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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

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11 **ADVANTEK MARKETING, INC.,**

12  
13 **Plaintiff,**

14 **vs.**

15 **SHANGHAI WALK-LONG TOOLS CO.,**  
16 **LTD.; NEOCRAFT TOOLS CO., LTD.;**  
17 **ORION FACTORY DIRECT, and DOES**  
1-10 inclusive,

18 **Defendant.**

19 **And Related Counterclaims**

**CASE NO. 2:16-cv-03061-R-FFM**

**PROTECTIVE ORDER**

20  
21 **1. GOOD CAUSE STATEMENT; LIMITED SCOPE OF ORDER**

22 In this action, involving, *inter alia*, allegations of patent infringement and competitive  
23 harm, disclosure and discovery activity may require production of confidential,  
24 proprietary, or private information for which special protection from public disclosure  
25 and from use for any purpose other than prosecuting this litigation would be warranted.  
26 In particular, disclosure and discovery exchanged in this action may contain non-public  
27 and competitively sensitive information about a party's business activities which the  
28

[PROPOSED]PROTECTIVE ORDER  
CASE NO. 2:16-cv-03061-R-FFM

1 opposing party and third parties would not otherwise have access to, including (without  
2 prejudice to any party's right to pursue or object to any specific discovery request or  
3 assert or challenge any specific designation) information showing proprietary business  
4 methods and procedures, confidential income, costs, expenses, profits and pricing,  
5 confidential information regarding customers and prospective customers, distributors,  
6 suppliers and sources of supply, internal marketing plans and strategies, other  
7 competitive plans and strategies, buyer accounts, budgeting, product launches,  
8 advertising expenditures, and research and development. Accordingly, the parties hereby  
9 stipulate to and petition the court to enter the following Stipulated Protective Order  
10 ("Protective Order"). The parties acknowledge that this Protective Order does not confer  
11 blanket protections on all disclosures or responses to discovery and that the protection it  
12 affords extends only to the limited information or items that are entitled under the  
13 applicable legal principles to treatment as confidential. The parties further acknowledge,  
14 as set forth in Section 10, below, that this Stipulated Protective Order creates no  
15 entitlement to file confidential information under seal; Local Rule 79-5 sets forth the  
16 procedures that must be followed when a party seeks permission from the court to file  
17 material under seal.

18           2.     DEFINITIONS

19           2.1     Challenging Party: a Party or Non-Party that challenges the designation of  
20 information or items under this Protective Order.

21           2.2     "CONFIDENTIAL" Information or Items: information (regardless of how it  
22 is generated, stored or maintained) or tangible things that qualify for protection under  
23 Federal Rule of Civil Procedure 26(c).

24           2.3     Counsel (without qualifier): Outside Counsel of Record and House Counsel  
25 (as well as their support staff).

26           2.4     Designated House Counsel: House Counsel who seek access to "HIGHLY  
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this matter.

1           2.5 Designating Party: a Party or Non-Party that designates information or items  
2 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” or  
3 “HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY.”

4           2.6 Disclosure or Discovery Material: all items or information, regardless of the  
5 medium or manner in which it is generated, stored, or maintained (including, among  
6 other things, testimony, transcripts, and tangible things), that are produced or generated in  
7 disclosures or responses to discovery in this matter.

8           2.7 Expert: a person with specialized knowledge or experience in a matter  
9 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as  
10 an expert witness or as a consultant in this action, (2) is not a past or current employee of  
11 a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to  
12 become an employee of a Party or of a Party's competitor.

13           2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY” Information  
14 or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to  
15 another Party or Non-Party would create a substantial risk of serious harm that could not  
16 be avoided by less restrictive means.

17           2.9 House Counsel: attorneys who are employees of a party to this action. House  
18 Counsel does not include Outside Counsel of Record or any other outside counsel.

19           2.10 Non-Party: any natural person, partnership, corporation, association, or other  
20 legal entity not named as a Party to this action.

21           2.11 Outside Counsel of Record: attorneys who are not employees of a party to  
22 this action but are retained to represent or advise a party to this action and have appeared  
23 in this action on behalf of that party or are affiliated with a law firm which has appeared  
24 on behalf of that party.

25           2.12 Party: any party to this action, including all of its officers, directors,  
26 employees, consultants, retained experts, and Outside Counsel of Record (and their  
27 support staffs).

