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

STYKU, LLC., a California limited liability company,

Plaintiff,

vs.

FIT3D, INC., a Delaware corporation; and DOES 1 through 10, inclusive,

Defendant.

FIT3D, INC., a Delaware corporation,

Counterclaimant,

vs.

STYKU, LLC., a California limited liability company,

Counterclaim Defendant.

CASE NO. 2:17-cv-01882-AB(KSx)

Hon. Karen L. Stevenson
United States Magistrate Judge

Hon. André Birotte Jr.
United States District Judge

STIPULATED PROTECTIVE ORDER

Action Filed: March 8, 2017
Trial Date: None set

1 1. A. PURPOSES AND LIMITATIONS

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

15
16 B. GOOD CAUSE STATEMENT

17 This action is likely to involve trade secrets, customer and pricing lists and
18 other valuable research, development, commercial, financial, technical and/or
19 proprietary information for which special protection from public disclosure and
20 from use for any purpose other than prosecution of this action is warranted. Such
21 confidential and proprietary materials and information consist of, among other
22 things, confidential business or financial information, information regarding
23 confidential business practices, or other confidential research, development, or
24 commercial information (including information implicating privacy rights of third
25 parties), information otherwise generally unavailable to the public, or which may
26 be privileged or otherwise protected from disclosure under state or federal statutes,
27 court rules, case decisions, or common law. Accordingly, to expedite the flow of
28 information, to facilitate the prompt resolution of disputes over confidentiality of

1 discovery materials, to adequately protect information the parties are entitled to
2 keep confidential, to ensure that the parties are permitted reasonable necessary uses
3 of such material in preparation for and in the conduct of trial, to address their
4 handling at the end of the litigation, and serve the ends of justice, a protective order
5 for such information is justified in this matter. It is the intent of the parties that
6 information will not be designated as confidential for tactical reasons and that
7 nothing be so designated without a good faith belief that it has been maintained in
8 a confidential, non-public manner, and there is good cause why it should not be
9 part of the public record of this case.

10
11 2. DEFINITIONS

12 2.1 Action: Case No.: 2:17-cv-01882-AB(KSx)

13 2.2 Challenging Party: a Party or Non-Party that challenges the
14 designation of information or items under this Order.

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

19 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
20 their support staff).

21 2.5 Designating Party: a Party or Non-Party that designates information
22 or items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL.”

24 2.6 Disclosure or Discovery Material: all items or information, regardless
25 of the medium or manner in which they are generated, stored, or maintained
26 (including, among other things, testimony, transcripts, and tangible things), that are
27 produced or generated in disclosures or responses to discovery in this matter.

28 2.7 Expert: a person with specialized knowledge or experience in a

1 matter pertinent to the litigation who has been retained by a Party or its counsel to
2 serve as an expert witness or as a consultant in this Action.

3 2.8 House Counsel: attorneys who are employees of a party to this
4 Action. House Counsel does not include Outside Counsel of Record or any other
5 outside counsel.

6 2.9 Non-Party: any natural person, partnership, corporation, association,
7 or other legal entity not named as a Party to this action.

8 2.10 Outside Counsel of Record: attorneys who are not employees of a
9 party to this Action but are retained to represent or advise a party to this Action
10 and have appeared in this Action on behalf of that party or are affiliated with a law
11 firm which has appeared on behalf of that party, including support staff.

12 2.11 Party: any party to this Action, including all of its officers, directors,
13 employees, consultants, retained experts, and Outside Counsel of Record (and their
14 support staffs).

15 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this Action.

17 2.13 Professional Vendors: persons or entities that provide litigation
18 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
19 demonstrations, and organizing, storing, or retrieving data in any form or medium)
20 and their employees and subcontractors.

21 2.14 Protected Material: any Disclosure or Discovery Material that is
22 designated as “CONFIDENTIAL” or “CONFIDENTIAL- ATTORNEYS EYES
23 ONLY.”

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26
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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
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

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

9
10 4. DURATION

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

19
20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection.

22 Each Party or Non-Party that designates information or items for protection under
23 this Order must take care to limit any such designation to specific material that
24 qualifies under the appropriate standards. The Designating Party must designate for
25 protection only those parts of material, documents, items, or oral or written
26 communications that qualify so that other portions of the material, documents,
27 items, or communications for which protection is not warranted are not swept
28 unjustifiably within the ambit of this Order.

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

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

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix at a minimum, the legend
18 "CONFIDENTIAL" or "CONFIDENTIAL- ATTORNEYS EYES ONLY," to
19 each page that contains protected material. If only a portion or portions of the
20 material on a page qualifies for protection, the Producing Party also must clearly
21 identify the protected portion(s) (e.g., by making appropriate markings in the
22 margins).

23 A Party or Non-Party that makes original documents available for inspection
24 need not designate them for protection until after the inspecting Party has indicated
25 which documents it would like copied and produced. During the inspection and
26 before the designation, all of the material made available for inspection shall be
27 deemed "CONFIDENTIAL." After the inspecting Party has identified the
28 documents it wants copied and produced, the Producing Party must determine

1 which documents, or portions thereof, qualify for protection under this Order.
2 Then, before producing the specified documents, the Producing Party must affix
3 the “CONFIDENTIAL” or “CONFIDENTIAL- ATTORNEYS EYES ONLY”
4 designation to each page that contains Protected Material. If only a portion or
5 portions of the material on a page qualifies for protection, the Producing Party also
6 must clearly identify the protected portion(s) (e.g., by making appropriate
7 markings in the margins).

