
4 Confidential Information, as designated by the producing party, until the Court has
5 ruled on the motion or the matter has been otherwise resolved.

6 10. At any stage of these proceedings, any party may object to a
7 designation of Confidential Information and/or Materials designated
8 "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY". The party
9 objecting to the designation must notify, in writing, Counsel for the producing party
10 of the objected-to Materials and the grounds for the objection. If the dispute is not
11 resolved consensually between the parties within fourteen (14) days of receipt of
12 such a notice of objections, the objecting party may move the Court for a ruling on
13 the objection. In the event any party files a motion challenging the designation or
14 redaction of information, the document shall be submitted to the Court, under seal,
15 for an in-camera inspection. The Materials at issue must be treated as Confidential
16 Information, as designated by the producing party, until the Court has ruled on the
17 objection or the matter has been otherwise resolved.

18 11. At any stage of these proceedings, any party may request that it be
19 permitted to disclose Confidential Information and/or Materials designated
20 "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY" to
21 individuals not permitted by this Order to view such information. The party must
22 notify, in writing, Counsel for the producing party of the identity of the relevant
23 Materials and the individuals to whom the party wishes to disclose the Materials. If
24 the request is not resolved consensually between the parties within fourteen (14)
25 days of receipt of such a request, the requesting party may move the Court for a
26 ruling allowing such disclosure. In the event any party files a motion requesting
27 such disclosure, the document shall be submitted to the Court, under seal, for an in-
28 camera inspection. The Materials at issue must be treated as Confidential

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1 Information, as designated by the producing party, until the Court has ruled on the
2 request or the matter has been otherwise resolved.

3 12. All Confidential Information and/or Materials designated
4 "CONFIDENTIAL" or "CONFIDENTIAL – FOR COUNSEL ONLY" must be
5 held in confidence by those inspecting or receiving it. To the extent the
6 Confidential Information and/or Materials designated "CONFIDENTIAL" or
7 "CONFIDENTIAL – FOR COUNSEL ONLY" has not been disclosed prior to and
8 apart from this litigation, it must be used only for purposes of this action. If the
9 Confidential Information and/or Materials designated "CONFIDENTIAL" or
10 "CONFIDENTIAL – FOR COUNSEL ONLY" was exchanged between the parties
11 prior to and apart from this litigation for purposes of conducting their respective
12 businesses, the parties may continue to use that Confidential Information and/or
13 Materials designated "CONFIDENTIAL" or "CONFIDENTIAL – FOR COUNSEL
14 ONLY" for that purpose. The parties may not distribute the Confidential
15 Information and/or Materials designated "CONFIDENTIAL" or "CONFIDENTIAL
16 – FOR COUNSEL ONLY" beyond those persons or entities that had receiving the
17 Confidential Information and/or Materials designated "CONFIDENTIAL" or
18 "CONFIDENTIAL – FOR COUNSEL ONLY" prior to this litigation. In addition,
19 Counsel for each party, and each person receiving Confidential Information and/or
20 Materials designated "CONFIDENTIAL" or "CONFIDENTIAL – FOR COUNSEL
21 ONLY", must take reasonable precautions to prevent the unauthorized or
22 inadvertent disclosure of such information. If Confidential Information and/or
23 Materials designated "CONFIDENTIAL" or "CONFIDENTIAL – FOR COUNSEL
24 ONLY" is disclosed to any person other than a person authorized by this Order, the
25 party responsible for the unauthorized disclosure must immediately bring all
26 pertinent facts relating to the unauthorized disclosure to the attention of the other
27 parties and, without prejudice to any rights and remedies of the other parties, make
28 every effort to prevent further disclosure by the party and by the person(s) receiving

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1 the unauthorized disclosure.

2 13. No party will be responsible to another party for disclosure of
3 Confidential Information under this Order if the information in question is not
4 labeled or otherwise identified as such in accordance with this Order.