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1           2.13 Producing Party: a Party or Non-Party that produces Disclosure or  
2 Discovery Material in this action.

3           2.14 Professional Vendors: persons or entities that provide litigation support  
4 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
5 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
6 their employees and subcontractors.

7           2.15 Protected Material: any Disclosure or Discovery Material that is designated  
8 as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
9 ONLY.”

10          2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from  
11 a Producing Party.

12           3.     SCOPE

13 The protections conferred by this Protective Order cover not only Protected Material (as  
14 defined above), but also (1) any information copied or extracted from Protected Material;  
15 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
16 testimony, conversations, or presentations by Parties or their Counsel that might reveal  
17 Protected Material. However, the protections conferred by this Protective Order do not  
18 cover the following information: (a) any information that is publicly available or  
19 otherwise is available as a result of publication not involving a violation of this Protective  
20 Order, including from the public record through trial or otherwise; (b) any information  
21 known to the Receiving Party prior to the disclosure; and (c) any information obtained by  
22 the Receiving Party from a third-party source who obtained the information lawfully and  
23 under no obligation of confidentiality to the Designating Party. Any use of Protected  
24 Material at trial shall be governed by a separate agreement or order. Nothing in this  
25 Protective Order shall limit disclosure or use by a Producing Party of its own Protected  
26 Material.

27           4.     DURATION

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1 Even after final disposition of this litigation, the confidentiality obligations imposed by  
2 this Protective Order shall remain in effect until a Designating Party agrees otherwise in  
3 writing or a court order otherwise directs. Final disposition shall be deemed to be the later  
4 of (1) dismissal of all claims and defenses in this action and the State Action (as defined  
5 in paragraph 7.1), with or without prejudice; and (2) final judgment herein and in the  
6 State Action 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       5.     DESIGNATING PROTECTED MATERIAL

10       5.1   Exercise of Restraint and Care in Designating Material for Protection. Each  
11 Party or Non-Party that designates information or items for protection under this  
12 Protective Order must take care to limit any such designation to specific material that  
13 qualifies under the appropriate standards. To the extent it is practical to do so, the  
14 Designating Party must designate for protection only those parts of material, documents,  
15 items, or oral or written communications that qualify – so that other portions of the  
16 material, documents, items, or communications for which protection is not warranted are  
17 not swept unjustifiably within the ambit of this Protective Order.

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

23       If it comes to a Designating Party’s attention that information or items that it  
24 designated for protection do not qualify for protection at all or do not qualify for the level  
25 of protection initially asserted, that Designating Party must promptly notify all other  
26 Parties that it is withdrawing the mistaken designation.

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

5 Designation in conformity with this Protective Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents, but  
7 excluding transcripts of depositions or other pretrial or trial proceedings), that the  
8 Producing Party affix the legend “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY” to each page that contains Protected Material. If only a  
10 portion or portions of the material on a page qualifies for protection, the Producing Party  
11 also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
12 in the margins) and must specify, for each portion, the level of protection being asserted.

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

26 (b) for testimony given in deposition or in other pretrial or trial proceedings, that  
27 the Designating Party identify on the record, before the close of the deposition, hearing,  
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1 or other proceeding, all protected testimony and specify the level of protection being  
2 asserted. When it is impractical to identify separately each portion of testimony that is  
3 entitled to protection and it appears that substantial portions of the testimony may qualify  
4 for protection, the Designating Party may invoke on the record (before the deposition,  
5 hearing, or other proceeding is concluded) a right to have up to 21 days after receipt of  
6 the official transcript of such proceeding to identify the specific portions of the testimony  
7 as to which protection is sought and to specify the level of protection being asserted.  
8 Only those portions of the testimony that are appropriately designated for protection  
9 within the 21 days shall be covered by the provisions of this Protective Order.  
10 Alternatively, a Designating Party may specify, at the deposition or up to 21 days after  
11 receipt of the deposition transcript if that period is properly invoked, that the entire  
12 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
13 ATTORNEYS’ EYES ONLY.”

