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18 UNITED STATES DISTRICT COURT  
19 CENTRAL DISTRICT OF CALIFORNIA

20 HAKOP ARSHAKYAN, an individual;  
21 MAXIMILIANO LOPES, an  
22 individual; ROBERTO MACIEL, an  
23 individual; and SANDRO  
24 RODRIGUES, an individual,

25 Plaintiffs,

26 v.

27 X17, INC., a California corporation;  
28 and FRANCOIS NAVARRE, an  
individual,

Defendants.

AND RELATED COUNTER-CLAIMS

Case No. 2:16-cv-04305-TJH-RAO  
Hon. Terry J. Hatter, Jr.

**STIPULATED PROTECTIVE  
ORDER<sup>1</sup>**

<sup>1</sup> This Stipulated Protective Order is based on the model protective order provided under Magistrate Judge Rozella A. Oliver's Procedures.

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1 1. A. PURPOSE AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public disclosure  
4 and from use for any purpose other than prosecuting and defending this litigation may  
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
6 enter the following Stipulated Protective Order. The parties acknowledge that this  
7 Order does not confer blanket protections on all disclosures or responses to discovery,  
8 and that the protection it affords from public disclosure and use extends only to the  
9 limited information or items that are entitled to confidential treatment under applicable  
10 legal principles.

11 B. GOOD CAUSE STATEMENT

12 It is the intent of the parties and the Court that information will not be designated  
13 as confidential for tactical reasons in this case, and that nothing will be so designated  
14 without a good faith belief that there is good cause as to why information should not be  
15 part of the public record.

16 Examples of confidential information that the parties may seek to protect from  
17 unrestricted or unprotected disclosure include:

- 18 a) Information that is the subject of a non-disclosure or confidentiality  
19 agreement or obligation;
- 20 b) The names of a Party's vendors, distributors, consultants, contractors, or  
21 customers (or other information tending to reveal their identities);
- 22 c) Agreements with third-parties;
- 23 d) Proprietary news and information-gathering techniques;
- 24 e) Information related to budgets, sales, profits, costs, margins, product  
25 pricing, or other internal financial/accounting information, including non-public  
26 information related to financial condition or performance, income, or other non-public  
27 tax information;
- 28 f) Information related to internal operations, including personnel

1 information; and,

2 g) Trade secrets (as defined by the jurisdiction in which the information is  
3 located).

4 Generally speaking, information and documents shall only be designated under  
5 this protective order because the Designating Party believes the information or  
6 documents are proprietary, confidential, and/or trade secret information that the  
7 Designating Party would not release publicly. Unrestricted or unprotected disclosure of  
8 such confidential, technical, commercial, or personal information would result in  
9 prejudice or harm to the Producing Party by revealing the Producing Party's  
10 competitive confidential information. Such information will have been developed at  
11 the expense of the Producing Party and represent valuable tangible and intangible assets  
12 of that Party. Additionally, privacy interests must be safeguarded.

13 Accordingly, to expedite the flow of information, to facilitate the prompt  
14 resolution of disputes over confidentiality of discovery materials, to adequately protect  
15 information the parties are entitled to keep confidential, to ensure that the parties are  
16 permitted reasonably necessary uses of such material in preparation for and in the  
17 conduct of trial, to address their handling at the end of the litigation, and to serve the  
18 ends of justice, a protective order for such information is justified in this matter. The  
19 parties respectfully submit that there is good cause for the entry of this Stipulated  
20 Protective Order.

21 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

22 The parties further acknowledge, as set forth in Paragraph 13.3, below, that this  
23 Stipulated Protective Order does not entitle them to file confidential information under  
24 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the  
25 standards that will be applied when a Party seeks permission from the Court to file  
26 material under seal.

27 There is a strong presumption that the public has a right of access to judicial  
28 proceedings and records in civil cases. In connection with non-dispositive motions,

1 good cause must be shown to support a filing under seal. *See Kamakana v. City and*  
2 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*  
3 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics, Inc.*,  
4 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good  
5 cause showing). A specific showing of good cause or compelling reasons, with proper  
6 evidentiary support and legal justification, must be made with respect to Protected  
7 Material that a Party seeks to file under seal. The parties' mere designation of  
8 Disclosure or Discovery Material as CONFIDENTIAL or ATTORNEYS' EYES  
9 ONLY does not — without the submission of competent evidence by declaration,  
10 establishing that the material sought to be filed under seal qualifies as confidential,  
11 privileged, or otherwise protectable — constitute good cause.

