

1 Amy Semmel, State Bar No. 116204  
 2 Paul M. Kelley, State Bar No. 87505  
 3 **KELLEY• SEMMEL, LLP**  
 4 5757 Wilshire Blvd., Penthouse 5  
 5 Los Angeles, California 90036  
 6 Telephone: 323-592-3450  
 7 asemmel@kelleysemmel.com

8 Attorneys for Plaintiff Brian Heston

9 Leila Nourani, State Bar No.  
 10 Michael A. Wertheim, State Bar No.  
 11 **JACKSON LEWIS**  
 12 **JACKSON LEWIS P.C.**  
 13 725 S. Figueroa Street, Suite 2500  
 14 Los Angeles, CA 90017  
 15 Telephone: (213) 630-8218  
 16 Leila.Nourani@jacksonlewis.com  
 17 Michael.wertheim@jacksonlewis.com

18 Attorneys for Defendant  
 19 Distributional Alternatives, Inc.

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

22 BRIAN HESTON, an individual,  
 23  
 24 Plaintiff,

25 vs.

26 DISTRIBUTION ALTERNATIVES,  
 27 INC., a Minnesota corporation; and  
 28 DOES 1 through 50, inclusive  
 Defendants.

**CASE NO.: 2:16-cv-08078 PJW**

**STIPULATED PROTECTIVE ORDER**

Complaint Filed: September 20, 2016  
 Magistrate Judge: Hon. Patrick J. Walsh  
 Courtroom: 790  
 Trial Date: None Set

1       1.       PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production  
3 of confidential, proprietary, or private information for which special protection from  
4 public disclosure and from use for any purpose other than prosecuting this litigation  
5 may be warranted. Accordingly, the parties hereby stipulate to and petition the court  
6 to 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 the  
10 applicable legal principles. The parties further acknowledge, as set forth in Section  
11 12.3, below, that this Stipulated Protective Order does not entitle them to file  
12 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures  
13 that must be followed and the standards that will be applied when a party seeks  
14 permission from the court to file material under seal.

15       2.       DEFINITIONS

16       2.1    Challenging Party: a Party or Non-Party that challenges the designation of  
17 information or items under this Order.

18       2.2    “CONFIDENTIAL” Information or Items: information (regardless of  
19 how it is generated, stored or maintained) or tangible things that qualify for protection  
20 under Federal Rule of Civil Procedure 26(c).

21       2.3    Counsel: Outside Counsel of Record and House Counsel (as well as  
22 their support staff).

23       2.4    Designating Party: a Party or Non-Party that designates information or  
24 items that it produces in disclosures or in responses to discovery as  
25 “CONFIDENTIAL.”

26       2.5    Disclosure or Discovery Material: all items or information, regardless of  
27 the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced or  
2 generated in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
5 expert witness or as a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action.  
7 House Counsel does not include Outside Counsel of Record or any other outside  
8 counsel.

9 2.8 Non-Party: any natural person, partnership, corporation, association, or  
10 other legal entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of a party  
12 to this action but are retained to represent or advise a party to this action and have  
13 appeared in this action on behalf of that party or are affiliated with a law firm which  
14 has appeared on behalf of that party.

15 2.10 Party: any party to this action, including all of its officers, directors,  
16 employees, consultants, retained experts, and Outside Counsel of Record (and their  
17 support staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
19 Discovery Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation support  
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
23 and their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is  
25 designated as “CONFIDENTIAL.”

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material  
27 from a Producing Party.

1     3.     SCOPE

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

16    4.     DURATION

17             Even after final disposition of this litigation, the confidentiality obligations  
18    imposed by this Order shall remain in effect until a Designating Party agrees  
19    otherwise in writing or a court order otherwise directs. Final disposition shall be  
20    deemed to be the later of (1) dismissal of all claims and defenses in this action, with or  
21    without prejudice; and (2) final judgment herein after the completion and exhaustion  
22    of all appeals, rehearings, remands, trials, or reviews of this action, including the time  
23    limits for filing any motions or applications for extension of time pursuant to  
24    applicable law.