14 Parties shall give the other parties notice if they reasonably expect a deposition,  
15 hearing, or other proceeding to include Protected Material so that the other parties can  
16 ensure that only authorized individuals who have signed the “Acknowledgment and  
17 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a  
18 document as an exhibit at a deposition shall not in any way affect its designation as  
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

20 Transcripts containing Protected Material shall have an obvious legend on the title page  
21 that the transcript contains Protected Material, and the title page shall be followed by a  
22 list of all pages (including line numbers as appropriate) that have been designated as  
23 Protected Material and the level of protection being asserted by the Designating Party.  
24 The Designating Party shall inform the court reporter of these requirements. Any  
25 transcript that is prepared before the expiration of a 21-day period for designation shall be  
26 treated during that period as if it had been designated “HIGHLY CONFIDENTIAL –  
27 ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the

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1 expiration of that period, the transcript shall be treated only as actually designated.

2 (c) for information produced in some form other than documentary and for any  
3 other tangible items, that the Producing Party affix in a prominent place on the exterior of  
4 the container or containers in which the information or item is stored the legend  
5 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”  
6 If only a portion or portions of the information or item warrant protection, the Producing  
7 Party, to the extent practicable, shall identify the protected portion(s) and specify the  
8 level of protection being asserted.

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10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
11 to designate qualified information or items does not, standing alone, waive the  
12 Designating Party’s right to secure protection under this Protective Order for such  
13 material. Upon timely correction of a designation, the Receiving Party must make  
14 reasonable efforts to assure that the material is treated in accordance with the provisions  
15 of this Protective Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party may challenge a designation of  
18 confidentiality at any time, subject to the meet and confer provisions set forth below. A  
19 Party does not waive its right to challenge a confidentiality designation by electing not to  
20 mount a challenge promptly after the original designation is disclosed. Neither a  
21 designation under this Protective Order, a party’s challenge to a confidentiality  
22 designation under this Protective Order, a party’s failure to challenge a confidentiality  
23 designation under this Protective Order, nor a compromise reached through the meet and  
24 confer process under this Protective Order, shall prejudice any party on the underlying  
25 merits of any element of a claim or defense that pertains to confidentiality.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
27 process by providing written notice of each designation it is challenging and describing  
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1 the basis for each challenge. To avoid ambiguity as to whether a challenge has been  
2 made, the written notice must recite that the challenge to confidentiality is being made in  
3 accordance with this specific paragraph of this Protective Order. A challenge to a lower  
4 level designation (i.e., “CONFIDENTIAL”) will not be made unless the Challenging  
5 Party also confirms it has a good faith belief the document or information bearing that  
6 designation may be used in connection with a deposition, in a motion filed with the  
7 Court, in a pre-trial proceeding, or offered into evidence with the Court at trial. The  
8 Parties shall attempt to resolve each challenge in good faith and must begin the process  
9 by conferring directly (in voice to voice dialogue; other forms of communication are not  
10 sufficient) within fourteen (14) days of the date of service of notice. In conferring, the  
11 Challenging Party must explain the basis for its belief that the confidentiality designation  
12 was not proper and must give the Designating Party an opportunity to review the  
13 designated material, to reconsider the circumstances, to propose a stipulated modification  
14 of this Protective Order addressing the specific document or information whose  
15 designation is challenged and, if no change in designation is offered, to explain the basis  
16 for the chosen designation. A Challenging Party may proceed to the next stage of the  
17 challenge process only if it has engaged in this meet and confer process first or  
18 establishes that the Designating Party failed to participate in the meet and confer process  
19 in a timely manner.

20       6.3 Judicial Intervention. This Protective Order is intended to facilitate the  
21 parties’ exchange of discovery. Assertions that information or items qualify for protection  
22 under this Protective Order, and challenges to such designations, shall not be used as an  
23 indirect attempt to obtain adjudication of the merits of any claim or defense as to which  
24 confidentiality is an element. If the Parties cannot resolve a challenge without court  
25 intervention, the Receiving Party may bring a motion to remove or re-categorize a  
26 designation as set forth in preceding paragraph above. Each such motion must be  
27 accompanied by a competent declaration affirming that the Receiving Party has engaged  
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1 in efforts with the Designating Party to resolve the motion, consistent with the meet and  
2 confer requirements imposed in the preceding paragraph. In any such motion proceeding,  
3 the Designating Party shall have the burden to show protection would be appropriate  
4 during the conduct of trial for any documents or material it designated  
5 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”.

6 Frivolous challenges and those made for an improper purpose (e.g., to harass or  
7 impose unnecessary expenses and burdens on other Parties) may expose the Challenging  
8 Party to sanctions. Unless the Designating Party has expressly waived or lowered the  
9 confidentiality designation through the meet and confer process or otherwise, all Parties  
10 shall continue to afford the material in question the level of protection to which it is  
11 entitled under the Designating Party’s designation until the Court rules on the challenge.

