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

MIKE SARIEDDINE, an individual,
Plaintiff,

v.

BIG BANG VAPE CO., LLC, a
Georgia limited liability company;
TAYLOR CRAIG, an individual; and
DOES 1 through 10, inclusive,
Defendants.

Case No. 2:17-cv-989-DSF-SK

**[PROPOSED] ORDER TO
STIPULATED PROTECTIVE
ORDER**

BIG BANG VAPE CO., LLC, a
Georgia limited liability company,
Counterclaimant,

v.

MIKE SARIEDDINE, an individual,
Counter-Defendant.

Having considered the parties' pleadings on file to date, and the parties' jointly submitted Stipulated Protective Order to govern the handling of information and materials produced in the course of discovery, or filed with the Court in this action, the Court determines as follows:

1 1. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS. Discovery in this action is likely to
3 involve production of confidential, proprietary, or private information for which
4 special protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the Court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from public
9 disclosure and use extends only to the limited information or items that are entitled
10 to confidential treatment under the applicable legal principles. The parties further
11 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
12 Order does not entitle them to file confidential information under seal; Civil Local
13 Rule 79-5 sets forth the procedures that must be followed and the standards that will
14 be applied when a party seeks permission from the Court to file material under seal.

15 1.2 GOOD CAUSE STATEMENT. This is an action for trademark
16 infringement, unfair competition, and breach of contract. The information disclosed
17 in discovery may be sensitive and may include, without limitation, revenue, profits,
18 costs, trade secrets, marketing, and sales forecasts. Accordingly, the parties believe
19 that the designation of certain materials as Confidential Information or Attorneys'
20 Eyes-Only Information is necessary because there is significant risk in disclosing
21 certain highly sensitive information beyond the purposes of this litigation. Any of the
22 parties could be irreparably harmed if designated Confidential Information and
23 Attorneys' Eyes-Only Information is divulged or somehow wrongly misused by the
24 Parties or non-parties. The unfettered disclosure of the information, including but not
25 limited to the filing of the documents in the public record, could be harmful to the
26 commercial interests of the Parties. There is good cause to enter this Protective Order
27 to ensure adequate protection against the wrongful use or disclosure of protected
28 material, and to protect the value associated with the protected material. Any
violation of the confidentiality obligations set forth in this Protective Order could be

1 detrimental and prejudicial to one or more Parties. It is the intent of the parties that
2 information will not be designated as confidential for tactical reasons and that nothing
3 be so designated without a good faith belief that it has been maintained in a
4 confidential, non-public manner, and there is good cause why it should not be part of
5 the public record of this case. The Parties agree that the concerns set forth in this
6 paragraph are asserted in good faith.

7 2. DEFINITIONS

8 2.1 Action: *Sarieddine v. Big Bang Vape Co., LLC*, et al., Case No. 2:17-cv-
9 989-DSF-SK.

10 2.2 Challenging Party: a Party or Non-Party that challenges the designation
11 of information or items under this Order.

12 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
13 how it is generated, stored or maintained) or tangible things that qualify for
14 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
15 the Good Cause Statement.

16 2.4 “ATTORNEYS’ EYES ONLY” Information or Items: a subset of
17 Confidential Information that a party in good faith believes is entitled to heightened
18 protection in order to protect economic, competitive, or sensitive personal
19 information. General examples of such “Attorneys Eyes Only” information may
20 include, without limitation, currently competitive trade secrets, minutes of Board
21 meetings, pricing data, financial data, sales information, customer confidential
22 information, agreements or relationships with non-parties, market projections or
23 forecasts, strategic business plans, selling or marketing strategies, or information
24 about employees. These examples are provided for illustrative purposes only and do
25 not constitute an admission of the relevancy of any such materials in this litigation.

26 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as their
27 support staff).

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

4 2.7 Disclosure or Discovery Material: all items or information, regardless of
5 the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced
7 or generated in disclosures or responses to discovery in this matter.

8 2.8 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as
10 an expert witness or as a consultant in this Action.

11 2.9 House Counsel: attorneys who are employees of a party to this Action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.10 Non-Party: any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.

16 2.11 Outside Counsel of Record: attorneys who are not employees of a party
17 to this Action but are retained to represent or advise a party to this Action and have
18 appeared in this Action on behalf of that party or are affiliated with a law firm
19 which has appeared on behalf of that party, and includes support staff.

20 2.12 Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.14 Professional Vendors: persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium)
28 and their employees and subcontractors.