25    5.     DESIGNATING PROTECTED MATERIAL

26             5.1    Exercise of Restraint and Care in Designating Material for Protection.  
27    Each Party or Non-Party that designates information or items for protection under this

1 Order must take care to limit any such designation to specific material that qualifies  
2 under the appropriate standards. The Designating Party must designate for protection  
3 only those parts of material, documents, items, or oral or written communications that  
4 qualify – so that other portions of the material, documents, items, or communications  
5 for which protection is not warranted are not swept unjustifiably within the ambit of  
6 this Order.

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

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

15 5.2 Manner and Timing of Designations. Except as otherwise provided in  
16 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
17 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
18 under this Order must be clearly so designated before the material is disclosed or  
19 produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic  
22 documents, but excluding transcripts of depositions or other pretrial or trial  
23 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each  
24 page that contains protected material. If only a portion or portions of the material on a  
25 page qualifies for protection, the Producing Party also must clearly identify the  
26 protected portion(s) (e.g., by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents or materials available for

1 inspection need not designate them for protection until after the inspecting Party has  
2 indicated which material it would like copied and produced. During the inspection and  
3 before the designation, all of the material made available for inspection shall be  
4 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents  
5 it wants copied and produced, the Producing Party must determine which documents,  
6 or portions thereof, qualify for protection under this Order. Then, before producing the  
7 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend  
8 to each page that contains Protected Material. If only a portion or portions of the  
9 material on a page qualifies for protection, the Producing Party also must clearly  
10 identify the protected portion(s) (e.g., by making appropriate markings in the  
11 margins).

12 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
13 that the Designating Party identify on the record, before the close of the deposition,  
14 hearing, or other proceeding, all protected testimony.

15 (c) for information produced in some form other than documentary and for  
16 any other tangible items, that the Producing Party affix in a prominent place on the  
17 exterior of the container or containers in which the information or item is stored the  
18 legend “CONFIDENTIAL.” If only a portion or portions of the information or item  
19 warrant protection, the Producing Party, to the extent practicable, shall identify the  
20 protected portion(s).

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
22 failure to designate qualified information or items does not, standing alone, waive the  
23 Designating Party’s right to secure protection under this Order for such material.  
24 Upon timely correction of a designation, the Receiving Party must make reasonable  
25 efforts to assure that the material is treated in accordance with the provisions of this  
26 Order.

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. Unless a prompt challenge to a Designating  
4 Party's confidentiality designation is necessary to avoid foreseeable, substantial  
5 unfairness, unnecessary economic burdens, or a significant disruption or delay of the  
6 litigation, a Party does not waive its right to challenge a confidentiality designation by  
7 electing not to mount a challenge promptly after the original designation is disclosed.

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

23             6.3     Judicial Intervention. If the Parties cannot resolve a challenge without  
24 court intervention, the Designating Party shall file and serve a motion to retain  
25 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-  
26 5, if applicable) within 21 days of the initial notice of challenge or within 14 days of  
27 the parties agreeing that the meet and confer process will not resolve their dispute,

1 whichever is earlier, or as otherwise agreed by the parties. Each such motion must be  
2 accompanied by a competent declaration affirming that the movant has complied with  
3 the meet and confer requirements imposed in the preceding paragraph. Failure by the  
4 Designating Party to make such a motion including the required declaration within 21  
5 days (or 14 days, if applicable) shall automatically waive the confidentiality  
6 designation for each challenged designation. In addition, the Challenging Party may  
7 file a motion challenging a confidentiality designation at any time if there is good  
8 cause for doing so, including a challenge to the designation of a deposition transcript  
9 or any portions thereof. Any motion brought pursuant to this provision must be  
10 accompanied by a competent declaration affirming that the movant has complied with  
11 the meet and confer requirements imposed by the preceding paragraph.

12 The burden of persuasion in any such challenge proceeding shall be on the  
13 Designating Party. Frivolous challenges, and those made for an improper purpose  
14 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
15 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
16 the confidentiality designation by failing to file a motion to retain confidentiality as  
17 described above, all parties shall continue to afford the material in question the level  
18 of protection to which it is entitled under the Producing Party's designation until the  
19 court rules on the challenge.

## 20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
22 disclosed or produced by another Party or by a Non-Party in connection with this case  
23 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
24 Material may be disclosed only to the categories of persons and under the conditions  
25 described in this Order. When the litigation has been terminated, a Receiving Party  
26 must comply with the provisions of section 13 below (FINAL DISPOSITION).