12 Further, if a Party requests sealing related to a dispositive motion or trial, then  
13 compelling reasons, not only good cause, for the sealing must be shown, and the relief  
14 sought shall be narrowly tailored to serve the specific interest to be protected. *See*  
15 *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item  
16 or type of information, document, or thing sought to be filed or introduced under seal in  
17 connection with a dispositive motion or trial, the Party seeking protection must  
18 articulate compelling reasons, supported by specific facts and legal justification, for the  
19 requested sealing order. Again, competent evidence supporting the application to file  
20 documents under seal must be provided by declaration.

21 Any document that is not confidential, privileged, or otherwise protectable in its  
22 entirety will not be filed under seal if the confidential portions can be redacted. If  
23 documents can be redacted, then a redacted version for public viewing, omitting only  
24 the confidential, privileged, or otherwise protectable portions of the document, shall be  
25 filed. Any application that seeks to file documents under seal in their entirety should  
26 include an explanation of why redaction is not feasible.

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1 2. DEFINITIONS

2 2.1. Action: The above-captioned lawsuit *Ashakyan, et al. v. X17, Inc., et al.*,  
3 No. 2:16-cv-04305-TJH-RAO pending in the U.S. District Court for the Central District  
4 of California.

5 2.2. ATTORNEYS' EYES ONLY: Those CONFIDENTIAL documents,  
6 correspondence, ESI, answers to interrogatories, responses to requests for admission,  
7 depositions, affidavits, expert reports, legal briefs or memoranda, and portions of such  
8 materials, and information derived therefrom which the Designating Party in good faith  
9 believes is highly confidential such that disclosure to the Receiving Party might cause  
10 competitive harm to the Designating Party. Information and material that may be  
11 subject to this protection includes, but is not limited to, financial statements, proprietary  
12 technical and/or internal process information, documents related to intellectual property  
13 in development or which is the subject of a non-public application, financial, marketing  
14 and other sales data (such as actual or prospective customer lists, actual or prospective  
15 vendor lists, actual or prospective contractor lists, purchase prices, and sales pricing),  
16 trade secrets, proprietary items or information, and/or information having strategic  
17 commercial value pertaining to the Designating Party's trade or business. Additionally,  
18 relevant documents related to employment or employment-related disclosures of any  
19 individual who is *not* a Plaintiff in the Action shall be made pursuant to a  
20 "ATTORNEYS' EYES ONLY" designation to protect the privacy of these individuals.

21 2.3. Challenging Party: A Party or Non-Party that challenges the designation  
22 of information or items under this Stipulated Protective Order.

23 2.4. CONFIDENTIAL: Those information (regardless of how it is generated,  
24 stored, or maintained), items, or tangible things that qualify for protection under  
25 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause  
26 Statement.

27 2.5. Counsel: Outside Counsel of Record and House Counsel (as well as their  
28 support staff).

1           2.6. Designating Party: A Party or Non-Party that designates information or  
2 items that it produces in disclosures or in responses to discovery as  
3 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

4           2.7. Disclosure or Discovery Material: All items or information, regardless of  
5 the 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  
7 in disclosures or responses to discovery in the Action.

8           2.8. ESI: Electronically-Stored Information as that term is used in Federal  
9 Rule of Civil Procedure 34(a).

10          2.9. Expert: A person with specialized knowledge or experience in a matter  
11 pertinent to this litigation who has been retained by a Party to serve as an expert witness  
12 or as a consultant in this litigation and who, at the time of retention, is not anticipated to  
13 become an officer, director, or employee of a Party. Nothing in this Protective Order  
14 purports to alter in any way the requirements for offering testimony under Fed. R. Evid.  
15 703, or to define the term “expert” for purposes other than those addressed in this  
16 Protective Order.

17          2.10. House Counsel: Attorneys who are employees of a Party to this Action.  
18 House Counsel does not include Outside Counsel of Record or any other outside  
19 counsel.

20          2.11. Non-Party: Any natural person, partnership, corporation, association, or  
21 other legal entity not named as a Party to this action.

22          2.12. Outside Counsel of Record: Attorneys who are not employees of a Party  
23 to this Action, but who are retained to represent or advise a Party to this Action and  
24 have appeared in this Action on behalf of that Party or are affiliated with a law firm that  
25 has appeared on behalf of that Party, and including their support staff.

