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 7

8 UNITED STATES DISTRICT COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION  
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11 BRIGHTON COLLECTIBLES, LLC, a  
 Delaware limited liability company,

12 Plaintiff,

13 vs.

14 PUBLISHERS CLEARING HOUSE,  
 15 LLC a New York limited liability  
 company; ASTRA INTERNATIONAL,  
 16 INC., a New York corporation; LF  
 PRODUCTS PTE LTD, a Singapore  
 17 corporation,

18 Defendants.  
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Case No. 2:17-cv-02327 TJH (JEMx)  
 Hon. Terry J. Hatter  
 Magistrate John E. McDermott

~~Proposed~~ **Stipulated Protective  
 Order**

Magistrate Judge:  
 Hon. John E. McDermott

1           The Court, finding that the order requested by the parties is proper and  
2 desirable in the circumstances of this case, and good cause appearing therefore,  
3 pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, grants the parties'  
4 Joint Motion for Entry of Protective Order and enters the following Protective Order  
5 for the benefit of all parties and witnesses and to govern the course of the discovery  
6 proceedings in this case:

7           1.       The following definitions shall apply to this Protective Order:

8               a.       “Party” shall mean and refer to Brighton Collectibles, LLC;  
9 Publishers Clearing House LLC; Astra International, Inc.; or LF Products PTE Ltd.

10              b.       “Confidential Information” shall mean and refer to any  
11 information that has not been made public and the disclosure of which may cause  
12 harm to the person or entity from which the information is obtained, including, but  
13 not limited to, documents and/or data that is considered in good faith by the  
14 designating party to constitute a trade secret (as defined in California Civil Code §  
15 3426.1), confidential information, and/or proprietary business or technical  
16 information. The designation made by a Party or non-party shall be a certification  
17 to the Court and to the other parties that such information is believed in good faith to  
18 be confidential within the meaning of this Protective Order.

19              c.       “Confidential for Attorneys’ Eyes Only Information” shall mean  
20 and refer to any Confidential Information that is considered in good faith by the  
21 designating party to be so highly sensitive that disclosure to persons other than  
22 limited and specified individuals could cause undue risk of substantial and  
23 immediate injury to the business of the producing party. The designation made by a  
24 disclosing party or non-party shall be a certification to the Court and the other  
25 parties that such information is believed to be highly sensitive Confidential  
26 Information and subject to this more restrictive classification within the meaning of  
27 this Protective Order.

28              d.       “Qualified Persons” entitled to view or receive Confidential

1 Information not designated Confidential for Attorneys' Eyes Only Information shall  
2 be limited to:

3 i. Counsel to any Party to the litigation and those employees  
4 of the Parties' counsel who need to see such Confidential Information in order to  
5 perform their jobs, including the paralegals, clerical staff, secretarial staff, and other  
6 support personnel employed by such counsel;

7 ii. Those officers, directors or employees of the Parties to this  
8 litigation, including their parents, subsidiaries, affiliates and insurers, who are  
9 reasonably necessary to assist counsel in this litigation;

10 iii. Any persons who appear on the face of the Confidential  
11 Information as an author, addressee or prior recipient thereof;

12 iv. Expert witnesses or consultants retained or employed by  
13 the parties or their respective attorneys solely for the purpose of assisting counsel in  
14 the prosecution, defense or settlement of this litigation who have complied with  
15 paragraph 2, below, and the employees of such experts or consultants who are  
16 assisting them;

17 v. The United States District Court for the Central District of  
18 California and its personnel, the United States Court of Appeals for the Ninth  
19 Circuit and its personnel, and any other court of competent jurisdiction having  
20 involvement in this litigation and its personnel;

21 vi. Court reporters, stenographers, and video  
22 reporters/videographers who are retained to transcribe or videotape testimony,  
23 including depositions, in this litigation;

24 vii. Any designated arbitrator who is assigned to hear and  
25 adjudicate this litigation, or any mediator who is assigned to mediate this litigation  
26 or consulted by agreement of the parties in any attempt to settle this matter, and any  
27 of their respective personnel;

28 viii. Witnesses at any deposition or other proceeding in this

1 action, during the course of their testimony upon the witness being advised of the  
2 need and agreeing to keep the records confidential, and/or

3 ix. Any other person to whom the Parties agree in writing.

