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

22 INDIO PRODUCTS, INC., a California
23 Corporation,

24 Plaintiff,

25 v.

26 BRYBRADAN, INC., a California
27 corporation, doing business as MISTIC
28 PRODUCTS, and DOES 1 through 20,
inclusive,

Defendants.

CASE NO.: 2:16-cv-05067-BRO-E

[Hon. Charles F. Eick]

~~PROPOSED~~ ORDER ENTERING
STIPULATED PROTECTIVE
ORDER

1 **[PROPOSED] ORDER STIPULATED PROTECTIVE ORDER**

2
3 1. **PURPOSES AND LIMITATIONS**

4 1.1 Disclosure and discovery activity in this action are likely to involve
5 production of confidential, proprietary, or private information for which special
6 protection from public disclosure and from use for any purpose other than prosecuting
7 this litigation may be warranted. Accordingly, the parties hereby stipulate to and
8 petition the court to enter the following Stipulated Protective Order. The parties
9 acknowledge that this Order does not confer blanket protections on all disclosures or
10 responses to discovery and that the protection it affords from public disclosure and use
11 extends only to the limited information or items that are entitled to confidential
12 treatment under the applicable legal principles. The parties further acknowledge, as set
13 forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them
14 to file confidential information under seal; Local Rule 79-5 sets forth the procedures
15 that must be followed and the standards that will be applied when a party seeks
16 permission from the court to file material under seal.

17 1.2 **Good Cause Statement:** The parties to this case are in the field of
18 selling esoteric and mystical candles, room sprays, oils, sachets, and similar products.
19 Because of the parties' status as real or potential competitors, confidential business
20 information such as sales data, customer or potential customer lists, cost-of-goods
21 sold, pricing, manufacturing and product details, specifications, information, and other
22 materials that may qualify as trade secrets under California Civil Code § 3426.1, and
23 other, similar information must necessarily be protected from disclosure to opposing
24 parties and/or other competitors in the market, so as to avoid significant competitive
25 harm.

26 The parties to this case each sell their candles, room sprays, oils, sachets, and
27 similar products to others in the business and to the public.

28 The threshold issues in the pleadings center on Plaintiff's allegations of

1 copyright and trademark infringement, and unfair competition. Defendant's asserted
2 defenses include that Plaintiff lacks ownership of the copyrights, that the asserted
3 trademarks are not, in fact, trademarks, and that Plaintiff is attempting to claim rights
4 in what others in the industry created and used prior to Plaintiff's alleged creation and
5 first use of the same. There are also damages claims made by Plaintiff.

6 Resolution of these issues, and particularly the associated damages analysis,
7 necessarily requires evidence of sales information, manufacturing information,
8 product specifications, cost information, any marketing information or research, and
9 customer lists, at a minimum, to be disclosed, at minimum, to opposing counsel. This
10 Stipulated Protective Order is geared towards allowing resolution of the factual and
11 legal issues without imposing undue competitive harm on the parties.

12 Federal Rule of Civil Procedure Rule 26(c)(1)(G) permits the grant of a
13 protective order upon a showing of good cause, and provides that the protection of a
14 trade secret or other confidential commercial information is a proper basis for the
15 issuance of a protective order. The party seeking such an order must demonstrate a
16 particular and specific need for the protective order. Gray v. Rodewald, 133 F.R.D.
17 39, 40 (N.D. Cal. 1990).

18 A protective order that focuses on preventing disclosure of particular
19 information, e.g. confidential business information, where disclosure would "likely
20 cause serious harm," is supported by good cause. Hayden v. Siemens Medical
21 Systems, Inc., 106 F.R.D. 551, 556, (S.D.N.Y. 1985). To support a showing of good
22 cause, however, a protective order must be sufficiently tailored in the information it
23 seeks to protect, e.g. by designating certain classes or types of information. Id.

24 As apparent or actual competitors, the parties' proposed protective order was
25 drafted specifically to protect the disclosure of each party's commercially sensitive
26 sales information and other confidential business information, as set forth above and
27 below. Confidential information under this agreement is specifically defined below.
28 Such information, under the proposed protective order, may be designated

1 CONFIDENTIAL or HIGHLY CONFIDENTIAL ATTORNEY EYES ONLY, and is
2 open to challenge by either party, any third party, or the public.