26          2.13. Party: Any Party to this Action, including all of its officers, directors,  
27 employees, consultants, retained experts, and Outside Counsel of Record (and their  
28 support staffs).

1           2.14. Producing Party: A Party or Non-Party that produces Disclosure or  
2 Discovery Material in this Action.

3           2.15. 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           2.16. Protected Material: Any Disclosure or Discovery Material that is  
8 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

9           2.17. Receiving Party: A Party that receives Disclosure or Discovery Material  
10 from a Producing Party.

11           2.18. Support Personnel: Personnel who support an Expert’s work under the  
12 Expert’s direction and supervision, and who are necessary for the completion of that  
13 work; *see also* Paragraph 7.1 below.

14 3.     SCOPE

15           The protections conferred by this Stipulation and Order cover Protected Material  
16 (as defined above), and (1) any information copied or extracted from Protected  
17 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and  
18 (3) any testimony, conversations, or presentations by Parties or their Counsel that might  
19 reveal Protected Material.

20           3.1. Exclusions. The protections conferred by this Stipulation and Order do not  
21 cover the following information: (a) any information that is in the public domain at the  
22 time of disclosure to a Receiving Party or becomes part of the public domain after its  
23 disclosure to a Receiving Party as a result of publication not involving a violation of  
24 this Stipulated Protective Order, including by becoming part of the public record  
25 through trial or otherwise; (b) any information known to the Receiving Party prior to  
26 the disclosure or obtained by the Receiving Party after the disclosure from a source who  
27 obtained the information lawfully and under no obligation of confidentiality to the  
28



1 Designating Party; and (c) any Protected Material that is disclosed at trial that was not  
2 afforded protection by the trial judge.

3 3.2. Nothing in this Stipulated Protective Order shall govern or apply to a  
4 Party's use or disclosure of its own Disclosure or Discovery Material.

5 3.3. Any use of Protected Material at trial shall be governed by the orders of  
6 the trial judge. This Order does not govern the use of Protected Material at trial.

7 4. DURATION

8 Once a case proceeds to trial, information that was designated as  
9 CONFIDENTIAL or maintained as CONFIDENTIAL pursuant to this protective order  
10 will become public and will be presumptively available to all members of the public,  
11 including the press, when it is used or introduced as an exhibit at trial *unless*  
12 compelling reasons supported by specific factual findings to proceed otherwise are  
13 made to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81  
14 (distinguishing "good cause" showing for sealing documents produced in discovery  
15 from "compelling reasons" standard when merits-related documents are part of court  
16 record). Accordingly, the terms of this Stipulated Protective Order do not extend  
17 beyond the commencement of the trial.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1. Exercise of Restraint and Care in Designating Material for Protection.

20 Each Party or Non-Party that designates information or items for protection under this  
21 Stipulated Protective Order must take care to limit any such designation to specific  
22 material that qualifies under the appropriate standards. The Designating Party must  
23 designate for protection only those parts of material, documents, items, or oral or  
24 written communications that qualify so that other portions of the material, documents,  
25 items, or communications for which protection is not warranted are not swept  
26 unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
28 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,

1 to unnecessarily encumber the case development process or to impose unnecessary  
2 expenses and burdens on other parties) may expose the Designating Party to sanctions.

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

6 5.2. Manner and Timing of Designations. Except as otherwise provided in  
7 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
9 under this Order must clearly be so designated before the material is disclosed or  
10 produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic  
13 documents, but excluding transcripts of depositions or other pretrial or trial  
14 proceedings), that the Producing Party affix, at a minimum, the appropriate legend  
15 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" to each page that contains  
16 protected material so designated. If only a portion of the material on a page qualifies  
17 for protection, the Producing Party also must clearly identify the protected portion(s)  
18 (e.g., by making appropriate markings in the margins).

19 A Party or Non-Party that makes original documents available for inspection  
20 need not designate them for protection until after the inspecting Party has indicated  
21 which documents it would like copied and produced. During the inspection and before  
22 the designation, all of the material made available for inspection shall be deemed  
23 "ATTORNEYS' EYES ONLY." After the inspecting Party has identified the  
24 documents it wants copied and produced, the Producing Party must determine which  
25 documents, or portions thereof, qualify for protection under this Order. Then, before  
26 producing the specified documents, the Producing Party must affix the  
27 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" legend, as appropriate, to each  
28 page that contains Protected Material. If only a portion of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the protected  
2 portion(s) (e.g., by making appropriate markings in the margins).