1 2.15 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

3 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

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
8 extracted from Protected Material; (2) all copies, excerpts, summaries, or
9 compilations of Protected Material; and (3) any testimony, conversations, or
10 presentations by Parties or their Counsel that might reveal Protected Material.

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

13 **4. DURATION**

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

22 **5. DESIGNATING PROTECTED MATERIAL**

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or Non-Party that designates information or items for protection under
25 this Order must take care to limit any such designation to specific material that
26 qualifies under this Order. The Designating Party must designate for protection only
27 those parts of material, documents, items, or oral or written communications that
28 qualify so that other portions of the material, documents, items, or communications

1 for which protection is not warranted are not swept unjustifiably within the ambit of
2 this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations
4 that are shown to have been made for an improper purpose (e.g., to unnecessarily
5 encumber the case development process or to impose unnecessary expenses and
6 burdens on other parties) may expose the Designating Party to sanctions.

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

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

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents,
17 but excluding transcripts of depositions or other pretrial or trial proceedings), that
18 the Producing Party affix at a minimum, the legend "CONFIDENTIAL"
19 (hereinafter "CONFIDENTIAL legend") "ATTORNEYS' EYES ONLY"
20 (hereinafter "AEO legend"), to each page that contains protected material.

21 A Party or Non-Party that makes original documents available for inspection
22 need not designate them for protection until after the inspecting Party has indicated
23 which documents it would like copied and produced. During the inspection and
24 before the designation, all of the material made available for inspection will be
25 deemed "ATTORNEYS' EYES ONLY." After the inspecting Party has identified
26 the documents it wants copied and produced, the Producing Party must determine
27 which documents, or portions thereof, qualify for protection under this Order. Then,
28 before producing the specified documents, the Producing Party must affix EITHER

1 the “CONFIDENTIAL legend” or the “AEO legend” to each page that contains
2 Protected Material.

3 (b) for testimony given in depositions that the Designating Party identify the
4 Disclosure or Discovery Material on the record, before the close of the deposition
5 all protected testimony.

6 (c) Native and/or Other Electronic Materials: All Protected Material not
7 reduced to hard copy, tangible, or physical form or that cannot be conveniently
8 designated as set forth in Paragraph 5.2(a) shall be designated by informing the
9 Receiving Party of the designation in writing, and/or in the load file or other similar
10 database, table or chart accompanying said production. To the extent the Receiving
11 Party subsequently generates any permitted copies of this information, whether
12 electronic or hard copy, it shall ensure that all such copies are clearly designated
13 with the appropriate confidentiality designations.

14 When documents are produced in electronic form, the Producing Party shall
15 include a confidentiality designation on the medium containing the documents. If
16 the medium contains documents in native electronic format, the medium shall
17 include an electronic database record for each native format file that includes on the
18 face of the electronic database record the applicable confidentiality designation (if
19 any) and a document identification or Bates number for the associated document.
20 When a Receiving Party prints a native format file from such medium, the
21 Receiving Party shall also print the corresponding electronic database record and
22 attach it to the native format file so that the native file’s confidentiality designation
23 will be readily apparent to one viewing the file. In the event that a Receiving Party
24 prints a native format file from a medium that has been marked with a
25 confidentiality designation, but the native file is not accompanied by an electronic
26 database record or the electronic database record could not be printed, the
27 Receiving Party shall mark each page of such native file with a “CONFIDENTIAL”
28

1 or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation until the native
2 file’s electronic database record may be located or printed.

3 5.3 Inadvertent Failures to Designate. If corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the
5 Designating Party’s right to secure protection under this Order for such material.
6 Upon correction of a designation, the Receiving Party must make reasonable efforts
7 to assure that the material is treated in accordance with the provisions of this Order.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
10 designation of confidentiality at any time that is consistent with the Court’s
11 Scheduling Order.

12 6.2 Meet and Confer. The Challenging Party will initiate the dispute
13 resolution process (and, if necessary, file a discovery motion) under Local Rule
14 37.1 et seq.

15 6.3 The burden of persuasion in any such challenge proceeding will be on the
16 Designating Party. Frivolous challenges made for an improper purpose (*e.g.*, to
17 harass or impose unnecessary expenses and burdens on other parties) may expose
18 the Challenging Party to sanctions. Unless the Designating Party has waived or
19 withdrawn the confidentiality designation, all parties will continue to afford the
20 material in question the level of protection to which it is entitled under the
21 Producing Party’s designation until the Court rules on the challenge.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

1 Party at a location and in a secure manner that ensures that access is limited to the
2 persons authorized under this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items.