4 e. "Qualified Persons" entitled to view or receive Confidential for  
5 Attorneys' Eyes Only Information shall be limited to:

6 i. Counsel to any Party to the litigation and those employees  
7 of the Parties' counsel who need to see such Confidential for Attorneys' Eyes Only  
8 Information in order to perform their jobs, including the paralegals, clerical staff,  
9 secretarial staff, and other support personnel employed by such counsel;

10 ii. Designated In-House Counsel of the Party who receives  
11 the documents ("Receiving Party") (1) who has no involvement in competitive  
12 decision-making, (2) to whom disclosure is reasonably necessary for this litigation,  
13 and (3) who has signed the "Acknowledgment and Agreement to Be Bound"  
14 (Exhibit A);

15 iii. Any persons who appear on the face of the Confidential  
16 for Attorneys' Eyes Only Information as an author, addressee or prior recipient  
17 thereof;

18 iv. Expert witnesses or consultants who are not employees of  
19 any Party and who are retained or employed by the Parties or their respective  
20 attorneys solely for the purpose of assisting counsel in the prosecution, defense or  
21 settlement of this litigation who have complied with paragraph 2, below, and the  
22 employees of such experts or consultants who are assisting them, to the extent  
23 counsel of record in good faith believes such disclosure is required to assist in the  
24 prosecution, defense or resolution of this litigation;

25 v. The United States District Court for the Central District of  
26 California and its personnel, the United States Court of Appeals for the Ninth  
27 Circuit and its personnel, and any other court of competent jurisdiction having  
28 involvement in this litigation and its personnel;

1 vi. Court reporters, stenographers, and video  
2 reporters/videographers who are retained to transcribe or videotape testimony,  
3 including depositions, in this litigation;

4 vii. Any designated arbitrator who is assigned to hear and  
5 adjudicate this litigation, or any mediator who is assigned to mediate this litigation  
6 or consulted by agreement of the Parties in any attempt to settle this matter, and any  
7 of their respective personnel;

8 viii. Witnesses at any deposition or other proceeding in this  
9 action, during the course of their testimony, whom counsel for a Party legitimately  
10 believes may, might or could have knowledge of the contents of the document  
11 designated Confidential for Attorneys Eyes' Only or the specific events,  
12 transactions, discussions, or data reflected in the document, and upon the witness  
13 being advised of the need and agreeing to keep the records confidential; and/or

14 ix. Any other person to whom the Parties agree in writing.

15 2. Prior to receiving information designated as Confidential Information  
16 or Confidential for Attorneys' Eyes Only Information, all Qualified Persons  
17 identified in Paragraph 1(d), subparagraphs (iv), (v), or (ix), or Paragraph 1(e),  
18 subparagraphs (ii), (iv), (vii), or (ix), shall be provided with a copy of this Protective  
19 Order and shall sign a sworn Written Assurance statement in substantially the form  
20 that appears in Exhibit A. The original of the executed written assurance shall  
21 remain in the possession of the attorney who makes the disclosure of the  
22 Confidential Information or the Confidential for Attorneys' Eyes Only Information  
23 until the Parties agree in writing to the contrary.

24 3. The production of any material or information during discovery in this  
25 action shall be without prejudice to any claim that such is privileged as a trade secret  
26 or confidential and proprietary business information, or protected by the right of  
27 privacy, and no Party shall be held to have waived these privileges or right by such  
28 production.

1           4. Whenever during the course of discovery in this matter a Party or  
2 witness is properly requested to disclose, or voluntarily discloses, materials or  
3 information that a Party considers to be Confidential Information or Confidential for  
4 Attorneys' Eyes Only Information, that Party shall indicate at or before the time of  
5 disclosure that the information or materials are Confidential Information or  
6 Confidential for Attorneys' Eyes Only Information by marking the information or  
7 materials as such or putting some other similar designation thereon, or by indicating  
8 in some other appropriate fashion that the information or materials produced are  
9 subject to this Protective Order. Inadvertent failure to designate material as  
10 "Confidential" or "Confidential--For Attorneys' Eyes Only" under this Protective  
11 Order shall not operate as waiver of the Party's right to subsequently designate such  
12 material as "Confidential" or "Confidential--For Attorneys' Eyes Only."

13           5. Materials or information designated as Confidential Information or  
14 Confidential for Attorneys' Eyes Only Information, including any summaries,  
15 copies, abstracts, or other documents containing the Confidential Information or  
16 Confidential for Attorneys' Eyes Only Information, shall be treated in accordance  
17 with the terms of this Protective Order and shall be used by the Parties, their  
18 respective agents, and any other persons to whom such Confidential Information or  
19 Confidential for Attorneys' Eyes Only Information may be disclosed pursuant to  
20 this Protective Order, only for the prosecution, defense or settlement of this  
21 litigation, and for no other purposes, including but not limited to business and other  
22 litigation purposes. Notwithstanding the foregoing, nothing in this Protective Order  
23 shall prevent or limit the ability of either Party to disclose Confidential Information  
24 or Confidential for Attorneys' Eyes Only Information lawfully obtained by such  
25 Party independent of discovery in this action, whether or not such material is also  
26 obtained through discovery in this action, or from disclosing its own Confidential  
27 Information or Confidential for Attorneys' Eyes Only Information to any person as  
28 it deems appropriate.