3 (b) for testimony given in depositions that involves a disclosure of  
4 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" documents or information of  
5 any Party, said deposition or portions thereof shall be designated as containing  
6 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" material subject to the  
7 provisions of this Protective Order at the time the deposition is taken whenever  
8 possible; *however*, any Party shall have until twenty-one (21) days after receipt of the  
9 deposition transcript within which to designate, in writing, those portions of the  
10 transcript it wishes to remain designated as "CONFIDENTIAL" or "ATTORNEYS'  
11 EYES ONLY," and the right to make such designation shall be waived unless made  
12 within the twenty-one (21) day period. During such twenty-one (21) period, the  
13 entirety of the transcript shall be deemed designated "ATTORNEYS' EYES ONLY" to  
14 preserve the right of any Party to make a designation of "CONFIDENTIAL" or  
15 "ATTORNEYS' EYES ONLY" during that twenty-one (21) day period.

16 (c) for information produced in some form other than documentary and for  
17 any other tangible items, that the Producing Party affix in a prominent place on the  
18 exterior of the container or containers in which the information is stored the legend  
19 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," as appropriate. If only a  
20 portion or portions of the information warrants protection, the Producing Party, to the  
21 extent practicable, shall identify the protected portion(s).

22 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent  
23 failure to designate qualified information or items does not, standing alone, waive the  
24 Designating Party's right to secure protection under this Stipulated Protective Order for  
25 such material. Upon timely correction of a designation, the Receiving Party must make  
26 reasonable efforts to assure that the material is treated in accordance with the provisions  
27 of this Order.

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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1. Timing of Challenges. Any Party or Non-Party may challenge a  
3 designation of confidentiality at any time that is consistent with the Court's Scheduling  
4 Order.

5 6.2. Meet and Confer. The Challenging Party shall initiate the dispute  
6 resolution process by providing written notice of each designation it is challenging with  
7 a description of the basis for each challenge. To avoid ambiguity as to whether a  
8 challenge has been made, the written notice must recite that the challenge to  
9 confidentiality is being made in accordance with this specific paragraph of the  
10 Stipulated Protective Order. The parties shall attempt to resolve each challenge in good  
11 faith, and must begin the process by conferring directly (in voice to voice dialogue;  
12 other forms of communication are not sufficient) within 5 days of the date of service of  
13 notice. In conferring, the Challenging Party must explain the basis for its belief that the  
14 confidentiality designation was not proper and must give the Designating Party an  
15 opportunity to review the designated material, to reconsider the circumstances, and, if  
16 no change in designation is offered, to explain the basis for the chosen designation. A  
17 Challenging Party may proceed to the next stage of the challenge process only if it has  
18 engaged in this meet and confer process first *or* establishes that the Designating Party is  
19 unwilling to participate in the meet and confer process in a timely manner.

20 6.3. Judicial Intervention. If the Parties cannot resolve a challenge without  
21 court intervention, the Designating Party shall file and serve a motion to retain  
22 confidentiality within twenty-one (21) days of the initial notice of challenge or within  
23 seven (7) days of the parties agreeing that the meet and confer process will not resolve  
24 their dispute, whichever is earlier. Any motion seeking relief from the Court must  
25 comply with Local Rule 37 *et seq.*, including the Joint Stipulation requirement. Each  
26 such motion must be accompanied by a competent declaration affirming that the  
27 movant has complied with the meet and confer requirements imposed in the preceding  
28 paragraph. Failure by the Designating Party to make such a motion, including the

1 required declaration within twenty-one (21) days (or seven (7) days, if applicable), shall  
2 automatically waive the confidentiality designation for each challenged designation. In  
3 addition, the Challenging Party may file a motion challenging a confidentiality  
4 designation at any time if there is good cause for doing so, including a challenge to the  
5 designation of a deposition transcript or any portions thereof. Any motion brought  
6 pursuant to this provision must be accompanied by a competent declaration affirming  
7 that the movant has complied with the meet and confer requirements imposed by the  
8 preceding paragraph.