12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
14 disclosed or produced by another Party or by a Non-Party in connection with this case  
15 only for prosecuting, defending, or attempting to settle this litigation, with the narrow  
16 exception of use in the State Action as set forth below in this Section 7.1. Such Protected  
17 Material may be disclosed only to the categories of persons and under the conditions  
18 described in this Protective Order. When the litigation has been terminated, a Receiving  
19 Party must comply with the provisions of paragraph 13 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a  
21 location and in a secure manner that ensures that access is limited to the persons  
22 authorized under this Protective Order. In addition, without prejudice to any party’s  
23 rights regarding the merits, the scope of proper discovery, or admissibility of Protected  
24 Material, the parties acknowledge that as of the date of this Protective Order there is a  
25 pending California state court lawsuit in the Ventura County Superior Court, titled  
26 *Advantek Marketing, Inc. v. Miles McMahon, et al.*, Case No. 56-2016-00478446-CU-  
27 BT-VTA (the “State Action”), between the same plaintiff and an employee of one of the  
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1 parties to this action, and that some of the issues and contentions in that action and this  
2 Action may overlap. Accordingly, it shall not be a violation of this Protective Order to  
3 use Protected Material from this Action for prosecuting, defending or attempting to settle  
4 the State Action so long as the Receiving Party treats the Protected Material with the  
5 same level of confidentiality the Protected Material would be entitled to receive under his  
6 Protective Order. When used in the State Action as permitted hereunder, such Protected  
7 Material will be subject to the terms of the protective order in the State Action, provided,  
8 however, that Protected Material received in this Action shall not be used in the State  
9 Action unless it is afforded at least the same level of confidentiality protection as  
10 provided under this Protective Order.

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
12 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
13 may disclose any information or item designated “CONFIDENTIAL” only to:

14 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
15 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
16 disclose the information for this litigation and who have signed the “Acknowledgment  
17 and Agreement to Be Bound” that is attached hereto as Exhibit A;

18 (b) the officers, directors, and employees (including House Counsel) of the  
19 Receiving Party to whom disclosure is reasonably necessary for this litigation and who  
20 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (c) Experts (as defined in this Protective Order) of the Receiving Party to whom  
22 disclosure is reasonably necessary for this litigation and who have signed the  
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (d) the court and its personnel;

25 (e) court reporters and their staff, professional jury or trial consultants, and  
26 Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
27 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);  
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1 (f) during their depositions, witnesses in the action to whom disclosure is  
2 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
3 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
4 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
5 Protected Material must be separately bound by the court reporter and may not be  
6 disclosed to anyone except as permitted under this Protective Order.

7 (g) the author or recipient of a document containing the information or a custodian  
8 or other person who otherwise possessed or knew the information.

9 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
10 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in  
11 writing by the Designating Party, a Receiving Party may disclose any information or item  
12 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

13 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
14 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
15 disclose the information for this litigation and who have signed the “Acknowledgment  
16 and Agreement to Be Bound” that is attached hereto as Exhibit A;

17 (b) Designated House Counsel of the Receiving Party (1) who has no involvement  
18 in competitive decision-making, (2) to whom disclosure is reasonably necessary for this  
19 litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound”  
20 (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.5(a)(1), below,  
21 have been followed;

22 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary  
23 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be  
24 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.5(a)(2),  
25 below, have been followed;

26 (d) the court and its personnel;

27 (e) court reporters and their staff, professional jury or trial consultants, and  
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1 Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
2 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

3 (f) the author or recipient of a document containing the information or a custodian  
4 or other person who otherwise possessed or knew the information.

5 7.4 Information or an item that has been designated “CONFIDENTIAL  
6 INFORMATION” or “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” may  
7 be disclosed to a person who is not already allowed access to such information under this  
8 Protective Order if:

9 (a) the information was authored or received by a director, officer, employee or  
10 agent of the company for which the person is testifying as a designee under Fed. R. Civ.  
11 P. 30(b)(6);

12 (b) the Designating Party is the person or is the party for whom the person is a  
13 director, officer, employee, consultant or agent; or

14 (c) counsel for the party designating the material agrees that the material may be  
15 disclosed to the person.