1           6. If a Party or their counsel is served during this action (including up to  
2 the deadline to destroy or return documents set forth in paragraph 12), with a  
3 subpoena requiring production of an opposing Party's Confidential Information or  
4 Confidential for Attorneys' Eyes Only Information, the subpoenaed Party will,  
5 within three court days, send by email a copy of the subpoena to the attorney for the  
6 opposing Party (i.e., the Party that produced the material the subpoena seeks). Once  
7 it receives the notice, the opposing Party shall have five court days to file a motion  
8 in the proper court objecting to the subpoena. If a motion objecting to the subpoena  
9 is timely filed, the subpoenaed Party shall not produce the material until after a court  
10 rules on the motion, unless required to do so by a court order (other than the  
11 subpoena itself) or by the law.

12           7. When briefs, memoranda or other documents or things containing  
13 Confidential Information or Confidential for Attorneys' Eyes Only Information are  
14 filed with the Court, the filing Party shall make every effort to file these documents  
15 or things under seal and shall comply with the Court's requirements for doing so. In  
16 particular, the filing Party shall move in accordance with the Local Rules to file the  
17 documents under seal. In all instances the designating party shall be provided an  
18 opportunity, before a motion to file under seal is filed, to place in that motion the  
19 reasons why the designating Party believes the material may be filed under seal. If  
20 the Magistrate Judge or the District Judge approves this request, and orders that the  
21 documents may be filed under seal, the documents shall then be filed under seal.  
22 However, should the Magistrate Judge or the District Judge decline to allow the  
23 documents or things to be filed under seal, nothing in this Protective Order shall  
24 prevent the filing party from submitting the documents or things to the Court in an  
25 unsealed filing.

26           8. No document shall be filed under seal unless counsel secures a court  
27 order allowing the filing of a document under seal. An application to file a  
28 document under seal shall be served on opposing counsel, and on the person or

1 entity that has custody and control of the document, if different from opposing  
2 counsel. If opposing counsel, or the person or entity who has custody or control of  
3 the document, wishes to oppose the application, he/she must contact the chambers of  
4 the judge who will rule on the application, to notify the judge's staff that an  
5 opposition to the application will be filed.

6 9. Should any document(s) containing Confidential Information or  
7 Confidential for Attorneys' Eyes Only Information be inadvertently filed without  
8 the designation referred to in paragraph 4, the Party filing the document(s) shall,  
9 upon discovering the error or upon written notification of the error, promptly ask the  
10 Court to allow it to withdraw the documents, and will then follow the procedures  
11 required by paragraphs 7 and 8, above.

12 10. The process for challenging a Party's designation of material as  
13 confidential shall be as follows:

14 a. Any Party or Non-Party may challenge a designation of  
15 confidentiality at any time.

16 b. The Party challenging the designation ("Challenging Party")  
17 shall initiate the dispute resolution process by providing written notice of each  
18 designation it is challenging and describing the basis for each challenge. To avoid  
19 ambiguity as to whether a challenge has been made, the written notice must recite  
20 that the challenge to confidentiality is being made in accordance with this specific  
21 paragraph of the Protective Order. The Parties shall attempt to resolve each  
22 challenge in good faith and must begin the process by conferring directly (in voice  
23 to voice dialogue; other forms of communication are not sufficient) within 14 days  
24 of the date of service of notice. In conferring, the Challenging Party must explain  
25 the basis for its belief that the confidentiality designation was not proper and must  
26 give the party who designated the material confidential ("Designating Party") an  
27 opportunity to review the designated material, to consider the circumstances, and,  
28 if no change in designation is offered, to explain the basis for the chosen



1 designation. A Challenging Party may proceed to the next stage of the challenge  
2 process only if it has engaged in this meet and confer process first or establishes that  
3 the Designating Party is unwilling to participate in the meet and confer process in a  
4 timely manner.

5 c. If the Parties cannot resolve a challenge without court  
6 intervention, the Challenging Party may file and serve a motion challenging the  
7 designation under Civil Local Rules 7-4 through 7-8 (and in compliance with Civil  
8 Local Rule 79-5, if applicable). Each such motion must be accompanied by a  
9 competent declaration affirming that the movant has complied with the meet and  
10 confer requirements imposed in the preceding sub-paragraph.