8 (b) for testimony given in depositions, that the Designating Party
9 identify the Disclosure or Discovery Material on the record, before the close of the
10 deposition.

11 (c) for information produced in some form other than documentary
12 and for any other tangible items, that the Producing Party affix in a prominent
13 place on the exterior of the container or containers in which the information is
14 stored the legend “CONFIDENTIAL” or “CONFIDENTIAL- ATTORNEYS
15 EYES ONLY.” If only a portion or portions of the information warrants
16 protection, the Producing Party, to the extent practicable, shall identify the
17 protected portion(s).

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

24
25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
27 designation of confidentiality at any time that is consistent with the Court’s
28 Scheduling Order.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 Burden of Persuasion. The burden of persuasion in any such
4 challenge proceeding shall be on the Designating Party. Frivolous challenges, and
5 those made for an improper purpose (e.g., to harass or impose unnecessary
6 expenses and burdens on other parties) may expose the Challenging Party to
7 sanctions. Unless the Designating Party has waived or withdrawn the
8 confidentiality designation, all parties shall continue to afford the material in
9 question the level of protection to which it is entitled under the Producing Party's
10 designation until the Court rules on the challenge.

11
12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
24 otherwise ordered by the court or permitted in writing by the Designating Party, a
25 Receiving Party may disclose any information or item designated
26 "CONFIDENTIAL" only to:

27 (a) the Receiving Party's Outside Counsel of Record in this Action, as
28 well as employees of said Outside Counsel of Record to whom it is reasonably

1 necessary to disclose the information for this Action;

2 (b) the Receiving Party and/or its officers, directors, and employees
3 (including House Counsel) to whom disclosure is reasonably necessary for this
4 Action;

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

8 (d) the Court and its personnel;

9 (e) court reporters and their staff;

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

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

15 (h) during their depositions, witnesses, and attorneys for witnesses, in
16 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
17 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
18 that they will not be permitted to keep any confidential information unless they
19 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
20 otherwise agreed by the Designating Party or ordered by the Court. Pages of
21 transcribed deposition testimony or exhibits to depositions that reveal Protected
22 Material may be separately bound by the court reporter and may not be disclosed
23 to anyone except as permitted under this Stipulated Protective Order; and

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

26 7.3 Attorneys Eyes Only Designation. A party may designate any
27 CONFIDENTIAL Information “CONFIDENTIAL- ATTORNEYS EYES ONLY”
28 where that material constitutes or discloses extremely sensitive CONFIDENTIAL

1 Information, the disclosure of which would be especially detrimental or harmful to
2 the producing party if disclosed beyond the limited class of permitted recipients as
3 specified in 7.2(b). “CONFIDENTIAL- ATTORNEYS EYES ONLY”
4 information or materials includes, but is not limited to: (i) trade secrets; (ii) product
5 designs; (iii) product testing, and (iv) highly sensitive financial information,
6 business plans and/or forecasts, customer lists, pricing data, cost data, customer
7 orders, or customer quotations. Unless otherwise ordered by the Court or
8 permitted in writing by the Designating Party, a Receiving Party may disclose any
9 information or item designated “CONFIDENTIAL- ATTORNEYS EYES ONLY”
10 only to the class of permitted recipients as specified in 7.2(a) and (c) through (i).
11 Materials designated with a notation essentially equivalent to the phrase
12 “Confidential – Attorneys’ Eyes Only” (e.g., “Attorneys’ Eyes Only”) and
13 materials designated as “Confidential—Attorneys’ Eyes Only” shall be given all
14 other protections for Confidential Information contained in this Order.

15
16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
17 IN OTHER LITIGATION

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

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

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

28 (c) cooperate with respect to all reasonable procedures sought to be

1 pursued by the Designating Party whose Protected Material may be affected.

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

11
12 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
13 PRODUCED IN THIS LITIGATION

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

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

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

1 specific description of the information requested; and

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

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

13
14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

24
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

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

9
10 12. MISCELLANEOUS

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

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

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

1 13. FINAL DISPOSITION

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

20
21 14. Any violation of this Order may be punished by any and all appropriate
22 measures including, without limitation, contempt proceedings and/or monetary
23 sanctions.

24
25 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

26
27 Dated: December 20, 2017

28 
KAREN L. STEVENSON
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Central District of California
8 on [date] in the case of *Styku, LLC. v. Fit3D, Inc.*, Case No.: 2:17-cv-01882-AB-
9 KS. I agree to comply with and to be bound by all the terms of this Stipulated
10 Protective Order and I understand and acknowledge that failure to so comply could
11 expose me to sanctions and punishment in the nature of contempt. I solemnly
12 promise that I will not disclose in any manner any information or item that is
13 subject to this Stipulated Protective Order to any person or entity except in strict
14 compliance with the provisions of this Order. I further agree to submit to the
15 jurisdiction of the United States District Court for the Central District of California
16 for the purpose of enforcing the terms of this Stipulated Protective Order, even if
17 such enforcement proceedings occur after termination of this action. I hereby
18 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 Signature: _____

27
28