16 In the event of disclosure under this paragraph, only the reporter, the person, his or her  
17 counsel, the presiding judge, and persons to whom disclosure may be made and who are  
18 bound by this Protective Order, may be present during the disclosure or discussion of  
19 Confidential Information. Disclosure of material pursuant to this paragraph does not  
20 constitute a waiver of the confidential status of the material so disclosed

21 7.5 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated  
23 House Counsel or Experts.

24 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the  
25 Designating Party, a Party that seeks to disclose to Designated House Counsel any  
26 information or item that has been designated “HIGHLY CONFIDENTIAL –  
27 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written  
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1 request to the Designating Party that (1) sets forth the full name of the Designated House  
2 Counsel and the city and state of his or her residence and (2) describes the Designated  
3 House Counsel’s current and reasonably foreseeable future primary job duties and  
4 responsibilities in sufficient detail to determine if House Counsel is involved, or may  
5 become involved, in any competitive decision-making.

6 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the  
7 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Protective  
8 Order) any information or item that has been designated “HIGHLY CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written  
10 request to the Designating Party that (1) identifies the general categories of “HIGHLY  
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party  
12 seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and  
13 the city and state of his or her primary residence, (3) attaches a copy of the Expert’s  
14 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person  
15 or entity from whom the Expert has received compensation or funding for work in his or  
16 her areas of expertise or to whom the expert has provided professional services, including  
17 in connection with a litigation, at any time during the preceding five years,<sup>1</sup> and (6)  
18 identifies (by name and number of the case, filing date, and location of court) any  
19 litigation in connection with which the Expert has offered expert testimony, including  
20 through a declaration, report, or testimony at a deposition or trial, during the preceding  
21 five years.

22 (b) A Party that makes a request and provides the information specified in the  
23 preceding respective paragraphs may disclose the subject Protected Material to the  
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25 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality  
26 obligation to a third-party, then the Expert should provide whatever information  
27 the Expert believes can be disclosed without violating any confidentiality  
28 agreements, and the Party seeking to disclose to the Expert shall be available to  
meet and confer with the Designating Party regarding any such engagement.

1 identified Designated House Counsel or Expert unless, within 14 days of delivering the  
2 request, the Party receives a written objection from the Designating Party. Any such  
3 objection must set forth in detail the grounds on which it is based.

4 (c) A Party that receives a timely written objection must meet and confer with the  
5 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
6 agreement within seven days of the written objection. If no agreement is reached, the  
7 Party seeking to make the disclosure to Designated House Counsel or the Expert may file  
8 a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-  
9 5, if applicable) seeking permission from the court to do so. Any such motion must  
10 describe the circumstances with specificity, set forth in detail the reasons why disclosure  
11 to Designated House Counsel or the Expert is reasonably necessary, assess the risk of  
12 harm that the disclosure would entail, and suggest any additional means that could be  
13 used to reduce that risk. In addition, any such motion must be accompanied by a  
14 competent declaration describing the parties' efforts to resolve the matter by agreement  
15 (i.e., the extent and the content of the meet and confer discussions) and setting forth the  
16 reasons advanced by the Designating Party for its refusal to approve the disclosure.

17 In any such proceeding, the Party opposing disclosure to Designated House Counsel or  
18 the Expert shall bear the burden of proving that the risk of harm that the disclosure would  
19 entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose  
20 the Protected Material to its Designated House Counsel or Expert.

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
22 IN OTHER LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation that compels  
24 disclosure of any information or items designated in this action as "CONFIDENTIAL,"  
25 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must:

26 (a) promptly notify in writing the Designating Party. Such notification shall  
27 include a copy of the subpoena or court order;

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

5 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
6 Designating Party whose Protected Material may be affected.<sup>2</sup>

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

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
16 PRODUCED IN THIS LITIGATION

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

23 (b) In the event that a Party is required, by a valid discovery request, to produce  
24 a Non-Party’s confidential information in its possession, and the Party is subject to an

25 \_\_\_\_\_  
26 <sup>2</sup> The purpose of imposing these duties is to alert the interested parties to the  
27 existence of this Protective Order and to afford the Designating Party in this case  
28 an opportunity to try to protect its confidentiality interests in the court from  
which the subpoena or order issued.

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  
4 that some or all of the information requested is subject to a confidentiality agreement  
5 with a Non-Party;

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

9 3. make the information requested available for inspection by the Non-  
10 Party.