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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
5 otherwise ordered by the court or permitted in writing by the Designating Party, a  
6 Receiving Party may disclose any information or item designated “CONFIDENTIAL”  
7 only to:

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

12 (b) the officers, directors, and employees (including House Counsel) of the  
13 Receiving Party to whom disclosure is reasonably necessary for this litigation and  
14 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
15 which shall include Kimberly DeMoss, the wife of Plaintiff;

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

19 (d) the court and its personnel;

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

24 (f) during their depositions, witnesses in the action to whom disclosure is  
25 reasonably necessary and who have signed the “Acknowledgment and Agreement to  
26 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered  
27 by the court. Pages of transcribed deposition testimony or exhibits to depositions that

1 reveal Protected Material must be separately bound by the court reporter and may not  
2 be disclosed to anyone except as permitted under this Stipulated Protective Order.

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

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
6 OTHER LITIGATION

7 If a Party is served with a subpoena or a court order issued in other litigation  
8 that compels disclosure of any information or items designated in this action as  
9 “CONFIDENTIAL,” that Party must:

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

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

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

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

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

3 (a) The terms of this Order are applicable to information produced by a  
4 Non-Party in this action and designated as “CONFIDENTIAL.” Such information  
5 produced by Non-Parties in connection with this litigation is protected by the  
6 remedies and relief provided by this Order. Nothing in these provisions should be  
7 construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

18 (3) make the information requested available for inspection by the Non-  
19 Party.

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

1     10.    UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
3     Protected Material to any person or in any circumstance not authorized under this  
4     Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
5     writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
6     to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
7     persons to whom unauthorized disclosures were made of all the terms of this Order,  
8     and (d) request such person or persons to execute the “Acknowledgment and  
9     Agreement to Be Bound” that is attached hereto as Exhibit A.

10    11.    INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
11        PROTECTED MATERIAL

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

22    12.    MISCELLANEOUS

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

25           12.2    Right to Assert Other Objections. By stipulating to the entry of this  
26     Protective Order no Party waives any right it otherwise would have to object to  
27     disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. Without written permission from the  
4 Designating Party or a court order secured after appropriate notice to all interested  
5 persons, a Party may not file in the public record in this action any Protected Material.  
6 A Party that seeks to file under seal any Protected Material must comply with Civil  
7 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court  
8 order authorizing the sealing of the specific Protected Material at issue. Pursuant to  
9 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that  
10 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise  
11 entitled to protection under the law. If a Receiving Party's request to file Protected  
12 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then  
13 the Receiving Party may file the information in the public record pursuant to Civil  
14 Local Rule 79-5(e) unless otherwise instructed by the court.

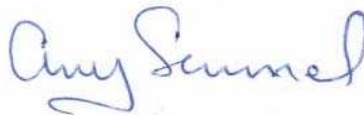
15 13. FINAL DISPOSITION

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

1 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
2 deposition and trial exhibits, expert reports, attorney work product, and consultant and  
3 expert work product, even if such materials contain Protected Material. Any such  
4 archival copies that contain or constitute Protected Material remain subject to this  
5 Protective Order as set forth in Section 4 (DURATION).

6 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD**

7 DATED: February 23, 2017

8 

9  
10 \_\_\_\_\_  
11 Amy Semmel  
12 Attorneys for Plaintiff  
13 Brian Heston

14 DATED: February \_\_\_\_, 2017

15  
16 \_\_\_\_\_  
17 Leila Nourani  
18 Michael A. Wertheim  
19 Attorneys for Defendant  
20 Distribution Alternatives, Inc.

21 **IT IS SO ORDERED.**

22 DATED: March 6, 2017

23 

24 \_\_\_\_\_  
25 Honorable Patrick J. Walsh  
26 United States Magistrate Judge

1 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  
5 I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Central District of California on  
7 [date] in the case of *Brian Heston v. Distribution Alternatives, Inc.*, Case No. 2:16-cv-  
8 08078 PJW. I agree to comply with and to be bound by all the terms of this Stipulated  
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 Stipulated Protective Order to any person or entity except in strict compliance with the  
13 provisions of this 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 Stipulated  
16 Protective Order, even if such enforcement proceedings occur after termination of this  
17 action.

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

23 Date: \_\_\_\_\_

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

25 Printed name: \_\_\_\_\_

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