

1 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
2 followed and the standards that will be applied when a party seeks permission from the
3 court to file material under seal.

4 **2. GOOD CAUSE STATEMENT**

5 This action is likely to involve trade secrets, customer and pricing lists and other
6 valuable research, development, commercial, financial, technical and/or proprietary
7 information for which special protection from public disclosure and from use for any
8 purpose other than prosecution of this action is warranted. Such confidential and
9 proprietary materials and information consist of, among other things, confidential
10 business or financial information, information regarding confidential business
11 practices, or other confidential research, development, or commercial information
12 (including information implicating privacy rights of third parties), information
13 otherwise generally unavailable to the public, or which may be privileged or otherwise
14 protected from disclosure under state or federal statutes, court rules, case decisions, or
15 common law. Accordingly, to expedite the flow of information, to facilitate the prompt
16 resolution of disputes over confidentiality of discovery materials, to adequately protect
17 information the parties are entitled to keep confidential, to ensure that the parties are
18 permitted reasonable necessary uses of such material in preparation for and in the
19 conduct of trial, to address their handling at the end of the litigation, and serve the ends
20 of justice, a protective order for such information is justified in this matter. It is the
21 intent of the parties that information will not be designated as confidential for tactical
22 reasons and that nothing be so designated without a good faith belief that it has been
23 maintained in a confidential, non-public manner, and there is good cause why it should
24 not be part of the public record of this case.

25 **2. DEFINITIONS**

26 2.1 Action: the above-captioned federal law suit.

27 2.2 Challenging Party: a Party or Non-Party that challenges the
28 designation of information or items under this Order.

1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
2 it is generated, stored or maintained) or tangible things that qualify for protection
3 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
4 Statement.

5 2.4 “HIGHLY CONFIDENTIAL” or “ATTORNEYS EYES ONLY”
6 Information or Items: Information or tangible things that contain or disclose
7 information that the Designating Party, in good faith, believes to be extremely
8 commercially sensitive or would provide a competitive advantage to competitors or
9 compromise or jeopardize the Designating Party’s business interests if disclosed.

10 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as their
11 support staff).

12 2.6 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL” or “ATTORNEYS EYES
15 ONLY”.

16 2.7 Disclosure or Discovery Material: all items or information, regardless of
17 the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced or
19 generated in disclosures or responses to discovery in this matter.

20 2.8 Expert: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
22 expert witness or as a consultant in this Action.

23 2.9 House Counsel: attorneys who are employees of a party to this Action.
24 House Counsel does not include Outside Counsel of Record or any other outside
25 counsel.

26 2.10 Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.

28 2.11 Outside Counsel of Record: attorneys who are not employees of a party to

1 this Action but are retained to represent or advise a party to this Action and have
2 appeared in this Action on behalf of that party or are affiliated with a law firm which
3 has appeared on behalf of that party, and includes support staff.

4 2.12 Party: any party to this Action, including all of its officers, directors,
5 employees, consultants, retained experts, and Outside Counsel of Record (and their
6 support staffs).

7 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
8 Discovery Material in this Action.

9 2.14 Professional Vendors: persons or entities that provide litigation support
10 services (e.g., photocopying, videotaping, translating, preparing exhibits or
11 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
12 their employees and subcontractors.

13 2.15 Protected Material: any Disclosure or Discovery Material that is
14 designated as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL” or
15 “ATTORNEYS EYES ONLY”.

16 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
17 from a Producing Party.

18 **3. SCOPE**

19 The protections conferred by this Stipulation and Order cover not only Protected
20 Material (as defined above), but also (1) any information copied or extracted from
21 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
22 Material; and (3) any testimony, conversations, or presentations by Parties or their
23 Counsel that might reveal Protected Material.

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

26 **4. DURATION**

27 Even after final disposition of this litigation, the confidentiality obligations
28 imposed by this Order shall remain in effect until a Designating Party agrees otherwise

1 in writing or a court order otherwise directs. Final disposition shall be deemed to be
2 the later of (1) dismissal of all claims and defenses in this Action, with or without
3 prejudice; and (2) final judgment herein after the completion and exhaustion of all
4 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits
5 for filing any motions or applications for extension of time pursuant to applicable law.

6 **5. DESIGNATING PROTECTED MATERIAL**

7 5.1 Exercise of Restraint and Care in Designating Material for Protection.

8 Each Party or Non-Party that designates information or items for protection
9 under this Order must take care to limit any such designation to specific material that
10 qualifies under the appropriate standards. The Designating Party must designate for
11 protection only those parts of material, documents, items, or oral or written
12 communications that qualify so that other portions of the material, documents, items,
13 or communications for which protection is not warranted are not swept unjustifiably
14 within the ambit of this Order.

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

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

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this
24 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
25 or ordered, Disclosure or Discovery Material that qualifies for protection under this
26 Order must be clearly so designated before the material is disclosed or produced.

27 Designation in conformity with this Order requires:

- 28 (a) for information in documentary form (e.g., paper or electronic

1 documents, but excluding transcripts of depositions or other pretrial or trial
2 proceedings), that the Producing Party affix at a minimum, the legend
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” or “ATTORNEYS EYES
4 ONLY”. (hereinafter “Designation Legend”), to each page that contains protected
5 material. If only a portion or portions of the material on a page qualifies for protection,
6 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
7 appropriate markings in the margins).

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

20 (b) for testimony given in depositions that the Designating Party
21 identify the Disclosure or Discovery Material on the record, before the close of the
22 deposition all protected testimony; Failure of counsel to designate testimony or
23 exhibits at a deposition, however, shall not waive the protected status of the testimony
24 or exhibits. Counsel may designate specific testimony or exhibits as Protected
25 Material within thirty (30) calendar days after receiving the transcript of the
26 deposition. If counsel for the deponent or Party fails to designate the transcript or
27 exhibits as Protected Material within the above-described thirty-day period, any Party
28 shall be entitled to treat the transcript or exhibits as containing no Protected Material.