9       6.4. Burden of Persuasion. The burden of persuasion in any such challenge  
10 proceeding shall be on the Designating Party. Frivolous challenges, and those made for  
11 an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
12 other parties) may expose the Challenging Party to sanctions. Unless the Designating  
13 Party has waived or withdrawn the confidentiality designation, all parties shall continue  
14 to afford the material in question the level of protection to which it is entitled under the  
15 Producing Party's designation until the Court rules on the challenge.

16 7. EXPERTS & CONSULTANTS

17       7.1. Persons Covered By This Provision. The procedure specified under  
18 Paragraph 7.2 shall apply to Experts expressly retained by Counsel to assist in the  
19 preparation of this litigation for trial, whether or not the Expert is expected to testify at  
20 trial or not, as well as any personnel who support such Expert's work under the  
21 Expert's direction and supervision, and who are necessary for the completion of that  
22 work ("Support Personnel"). Disclosures to any such Support Personnel are to be  
23 limited to only those disclosures necessary to assist the Expert.

24       7.2. Procedure for Including Experts & Consultants Under the Protective  
25 Order. As a condition precedent to disclosure of any CONFIDENTIAL and/or  
26 ATTORNEYS' EYES ONLY materials to an individual described in Paragraph 7.1  
27 above, Counsel for the Receiving Party shall require the Expert and his/her Support  
28 Personnel (if any) to execute the form of Exhibit A attached hereto. Such executed

1 Exhibit A shall be maintained by Counsel for the Receiving Party for the term of this  
2 Stipulated Protective Order. (See Paragraphs 4 and 14.)

3 8. ACCESS TO AND USE OF PROTECTED MATERIAL

4 8.1. Basic Principles. A Receiving Party may use Protected Material that is  
5 disclosed or produced by another Party or by a Non-Party in connection with this  
6 Action only for prosecuting, defending, or attempting to settle this Action. Such  
7 Protected Material may be disclosed only to the categories of persons and under the  
8 conditions described in this Order. When the Action has been terminated, a Receiving  
9 Party must comply with the provisions of paragraph 14 below (FINAL  
10 DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a  
12 location and in a secure manner that ensures that access is limited to the persons  
13 authorized under this Stipulated Protective Order.

14 8.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
15 ordered by the Court or permitted in writing by the Designating Party, a Receiving  
16 Party may only disclose information or items designated "CONFIDENTIAL" to:

17 (a) the Receiving Party's Outside Counsel of Record in this Action, as  
18 well as employees of said Outside Counsel of Record to whom it is reasonably  
19 necessary to disclose the information for this Action;

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

22 (c) Experts and their Support Personnel (as defined in ¶¶ 2.18 and 7.1 of  
23 this Order) of the Receiving Party to whom disclosure is reasonably necessary for  
24 this Action and who have signed the "Acknowledgment and Agreement to Be  
25 Bound" (Exhibit A);

26 (d) the Court and its personnel;

27 (e) court reporters, videographers, and their staff;

28

1 (f) professional jury or trial consultants, mock jurors, and Professional  
2 Vendors to whom disclosure is reasonably necessary for this Action and who have  
3 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

6 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
7 Action to whom disclosure is reasonably necessary, *provided*: (1) the deposing party  
8 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will  
9 not be permitted to keep any confidential information unless otherwise agreed by the  
10 Designating Party or ordered by the Court. Pages of transcribed deposition  
11 testimony or exhibits to depositions that reveal Protected Material may be separately  
12 bound by the court reporter and may not be disclosed to anyone except as permitted  
13 under this Stipulated Protective Order; and

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

16 8.3. Disclosure of "ATTORNEYS' EYES ONLY" Information or Items.

17 Unless otherwise ordered by the Court or permitted in writing by the Designating Party,  
18 a Receiving Party may only disclose information or items designated "ATTORNEYS'  
19 EYES ONLY" to:

20 (a) the Receiving Party's Outside Counsel of Record in this Action, as  
21 well as employees of said Outside Counsel of Record to whom it is reasonably  
22 necessary to disclose the information for this Action;

23 (b) Experts and their support personnel (as defined in this Stipulated  
24 Protective Order) of the Receiving Party to whom disclosure is reasonably necessary  
25 for this Action and who have signed the "Acknowledgment and Agreement to Be  
26 Bound" (Exhibit A), *except* that the Experts who may view "ATTORNEYS' EYES  
27 ONLY" information cannot be employees or independent contractors of the Receiving  
28 Party or any of its subsidiaries or affiliated companies;

