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

THOMAS DERRICK MCELROY, <i>et</i>)	Case No. 2:16-cv-06445-CBM-AJWx
<i>al.</i> ,)	
)	
Plaintiffs,)	PROPOSED PROTECTIVE
)	ORDER
vs.)	
)	
MIKKEL S. ERIKSEN, <i>etc., et al.</i> ,)	
)	
Defendants.)	
)	

1 **PROTECTIVE ORDER**

2 The parties to this action anticipate that the conduct of this matter may require
3 disclosure of confidential information, including trade secrets, research,
4 development, commercial, financial or strategic information, within the scope of
5 Federal Rule of Civil Procedure 26(c). Accordingly, to expedite the flow of
6 discovery material, facilitate the prompt resolution of disputes over confidentiality,
7 adequately protect material entitled to be kept confidential and ensure that protection
8 is afforded only to material so entitled, and for good cause shown, pursuant to the
9 Court’s authority under Federal Rule of Civil Procedure 26(c)(1)(G), and with the
10 consent of the parties,

11 **IT IS HEREBY ORDERED:**

12 **1. DEFINITIONS**

13 1.1. “Action” means this pending federal law suit.

14 1.2. “Challenging Party” means a Party or Non-Party that challenges the
15 designation of information or items under this Order.

16 1.3. “CONFIDENTIAL” Information or Items means information
17 (regardless of how it is generated, stored or maintained) or tangible things that
18 qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified
19 above in the Good Cause Statement. “HIGHLY CONFIDENTIAL
20 INFORMATION” is information which, if known by the party to whom it is
21 disclosed, would be inherently harmful to the Designating Party’s business, privacy
22 or other protected interests.

23 1.4. “Counsel” means Outside Counsel of Record and House Counsel (as
24 well as their support staff).

25 1.5. “Designating Party” means a Party or Non-Party that designates
26 information or items that it produces in disclosures or in responses to discovery as
27 “CONFIDENTIAL.”

28

1 1.6. “Disclosure or Discovery Material” means all items or information,
2 regardless of the medium or manner in which it is generated, stored, or maintained
3 (including, among other things, testimony, transcripts, and tangible things), that are
4 produced or generated in disclosures or responses to discovery in this matter.

5 1.7. “Expert” means a person with specialized knowledge or experience in a
6 matter pertinent to the litigation who has been retained by a Party or its counsel to
7 serve as an expert witness in this Action.

8 1.8. “House Counsel” means attorneys who are employees of a party to this
9 Action. House Counsel does not include Outside Counsel of Record or any other
10 outside counsel.

11 1.9. “Non-Party” means any natural person, partnership, corporation,
12 association, or other legal entity not named as a Party to this action.

13 1.10. “Outside Counsel of Record” means attorneys who are not employees
14 of a party to this Action but are retained to represent or advise a party to this Action
15 and have appeared in this Action on behalf of that party or are affiliated with a law
16 firm which has appeared on behalf of that party, and includes support staff.

17 1.11. “Party” means any party to this Action, including all of its officers,
18 directors, employees, retained experts, and Outside Counsel of Record (and their
19 support staffs).

20 1.12. “Producing Party” means a Party or Non-Party that produces Disclosure
21 or Discovery Material in this Action.

22 1.13. “Professional Vendors” means persons or entities that provide litigation
23 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)
25 and their employees and subcontractors.

26 1.14. “Protected Material” means any Disclosure or Discovery Material that
27 is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

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1 1.15. "Receiving Party" means a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3 **2. SCOPE OF THIS PROTECTIVE ORDER**

4 2.1. The protections conferred by this Order cover not only Protected
5 Material (as defined above), but also:

- 6 (a) any information copied or extracted from Protected Material;
- 7 (b) all copies, excerpts, summaries, or compilations of Protected
8 Material; and
- 9 (c) any testimony, conversations, or presentations by Parties or their
10 Counsel that might reveal Protected Material.

11 2.2. Any use of Protected Material at trial shall be governed by the orders of
12 the trial judge. This Order does not govern the use of Protected Material at trial.

13 **4. DURATION OF THIS PROTECTIVE ORDER**

14 Even after final disposition of this litigation, the confidentiality obligations
15 imposed by this Order shall remain in effect until a Designating Party agrees
16 otherwise in writing or a court order otherwise directs. Final disposition shall be
17 deemed to be the later of:

- 18 (a) dismissal of all claims and defenses in this Action, with or
19 without prejudice; and
- 20 (b) final judgment herein after the completion and exhaustion of all
21 appeals, rehearings, remands, trials, or reviews of this Action, including the
22 time limits for filing any motions or applications for extension of time
23 pursuant to applicable law.