3 Based on the foregoing demonstration of good cause in support of the parties'
4 Stipulated Protective Order, an Order should be entered by the Court to protect the
5 parties' confidential business information.

6
7 2. DEFINITIONS

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation
9 of information or items under this Order.

10 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
11 how it is generated, stored or maintained) or tangible things that qualify for protection
12 under Federal Rule of Civil Procedure 26(c), and include, but are not necessarily
13 limited to, sales data, customer lists, cost-of-goods sold, pricing, market research,
14 manufacturers, and manufacturing agreements, and other similar information. It is
15 noted that some of this information may be sufficiently sensitive that it might be
16 designated pursuant to section 2.7 below.

17 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their
18 support staff).

19 2.4 Designating Party: a Party or Non-Party that designates information or
20 items that it produces in disclosures or in responses to discovery as
21 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
22 ONLY".

23 2.5 Disclosure or Discovery Material: all items or information, regardless of
24 the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced or
26 generated in disclosures or responses to discovery in this matter.

27 2.6 Expert: a person with specialized knowledge or experience in a matter
28 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve

1 as an expert witness or as a consultant in this action, (2) is not a past or current
2 employee of a Party or of a Party's competitor, and (3) at the time of retention, is not
3 anticipated to become an employee of a Party or of a Party's competitor.

4 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
5 Information or Items: extremely sensitive "Confidential Information or Items,"
6 disclosure of which to another Party or Non-Party would create a substantial risk of
7 serious harm that could not be avoided by less restrictive means. Such information
8 and items include, but are not necessarily limited to, sales data, customer lists, cost-of-
9 goods sold, pricing, market research, manufacturers, and manufacturing agreements,
10 information and other materials that qualify as trade secrets under California Civil
11 Code § 3426.1, and other similar information and items.

12 2.8 Non-Party: any natural person, partnership, corporation, association, or
13 other legal entity not named as a Party to this action.

14 2.9 Outside Counsel of Record: attorneys who are not employees of a party
15 to this action but are retained to represent or advise a party to this action and have
16 appeared in this action on behalf of that party or are affiliated with a law firm which
17 has appeared on behalf of that party.

18 2.10 Party: any party to this action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their
20 support staffs).

21 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this action.

23 2.12 Professional Vendors: persons or entities that provide litigation support
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium)
26 and their employees and subcontractors.

27 2.13 Protected Material: any Disclosure or Discovery Material that is
28 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY" pursuant to the terms of paragraphs 2.2 and 2.7 above.

2 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
3 from a Producing Party.

4
5 3. SCOPE

6 The protections conferred by this Stipulation and Order cover not only
7 Protected Material (as defined above), but also (1) any information copied or extracted
8 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
9 Protected Material; and (3) any testimony, conversations, or presentations by Parties
10 or their Counsel that might reveal Protected Material. However, the protections
11 conferred by this Stipulation and Order do not cover the following information: (a)
12 any information that is in the public domain at the time of disclosure to a Receiving
13 Party or becomes part of the public domain after its disclosure to a Receiving Party as
14 a result of publication not involving a violation of this Order, including becoming part
15 of the public record through trial or otherwise; and (b) any information known to the
16 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
17 disclosure from a source who obtained the information lawfully and under no
18 obligation of confidentiality to the Designating Party. Any use of Protected Material at
19 trial shall be governed by the orders of the trial judge.

20
21 4. DURATION

22 4.1 Confidential Designations at Trial: The parties understand that the Court
23 presumptively does not allow for confidentiality designations to be maintained at trial.
24 Should either of the parties believe that any of the information or items disclosed in
25 this action that have been designated by either party as CONFIDENTIAL or HIGHLY
26 CONFIDENTIAL – ATTORNEYS' EYES ONLY requires that such level of
27 protection be maintained at trial, the parties will separately apply to the district judge
28 for such relief sufficiently in advance of trial to allow for a motion to be filed, if

1 necessary, and a hearing and order on such motion to occur. Any such request to
2 maintain any information or items as CONFIDENTIAL or HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY for trial shall *specifically* identify
4 and enumerate the information or item(s) sought to be so protected at trial, and
5 *specifically* articulate the need to maintain such information or item(s) as
6 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY at
7 trial.