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

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
8 failure to designate qualified information or items does not, standing alone, waive the
9 Designating Party's right to secure protection under this Order for such material. Upon
10 timely correction of a designation, the Receiving Party must make reasonable efforts to
11 assure that the material is treated in accordance with the provisions of this Order.

12 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
14 designation of confidentiality at any time that is consistent with the Court's Scheduling
15 Order.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
17 resolution process under Local Rule 37.1 et seq.

18 6.3 The burden of persuasion in any such challenge proceeding shall be on
19 the Designating Party. Frivolous challenges, and those made for an improper purpose
20 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
21 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
22 withdrawn the confidentiality designation, all parties shall continue to afford the
23 material in question the level of protection to which it is entitled under the Producing
24 Party's designation until the Court rules on the challenge.

25 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Non-Party in connection with this
28 Action only for prosecuting, defending, or attempting to settle this Action. Such

1 Protected Material may be disclosed only to the categories of persons and under the
2 conditions described in this Order. When the Action has been terminated, a Receiving
3 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

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

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
11 well as employees of said Outside Counsel of Record to whom it is reasonably
12 necessary to disclose the information for this Action;

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

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

18 (d) the court and its personnel;

19 (e) court reporters and their staff;

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

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

25 (h) during their depositions, witnesses, and attorneys for witnesses, in
26 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
27 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they
28 will not be permitted to keep any confidential information, unless otherwise agreed by

1 the Designating Party or ordered by the court. Pages of transcribed deposition
2 testimony or exhibits to depositions that reveal Protected Material may be separately
3 bound by the court reporter and may not be disclosed to anyone except as permitted
4 under this Stipulated Protective Order; and

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

7 7.3 Disclosure of “HIGHLY CONFIDENTIAL” or “ATTORNEYS EYES
8 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
9 writing by the Designating Party, a Receiving Party may disclose any information or
10 item designated “HIGHLY CONFIDENTIAL” or “ATTORNEYS EYES ONLY” only
11 to:

12 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
13 well as employees of said Outside Counsel of Record to whom it is reasonably
14 necessary to disclose the information for this Action;

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

18 (c) the court and its personnel;

19 (d) court reporters and their staff;

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

23 (f) the author or recipient of a document containing the information or
24 a custodian or other person who otherwise possessed or knew the information;

25 (g) during their depositions, witnesses ,and attorneys for witnesses, in
26 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
27 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they
28 will not be permitted to keep any confidential information unless they sign the (i)

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

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

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

10 If a Party is served with a subpoena or a court order issued in other litigation that
11 compels disclosure of any information or items designated in this Action as
12 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL”, or “ATTORNEYS EYES
13 ONLY” that Party must:

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

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

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

22 If the Designating Party timely seeks a protective order, the Party served with
23 the subpoena or court order shall not produce any Protected Material before a
24 determination by the court from which the subpoena or order issued, unless the Party
25 has obtained the Designating Party’s permission. The Designating Party shall bear the
26 burden and expense of seeking protection in that court of its confidential material and
27 nothing in these provisions should be construed as authorizing or encouraging a
28 Receiving Party in this Action to disobey a lawful directive from another court.

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

3 (a) The terms of this Order are applicable to Protected Material produced by a
4 Non-Party in this Action. Such information produced by Non-Parties in connection
5 with this litigation is protected by the remedies and relief provided by this Order.
6 Nothing in these provisions should be construed as prohibiting a Non-Party from
7 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 Action, 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
19 Non-Party, if requested.

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

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

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

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

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

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

7 **13. FINAL DISPOSITION**

8 After the final disposition of this Action, as defined in paragraph 4, within 60
9 days of a written request by the Designating Party, each Receiving Party must return
10 all Protected Material to the Producing Party or destroy such material. As used in this
11 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
12 summaries, and any other format reproducing or capturing any of the Protected
13 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
14 must submit a written certification to the Producing Party (and, if not the same person
15 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
16 category, where appropriate) all the Protected Material that was returned or destroyed
17 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
18 compilations, summaries or any other format reproducing or capturing any of the
19 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
20 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
21 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
22 attorney work product, and consultant and expert work product, even if such materials
23 contain Protected Material. Any such archival copies that contain or constitute
24 Protected Material remain subject to this Protective Order as set forth in Section 4
25 (DURATION).

26 14. Any violation of this Order may be punished by any and all appropriate
27 measures including, without limitation, contempt proceedings and/or monetary
28 sanctions.

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2 DATED: August 28, 2017 BLAKELY LAW GROUP

3 By: /s/ Cindy Chan
4 Cindy Chan
5 *Attorneys for Plaintiff*
Luxottica Group S.p.A.

6 DATED: August 28, 2017 TINGLEY LAW GROUP, PC

7 By: /s/ Clark Waldon
8 Kevin W. Isaacson
9 Clark Waldon
Attorneys for Defendant
NSP Enterprises, Inc.

10 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

11
12 DATED: August 29, 2017

Patrick J. Walsh

13 Hon. Patrick J. Walsh
14 **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
5 perjury that I have read in its entirety and understand the Stipulated Protective Order
6 that was issued by the United States District Court for the Central District of California
7 on _____ [DATE] in the case of Luxottica Group S.p.A. v. NSP Enterprises, Inc.;
8 Case No. 17-cv-00597-JFW (PJW). I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that failure
10 to so comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.

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

22
23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____

27
28