24 **5. DESIGNATING PROTECTED MATERIAL**

25 5.1. Exercise of Restraint and Care in Designating Material for Protection.
26 Each Party or Non-Party that designates information or items for protection under
27 this Order must take care to limit any such designation to specific material that
28 qualifies under the appropriate standards. The Designating Party must designate for

1 protection only those parts of material, documents, items, or oral or written
2 communications that qualify so that other portions of the material, documents, items,
3 or communications for which protection is not warranted are not swept unjustifiably
4 within the ambit of this Order. Mass, indiscriminate, or routinized designations are
5 prohibited. Designations that are shown to be clearly unjustified or that have been
6 made for an improper purpose (e.g., to unnecessarily encumber the case
7 development process or to impose unnecessary expenses and burdens on other
8 parties) may expose the Designating Party to sanctions.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order or as otherwise stipulated or ordered, Disclosure or Discovery Material
11 that qualifies for protection under this Order must be clearly so designated before the
12 material is disclosed or produced. Designation in conformity with this Order
13 requires:

14 (a) for information in documentary form (e.g., paper or electronic
15 documents, but excluding transcripts of depositions or other pretrial or trial
16 proceedings), that the Producing Party affix at a minimum, the legend
17 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”) or “HIGHLY
18 CONFIDENTIAL” (hereinafter “HIGHLY CONFIDENTIAL LEGEND”), to
19 each page that contains protected material. A Party or Non-Party that makes
20 original documents available for inspection need not designate them for
21 protection until after the inspecting Party has indicated which documents it
22 would like copied and produced. During the inspection and before the
23 designation, all of the material made available for inspection shall be deemed
24 “CONFIDENTIAL.” After the inspecting Party has identified the documents
25 it wants copied and produced, the Producing Party must determine which
26 documents, or portions thereof, qualify for protection under this Order. Then,
27 before producing the specified documents, the Producing Party must affix the
28 “CONFIDENTIAL legend” or “HIGHLY CONFIDENTIAL legend” to each

1 page that contains Protected Material. If only a portion or portions of the
2 material on a page qualifies for protection, the Producing Party also must
3 clearly identify the protected portion(s) (e.g., by making appropriate markings
4 in the margins).

5 (b) for testimony given in depositions, Parties and deponents may,
6 within thirty (30) days after receiving a transcript of a deposition, designate
7 pages of the transcript (and exhibits thereto) as Confidential or Highly
8 Confidential to the extent the Party or deponent believes they contain material
9 or information entitled to that protection. Confidential or Highly Confidential
10 information within the deposition transcript may be designated only by
11 sending a letter indicating the page and line numbers of the deposition
12 transcript that the Party or deponent designates as Confidential and/or Highly
13 Confidential to the party who took the deposition and to the court reporter.
14 Audiovisual recordings, irrespective of the manner or medium of the
15 recording, of depositions are deemed “Confidential” under this Stipulated
16 Protective Order and shall not be made public or otherwise exhibited or
17 disclosed except when, as and if played in open court or as may permitted by
18 further order of the court. If the Party or deponent believes an audiovisual
19 recording of a deposition contains material or information entitled to Highly
20 Confidential protection, the Party or deponent may designate the portions
21 Highly Confidential by sending a letter within thirty (30) days after receipt of
22 the audiovisual recording, to the party who took the deposition and to the
23 videographer indicating by time code or by reference to the deposition
24 transcript the portion or portions of the audiovisual recording that the Party or
25 deponent designates as Highly Confidential. Until the expiration of the 30-
26 day period during which such designations may be made, both the transcript
27 and any audiovisual recording of the deposition will be treated as subject to
28 protection as Highly Confidential under this Stipulated Protective Order.

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

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
9 failure to designate qualified information or items does not, standing alone, waive
10 the Designating Party’s right to secure protection under this Order for such material.
11 Upon timely correction of a designation, the Receiving Party must make reasonable
12 efforts to assure that the material is treated in accordance with the provisions of this
13 Order.

14 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

15 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
16 designation of confidentiality at any time that is consistent with the Court’s
17 Scheduling Order.

18 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
19 resolution process under Local Rule 37.1 et seq.

20 6.3. The Court’s Determination of the Propriety of a Challenged
21 Designation. The burden of persuasion in any proceeding challenging a designation
22 of confidentiality shall be on the Designating Party. Frivolous challenges, and those
23 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and
24 burdens on other parties) may expose the Challenging Party to sanctions. Unless the
25 Designating Party has waived or withdrawn the confidentiality designation, all
26 parties shall continue to afford the material in question the level of protection to
27 which it is entitled under the Producing Party’s designation until the Court rules on
28 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
4 Action only for prosecuting, defending, or attempting to settle this Action. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the Action has been terminated, a
7 Receiving Party must comply with the provisions of section 13 below (FINAL
8 DISPOSITION). Protected Material must be stored and maintained by a Receiving
9 Party at a location and in a secure manner that ensures that access is limited to the
10 persons 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, any
13 information or item designated “CONFIDENTIAL” received by a Receiving Party
14 may only be disclosed to:

- 15 (a) Parties of record in this action;
 - 16 (b) Outside Counsel of Record in this Action, as well as employees
17 of said Outside Counsel of Record to whom it is reasonably necessary to
18 disclose the information for this Action;
 - 19 (c) Experts (as defined in this Order) of the Receiving Party to whom
20 disclosure is reasonably necessary for this Action and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
 - 22 (d) the court and its personnel;
 - 23 (e) court reporters and their staff;
 - 24 (f) professional jury or trial consultants, mock jurors, and
25 Professional Vendors to whom disclosure is reasonably necessary for this
26 Action and who have signed the “Acknowledgment and Agreement to Be
27 Bound” (Exhibit A);
- 28

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

4 (h) during their depositions, witnesses, and attorneys for witnesses,
5 in the Action to whom disclosure is reasonably necessary provided the witness
6 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
7 otherwise agreed by the Designating Party or ordered by the court. Pages of
8 transcribed deposition testimony or exhibits to depositions that reveal
9 Protected Material may be separately bound by the court reporter and may not
10 be disclosed to anyone except as permitted under this Stipulated Protective
11 Order; and

12 (j) any mediator or settlement officer, and their supporting personnel,
13 mutually agreed upon by any of the parties engaged in settlement discussions.

14 Unless otherwise ordered by the court or permitted in writing by the Designating
15 Party, a Receiving Party may disclose any information or item designated “HIGHLY
16 CONFIDENTIAL” only to those identified in Sections 7(b)-(g) and (j), above, and
17 7(h) above to the extent counsel has a good faith belief that the witness currently has
18 or would be expected to have knowledge of the contents of the document, or of its
19 subject matter, and to no one else.

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

22 If a Party is served with a subpoena or a court order issued in other litigation
23 that compels disclosure of any information or items designated in this Action as
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” that Party must:

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

27 (b) promptly notify in writing the party who caused the subpoena or
28 order to issue in the other litigation that some or all of the material covered by

1 the subpoena or order is subject to this Protective Order. Such notification
2 shall include a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the Designating Party whose Protected Material may be affected.
5 If the Designating Party timely seeks a protective order, the Party served with
6 the subpoena or court order shall not produce any information designated in
7 this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” before a
8 determination by the court from which the subpoena or order issued, unless
9 the Party has obtained the Designating Party’s permission. The Designating
10 Party shall bear the burden and expense of seeking protection in that court of
11 its confidential material and nothing in these provisions should be construed
12 as authorizing or encouraging a Receiving Party in this Action to disobey a
13 lawful directive from another court.

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

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

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

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

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

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

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

16 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

25 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
26 **PROTECTED MATERIAL**

27 When a Producing Party gives notice to Receiving Parties that certain
28 inadvertently produced material is subject to a claim of privilege or other protection,

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

9 **12. MISCELLANEOUS**

10 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 12.2. Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in this
15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
16 ground to use in evidence of any of the material covered by this Protective Order.

17 12.3. Filing Protected Material. A Party that seeks to file under seal any
18 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
19 only be filed under seal pursuant to a court order authorizing the sealing of the
20 specific Protected Material at issue. If a Party's request to file Protected Material
21 under seal is denied by the court, then the Receiving Party may file the information
22 in the public record unless otherwise instructed by the court.

23 **13. FINAL DISPOSITION**

24 After the final disposition of this Action, as defined in paragraph 4, within 60
25 days of a written request by the Designating Party, each Receiving Party must return
26 all Protected Material to the Producing Party or destroy such material. As used in
27 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
28 summaries, and any other format reproducing or capturing any of the Protected

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

14 **14. VIOLATION OF THIS PROTECTIVE ORDER**

15 Any violation of this Order may be punished by any and all appropriate
16 measures including, without limitation, contempt proceedings and/or monetary
17 sanctions.

18 **IT IS SO ORDERED.**

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21 Dated: June 7, 2017

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Hon. Andrew J. Wistrich
UNITED STATES MAGISTRATE JUDGE

1 *Submitted by:*
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Attorney for Defendant
WB MUSIC CORP.

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address],

5 declare under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for
7 the Central District of California on [date] in the case of *Thomas Dereck McElroy et*
8 *al. v. Mikkel S. Eriksen et al.*, Case No. 2:16-cv-06445-CBM-AJWx. I agree to
9 comply with and to be bound by all the terms of this Stipulated Protective Order and
10 I understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Central District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action. I hereby appoint _____ [print
19 or type full name] of _____ [print
20 or type full address and telephone number] as my California agent for service of
21 process in connection with this action or any proceedings related to enforcement of
22 this Stipulated Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26
27 Signature: _____

28