8 4.2 Final Disposition: Final disposition shall be deemed to be the later of (1)
9 dismissal of all claims and defenses in this action, with or without prejudice; and (2)
10 final judgment herein after the completion and exhaustion of all appeals, rehearings,
11 remands, trials, or reviews of this action, including the time limits for filing any
12 motions or applications for extension of time pursuant to applicable law.

13
14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.

16 Each Party or Non-Party that designates information or items for protection
17 under this Order must take care to limit any such designation to specific material that
18 qualifies under the appropriate standards. To the extent it is practical to do so, the
19 Designating Party must designate for protection only those parts of material,
20 documents, items, or oral or written communications that qualify – so that other
21 portions of the material, documents, items, or communications for which protection is
22 not warranted are not swept unjustifiably within the ambit of this Order.

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

28 If it comes to a Designating Party’s attention that information or items that it

1 designated for protection do not qualify for protection at all or do not qualify for the
2 level of protection initially asserted, that Designating Party must promptly notify all
3 other parties that it is withdrawing the mistaken designation.

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

9 Designation in conformity with this Order requires:

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

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

1 protection, the Producing Party also must clearly identify the protected portion(s)
2 (e.g., by making appropriate markings in the margins) and must specify, for each
3 portion, the level of protection being asserted.

4 (b) for testimony given in deposition or in other pretrial, that the Designating
5 Party identify on the record, before the close of the deposition, hearing, or other
6 proceeding, all protected testimony and specify the level of protection being asserted.
7 When it is impractical to identify separately each portion of testimony that is entitled
8 to protection and it appears that substantial portions of the testimony may qualify for
9 protection, the Designating Party may invoke on the record (before the deposition,
10 hearing, or other proceeding is concluded) a right to have up to 21 days after receipt of
11 the transcript to identify the specific portions of the testimony as to which protection
12 is sought and to specify the level of protection being asserted. Only those portions of
13 the testimony that are appropriately designated for protection within the 21 days shall
14 be covered by the provisions of this Stipulated Protective Order. The entire transcript
15 shall be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
16 ATTORNEYS' EYES ONLY" during the 21 day period. Any testimony not
17 designated prior to the expiration of the 21 day period after the transcript becomes
18 available shall be treated as undesignated.

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

26 Transcripts containing Protected Material shall have an obvious legend on the
27 title page that the transcript contains Protected Material, and the title page shall be
28 followed by a list of all pages (including line numbers as appropriate) that have been

1 designated as Protected Material and the level of protection being asserted by the
2 Designating Party. The Designating Party shall inform the court reporter of these
3 requirements. Alternatively, the transcript may be designated “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety pursuant to
5 agreement by the parties.

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

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

19
20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
22 designation of confidentiality at any time. Unless a prompt challenge to a Designating
23 Party’s confidentiality designation is necessary to avoid foreseeable, substantial
24 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
25 litigation, a Party does not waive its right to challenge a confidentiality designation by
26 electing not to mount a challenge promptly after the original designation is disclosed.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
28 resolution process under Local Rule 37-1 et seq. and by providing written notice of

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

15 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
16 court intervention, the Challenging Party may file a motion challenging a
17 confidentiality designation at any time if there is good cause for doing so, including a
18 challenge to the designation of a deposition transcript or any portions thereof. Any
19 motion brought pursuant to this provision must be briefed in accordance with C.D.
20 Cal. L.R. 37 and accompanied by a competent declaration affirming that the movant
21 has complied with the meet and confer requirements imposed by the preceding
22 paragraph.

23 The burden of persuasion in any such challenge proceeding shall be on the
24 Designating Party. Frivolous challenges and those made for an improper purpose (e.g.,
25 to harass or impose unnecessary expenses and burdens on other parties) may expose
26 the Challenging Party to sanctions. All parties shall continue to afford the material in
27 question the level of protection to which it is entitled under the Designating Party's
28 designation until the court rules on the challenge.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

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

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

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
3 Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered
4 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
5 reveal Protected Material must be separately bound by the court reporter and may not
6 be disclosed to anyone except as permitted under this Stipulated Protective Order.