5 14. If a party, through inadvertence, produces any Confidential Information
6 without labeling or marking or otherwise designating it as such in accordance with
7 this Order, the producing party may give written notice to the receiving party that
8 the Materials produced are deemed Confidential Information, and that the Materials
9 produced should be treated as such in accordance with that designation under this
10 Order. The receiving party must treat the Materials as confidential, once the
11 producing party so notifies the receiving party. If the receiving party has disclosed
12 the Materials before receiving the designation, the receiving party must notify the
13 producing party in writing of each such disclosure. Counsel for the parties will
14 agree on a mutually acceptable manner of labeling or marking the inadvertently
15 produced Materials as Confidential Information and/or Materials designated
16 "CONFIDENTIAL" or "CONFIDENTIAL – FOR COUNSEL ONLY" subject to
17 this Order.

18 15. Nothing within this Order will prejudice the right of any party to object
19 to the production of any discovery material on the ground that the material is
20 protected as privileged or as attorney work product.

21 16. Nothing in this Order will bar Counsel from rendering advice to this
22 clients with respect to this litigation and, in the course thereof, relying upon any
23 information designated as Confidential Information, provided that the contents of
24 the information must not be disclosed outside of this litigation.

25 17. This Order will be without prejudice to the right of any party to oppose
26 production of any information for lack of relevance or any other ground other than
27 the mere presence of Confidential Information. The existence of this Order must not
28 be used by either party as a basis for discovery that is otherwise improper under the

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1 Federal Rules of Civil Procedure.

2 18. Information designated as Confidential Information pursuant to this
3 Order may also be disclosed if: (a) the party making the designation consents to
4 such disclosure; (b) the Court, after notice to all affected persons, allows such
5 disclosure; or (c) the party to whom Confidential Information has been produced
6 thereafter becomes obligated to disclose the information in response to a lawful
7 subpoena, provided that the subpoenaed party gives prompt notice to Counsel for
8 the party which made the designation, and permits Counsel for that party sufficient
9 time to intervene and seek judicial protection from the enforcement of this subpoena
10 and/or entry of an appropriate protective order in the action in which the subpoena
11 was issued.

12 19. Nothing in this Confidentiality Order shall limit any producing party's
13 use of its own documents or shall prevent any producing party from disclosing its
14 own Confidential Information to any person. Such disclosures shall not affect any
15 confidential designation made pursuant to the terms of this Order so long as the
16 disclosure is made in a manner which is reasonably calculated to maintain the
17 confidentiality of the information. Nothing in this Order shall prevent or otherwise
18 restrict Counsel from rendering advice to their clients, and in the course thereof,
19 relying on examination of labeled Confidential Information.

20 20. Within thirty (30) days of the final termination of this action, including
21 any and all appeals, Counsel for each party must purge all Confidential Information
22 from all machine-readable media on which it resides and must either (a) return all
23 Confidential Information to the party that produced the information, including any
24 copies, excerpts, and summaries of that information, or (b) destroy the same. With
25 respect to paper copies, return or destruction of Confidential Information is at the
26 option of the producing party. Notwithstanding the foregoing, Counsel for each
27 party may retain all pleadings, briefs, memoranda, motions, and other documents
28 filed with the Court that refer to or incorporate Confidential Information, and will

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1 continue to be bound by this Order with respect to all such retained information after
2 the conclusion of this litigation. Further, attorney work product Materials that
3 contain Confidential Information need not be destroyed, but, if they are not
4 destroyed, the person in possession of the attorney work product will continue to be
5 bound by this Order with respect to all such retained information, after the
6 conclusion of this litigation.

7 21. The restrictions and obligations set forth within this Order will not
8 apply to any information that: (a) the parties agree should not be designated
9 Confidential Information; (b) the parties agree, or the Court rules, is already public
10 knowledge; or (c) the parties agree, or the Court rules, has become public
11 knowledge other than as a result of disclosure by the receiving party, its employees,
12 or its agents, in violation of this Order.