11 (c) If the Non-Party fails to object or seek a protective order from this court  
12 within 14 days of receiving the notice and accompanying information, the Receiving  
13 Party may produce the Non-Party's confidential information responsive to the discovery  
14 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not  
15 produce any information in its possession or control that is subject to the confidentiality  
16 agreement with the Non-Party before a determination by the court.<sup>3</sup> Absent a court order  
17 to the contrary, the Non-Party shall bear the burden and expense of seeking protection in  
18 this court of its Protected Material.

19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
21 Protected Material to any person or in any circumstance not authorized under this  
22 Protective Order, the Receiving Party must immediately (a) notify in writing the  
23 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
24 unauthorized copies of the Protected Material, (c) inform the person or persons to whom  
25

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26 <sup>3</sup> The purpose of this provision is to alert the interested parties to the existence  
27 of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity  
28 to protect its confidentiality interests in this court.

1 unauthorized disclosures were made of all the terms of this Protective Order, and (d)  
2 request such person or persons to execute the “Acknowledgment and Agreement to Be  
3 Bound” that is attached hereto as Exhibit A.

4 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
5 PROTECTED MATERIAL

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

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Protective Order abridges the right of  
17 any person to seek its modification by the court in the future.

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

22 12.3 Export Control. Disclosure of Protected Material shall be subject to all  
23 applicable laws and regulations relating to the export of technical data contained in such  
24 Protected Material, including the release of such technical data to foreign persons or  
25 nationals in the United States or elsewhere. The Producing Party shall be responsible for  
26 identifying any such controlled technical data, and the Receiving Party shall take  
27 measures necessary to ensure compliance.

1           12.4 Filing Protected Material. Without written permission from the Designating  
2 Party or a court order secured after appropriate notice to all interested persons, a Party  
3 may not file in the public record in this action any Protected Material. A Party that seeks  
4 to file under seal any Protected Material must comply with Civil Local Rule 79-5.  
5 Protected Material may only be filed under seal pursuant to a court order authorizing the  
6 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a  
7 sealing order will issue only upon a request establishing that the Protected Material at  
8 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under  
9 the law. If a Receiving Party's request to file Protected Material under seal pursuant to  
10 Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the  
11 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless  
12 otherwise instructed by the court.  
13

14           13. FINAL DISPOSITION

15 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
16 Receiving Party must return all Protected Material to the Producing Party or destroy such  
17 material. As used in this subdivision, “all Protected Material” includes all copies,  
18 abstracts, compilations, summaries, and any other format reproducing or capturing any of  
19 the Protected Material. Whether the Protected Material is returned or destroyed, the  
20 Receiving Party must submit a written certification to the Producing Party (and, if not the  
21 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
22 (by category, where appropriate) all the Protected Material that was returned or destroyed  
23 and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
24 compilations, summaries or any other format reproducing or capturing any of the  
25 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
26 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
27 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
28

1 work product, and consultant and expert work product, even if such materials contain  
2 Protected Material. Any such archival copies that contain or constitute Protected Material  
3 remain subject to this Protective Order as set forth in Section 4 (DURATION).  
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1 **PROTECTIVE ORDER EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 [print or type full address], declare under penalty of perjury that I have read in its  
5 entirety and understand the Protective Order that was issued by the United States District  
6 Court for the Central District of California on \_\_\_\_\_ [date] in the case of  
7 \_\_\_\_\_ [insert formal name of the case and the number and initials assigned to  
8 it by the court]. I agree to comply with and to be bound by all the terms of this  
9 Protective Order, and I understand and acknowledge that failure to so comply could  
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise  
11 that I will not disclose in any manner any information or item that is subject to this  
12 Protective Order to any person or entity except in strict compliance with the provisions of  
13 this Protective Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Central District of California for the purpose of enforcing the terms of this Protective  
16 Order, even if such enforcement proceedings occur after termination of this action.

17 I hereby appoint \_\_\_\_\_ [print or type full name] of  
18 \_\_\_\_\_ [print or type full address and  
19 telephone number] as my California agent for service of process in connection with this  
20 action or any proceedings related to enforcement of this Protective Order.

21 Date: \_\_\_\_\_

22 City and State where sworn and signed: \_\_\_\_\_

23  
24 Printed name: \_\_\_\_\_

25 [printed name]

26 Signature: \_\_\_\_\_

27 [signature]