4 Unless otherwise ordered by the Court or permitted in writing by the
5 Designating Party, a Receiving Party may disclose any information or item
6 designated “CONFIDENTIAL” only to:

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

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

12 (c) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this Action and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A). The executed
15 “Acknowledgement and Agreement to be Bound” document should be provided to
16 counsel for the opposing Party ten (10) days prior to disclosure of such material;

17 (d) the Court and its personnel;

18 (e) court reporters and their staff;

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

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

24 (h) during their depositions, witnesses, and attorneys for witnesses, in the
25 Action to whom disclosure is reasonably necessary provided they
26 will not be permitted to keep any confidential information unless they sign the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
28 agreed by the Designating Party or ordered by the Court. Pages of transcribed
deposition testimony or exhibits to depositions that reveal Protected Material may

1 be separately bound by the court reporter and may not be disclosed to anyone
2 except as permitted under this Stipulated Protective Order; and
3 (i) any mediator or settlement officer, and their supporting personnel, mutually
4 agreed upon by any of the parties engaged in settlement discussions.

5 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items.

6 Unless otherwise ordered by the Court or permitted in writing by the
7 Designating Party, a Receiving Party may disclose any information or item
8 designated as “ATTORNEYS’ EYES ONLY” only to:

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

12 (b) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this Action and who have signed the
14 “Acknowledgement and Agreement to be Bound” (Exhibit A). The executed
15 “Acknowledgement and Agreement to be Bound” document should be provided to
16 counsel for the opposing Party ten (10) days prior to disclosure of such material;

17 (c) the Court and its personnel; and

18 (d) court reporters and their staff.

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

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

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

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

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

3 If the Designating Party timely seeks a protective order, the Party served with
4 the subpoena or court order will not produce any information designated in this
5 action as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” before a
6 determination by the court from which the subpoena or order issued, unless the
7 Party has obtained the Designating Party’s permission. The Designating Party will
8 bear the burden and expense of seeking protection in that court of its confidential
9 material and nothing in these provisions should be construed as authorizing or
10 encouraging a Receiving Party in this Action to disobey a lawful directive from
11 another court.

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

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

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

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

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

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

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

11 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

20 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 21 PROTECTED MATERIAL

22 When a Producing Party gives notice to Receiving Parties that certain
23 inadvertently produced material is subject to a claim of privilege or other
24 protection, the obligations of the Receiving Parties are those set forth in Federal
25 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify the
26 procedure established in the Joint Report that provides for production without prior
27 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as
28 the parties have reached an agreement on the effect of disclosure of a
communication or information covered by the attorney-client privilege or work

1 product protection, the parties hereby incorporate their agreement in this Stipulated
2 Protective Order.

3 **12. MISCELLANEOUS**

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in this
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5. Protected Material
13 may only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue.

15 **13. FINAL DISPOSITION**

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

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

5 14. Any willful violation of this Order may be punished by any and all
6 appropriate measures including, without limitation, contempt proceedings and/or
7 monetary sanctions.

8
9 **IT IS SO ORDERED.**

10
11 DATED: December 5, 2017



12 HON. STEVE KIM
13 United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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2
3 I, _____ **[full name]**, of _____
4 **[full address]**, declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Central District of California on [date] in the case of
7 *Sarieddine v. Big Bang Vape Co., LLC*, et al., Case No. 2:17-cv-989-DSF-SK. I
8 agree to comply with and to be bound by all the terms of this Stipulated Protective
9 Order and I understand and acknowledge that failure to so comply could expose me
10 to sanctions and punishment in the nature of contempt. I solemnly promise that I
11 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
13 the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for 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 _____ **[full**
18 **name]** of _____ **[full address and**
19 **telephone number]** as my California agent for service of process in connection
20 with this action or any proceedings related to enforcement of this Stipulated
21 Protective Order.

22 Date: _____

23 City and State where signed: _____

24 Printed name: _____

25 Signature: _____

CERTIFICATE OF SERVICE

1
2 I, Valerie McConnell, hereby certify that on December 4, 2017, I
3 electronically filed the following document with the Clerk of the Court for the
4 United States District Court for the Central District of California by using the
5 CM/ECF system: [PROPOSED] ORDER TO STIPULATED PROTECTIVE
6 ORDER.

7 The document was electronically served by on all parties represented by
8 counsel through the CM/ECF system.

9 Executed on December 4, 2017, at Los Angeles, California.

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11
12 */s/ Valerie McConnell*
13 _____
14 Valerie McConnell
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