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

9 (h) any mediator or settlement officer, and their supporting personnel, mutually
10 agreed upon by any of the parties engaged in settlement discussions.

11 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
12 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in
13 writing by the Designating Party, a Receiving Party may disclose any information or
14 item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only
15 to:

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

19 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
20 necessary for this litigation, and (2) who have signed the "Acknowledgment and
21 Agreement to Be Bound" (Exhibit A);

22 (c) the court and its personnel;

23 (d) court reporters and their staff; professional jury or trial consultants, and
24 Professional Vendors to whom disclosure is reasonably necessary for this litigation
25 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
26 A); and

27 (e) the author or recipient of a document containing the information or a
28 custodian or other person who otherwise possessed or knew the information.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” that Party must:

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

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

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

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

24
25 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
26 IN THIS LITIGATION

27 (a) The terms of this Order are applicable to information produced by a Non-
28 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced by
2 Non-Parties in connection with this litigation is protected by the remedies and relief
3 provided by this Order. Nothing in these provisions should be construed as prohibiting
4 a Non-Party from seeking additional protections.

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

9 1. promptly notify in writing the Requesting Party and the Non-Party
10 that some or all of the information requested is subject to a confidentiality agreement
11 with a Non-Party;

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

15 3. make the information requested available for inspection by the
16 Non-Party.

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

25
26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
28 Protected Material to any person or in any circumstance not authorized under this

1 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
2 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
3 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
4 persons to whom unauthorized disclosures were made of all the terms of this Order,
5 and (d) request such person or persons to execute the "Acknowledgment and
6 Agreement to Be Bound" that is attached hereto as Exhibit A.

7
8 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
9 PROTECTED MATERIAL

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

20
21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in this
27 Stipulated Protective Order. Similarly, no Party waives any right to object on any
28 ground to use in evidence of any of the material covered by this Protective Order.

1 12.3 Filing Protected Material. Without written permission from the
2 Designating Party or a court order secured after appropriate notice to all interested
3 persons, a Party may not file in the public record in this action any Protected Material.
4 A Party that seeks to file under seal any Protected Material must comply with Local
5 Rule 79-5. Protected Material may only be filed under seal pursuant to a court order
6 authorizing the sealing of the specific Protected Material at issue. If a Party's request
7 to file Protected Material under seal pursuant to Local Rule 79-5(d) is denied by the
8 court, then the Receiving Party may file the Protected Material in the public record
9 pursuant to Local Rule 79-5 unless otherwise instructed by the court.

10
11 13. FINAL DISPOSITION

12 Within 60 days after the final disposition of this action, as defined in paragraph
13 4, each Receiving Party must return all Protected Material to the Producing Party or
14 destroy such material. As used in this subdivision, "all Protected Material" includes
15 all copies, abstracts, compilations, summaries, and any other format reproducing or
16 capturing any of the Protected Material. Whether the Protected Material is returned or
17 destroyed, the Receiving Party must submit a written certification to the Producing
18 Party (and, if not the same person or entity, to the Designating Party) by the 60-day
19 deadline that (1) identifies (by category, where appropriate) all the Protected Material
20 that was returned or destroyed and (2) affirms that the Receiving Party has not
21 retained any copies, abstracts, compilations, summaries or any other format
22 reproducing or capturing any of the Protected Material. (cont. on next page)

1 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
2 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
3 correspondence, deposition and trial exhibits, expert reports, attorney work product,
4 and consultant and expert work product, even if such materials contain Protected
5 Material.

6
7 **PURSUANT TO THE STIPULATION OF THE PARTIES THROUGH THEIR**
8 **COUNSEL OF RECORD, IT IS SO ORDERED.**

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11 Date: 4/5, 2017



Hon. Charles F. Eick
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address],
declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for the
Central District of California in the case of Indio Products, Inc. v. Brybradan, Inc. dba
Mistic Products, Case No. 2:16-cv-05067-BRO-E.

I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

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

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1 I hereby appoint _____ [print or type full name] of
2 _____ [print or type full
3 address and telephone number] as my California agent for service of process in
4 connection with this action or any proceedings related to enforcement of this
5 Stipulated Protective Order.

6
7 Date: _____

8
9 City and State where sworn and signed: _____

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11 Printed name: _____

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13 Signature: _____

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