13 22. Any party may designate as "CONFIDENTIAL" or "CONFIDENTIAL
14 – FOR COUNSEL ONLY" any Materials that were produced during the course of
15 this action by that party without such designation before the effective date of this
16 Order, as follows:

17 a. Parties to this action may designate such Materials by sending
18 written notice of such designation, accompanied by copies of the designated
19 Materials bearing the appropriate marking of "CONFIDENTIAL" or
20 "CONFIDENTIAL – FOR COUNSEL ONLY" to all other parties in possession or
21 custody of such previously undesignated Materials. Any party receiving such notice
22 and copies of designated Materials pursuant to this subparagraph shall return to the
23 producing party all undesignated copies of such Materials in its custody or
24 possession, or shall affix the appropriate legend to all copies of the designated
25 Materials in its possession or custody.

26 b. Upon notice of designation pursuant to this paragraph, parties
27 shall also: (i) make no disclosure of such designated Materials or information
28 contained therein except as allowed under this Order; and (ii) take reasonable steps

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1 to notify any persons known to have possession of such designated Materials or
2 information of the effect of such designation under this Order.

3 c. All such designations must be made within thirty (30) days of the
4 date of this Order.

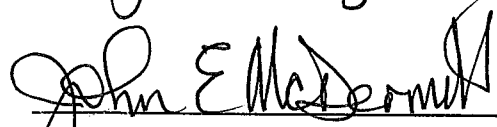
5 23. Transmission by e-mail or facsimile is acceptable for all notification
6 purposes within this Order.

7 24. This Order may be modified by agreement of the parties, subject to
8 approval by the Court.

9 25. The Court may modify the terms and conditions of this Order for good
10 cause, or in the interest of justice, or on its own order at any time in these
11 proceedings.

12 26. After termination of this action, the provisions of this Order shall
13 continue to be binding, except with respect to those documents and information that
14 became a matter of public record. This Court retains and shall have continuing
15 jurisdiction over the parties and recipients of Confidential Information and Materials
16 designated as confidential for enforcement of the provisions of this Order following
17 termination of this litigation.

18 IT IS SO ORDERED, this 11 day of January, 2017.

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21 
22 ~~HON. ROBERT G. KLAUSNER~~
~~UNITED STATES DISTRICT JUDGE~~
23 **JOHN E. McDERMOTT**
24 **UNITED STATES MAGISTRATE JUDGE**
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EXHIBIT A
IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BOILING POINT GROUP, INC.,
a California corporation,

Plaintiff,

v.

FONG WARE CO. LTD.,
FONGWARE LLC, FONG WARE
INDUSTRIAL CO., LTD, and
KEN-ZUEI LIU,

Defendants.

Case No. 2:16-cv-01672-RGK-JEM

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

FONG WARE CO. LTD., a California
corporation,

Cross-Complainant,

v.

BOILING POINT GROUP, INC.,
a California corporation,

Cross-Defendant.

I, _____, declare and say that:

1. I am retained as _____

by _____.

2. I have read the Stipulated Protective Order (the "Order") entered on
_____ and have received a copy of the Order.

3. I promise that I will use any and all "CONFIDENTIAL" or
"CONFIDENTIAL – FOR COUNSEL ONLY" information, as defined in the Order,
given to me only in a manner authorized by the Court, and only to assist Counsel in
the litigation of this matter.

4. I agree that I will not disclose or discuss such "CONFIDENTIAL" or

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1 "CONFIDENTIAL – FOR COUNSEL ONLY" information with anyone other than
2 persons permitted by the Order.

3 5. I acknowledge that, by signing this agreement, I am subjecting myself
4 to the jurisdiction of the United States District Court for the Central District of
5 California with respect to the enforcement of the Order.

6 6. I understand that any disclosure or use of "CONFIDENTIAL" or
7 "CONFIDENTIAL – FOR COUNSEL ONLY" information in any manner contrary
8 to the provisions of the Protective Order may subject me to sanctions for contempt
9 of court.

10 7. I agree to return all "CONFIDENTIAL" or "CONFIDENTIAL – FOR
11 COUNSEL ONLY" Materials (as defined in the Order) to the attorney who
12 provided it to me, upon request of that attorney, and I shall not retain any copies of
13 said Materials or any information contained within Confidential Materials.

14 I declare under penalty of perjury that the foregoing is true and correct.

15
16 Date: _____

Signature