11 d. The burden of persuasion in any such challenge proceeding shall  
12 be on the Designating Party. Frivolous challenges and those made for an improper  
13 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
14 parties) may expose the Challenging Party to sanctions. All parties shall continue to  
15 afford the material in question the level of protection to which it is entitled under the  
16 Designating Party's designation until the court rules on the challenge.

17 11. A Designating Party may give notice to another Party that it is  
18 eliminating or changing a previous designation of material as "Confidential" or  
19 "Confidential - For Attorneys' Eyes Only." In that event, if the Designating Party  
20 does not wish the previous designation to be known, it shall provide a new, re-  
21 designated copy of the documents or other material. Such re-designated copy will  
22 then be the only version of the documents that may be used as an exhibit at trial or  
23 otherwise displayed to the court. No mention shall be made to the Court of the  
24 previous designation.

25 12. Within 60 days after the termination of this Action and the expiration  
26 of the time for appeal or final determination of any appeal, all originals and copies  
27 of any Confidential Information or Confidential for Attorneys' Eyes Only  
28 Information in the possession, custody or control of any person or entity (other than

1 the courts identified in paragraphs 1(d)(v) and 1(e)(v) above) shall be destroyed or  
2 returned to the Party who produced such document(s) or information. In the event  
3 that the documents are destroyed, rather than returned, a letter to that effect shall be  
4 provided to counsel. Notwithstanding the foregoing, each Party's outside counsel  
5 may maintain one copy of all documents containing Confidential Information or  
6 Confidential For Attorney's Eyes Only Information for the sole purpose of  
7 maintaining complete and accurate files of this action.

8       **Confidential Information or Confidential for Attorneys' Eyes Only**  
9 Information in the possession, custody or control of the District Court shall be  
10 disposed of as follows: Within 30 days after the termination of this Action and the  
11 expiration of the time for appeal or final determination of any appeal, any Party to  
12 this action may provide to the District Court a package containing the materials  
13 necessary, with postage prepaid, to return the Confidential Information or  
14 Confidential for Attorneys' Eyes Only Information to that Party (hereinafter "Return  
15 Package"). The Party seeking return of the Confidential Information or Confidential  
16 for Attorneys' Eyes Only Information must be one of the parties to this action, or its  
17 counsel, but need not be the actual owner of the information or the party that  
18 actually submitted the information to the Court. The materials submitted to the  
19 Court in the Return Package shall include a list of the documents to be returned, and  
20 this list must be submitted to the other Party at least one week prior to the expiration  
21 of the 30 day period referenced above. Any Confidential Information or  
22 Confidential for Attorneys' Eyes Only Information returned pursuant to the  
23 foregoing procedure must be treated by the receiving party strictly in accordance  
24 with the terms of this Protective Order. To the extent that the parties do not seek the  
25 return of Confidential or Confidential for Attorneys' Eyes Only Information as set  
26 forth above, the District Court may dispose of such Confidential Information or  
27 Confidential for Attorneys' Eyes Only Information in any manner it deems proper.

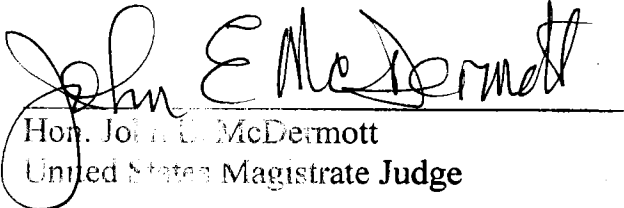
28       13. This Protective Order shall be without prejudice to the right of the

1 Parties to present a motion to the Court under Federal Rule of Civil Procedure 26(c)  
2 for a separate protective order as to any particular document or information,  
3 including restrictions differing from those as specified herein.

4 14. Third parties who produce documents or materials or provide testimony  
5 in connection with this action, whether in response to a subpoena or otherwise, may  
6 produce such documents or materials and/or testify pursuant to the protections  
7 afforded by this Order by complying with paragraph 2 above.

8 15. The provisions of this Protective Order are subject to further Court  
9 order.

10 16. Without separate and subsequent Court order, this Protective Order  
11 does not change, amend, or circumvent any Court rule or Local Rule.

12  
13 Dated: October 25, 2017   
14 Hon. John E. McDermott  
15 United States Magistrate Judge  
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**EXHIBIT**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I \_\_\_\_\_ [name], \_\_\_\_\_ [position of  
employment], hereby acknowledge that any information provided to me is subject to  
the terms and conditions of the Protective Order in case number 2:17-cv-02327,  
pending in the United States District Court for the Central District of California.

Having been given a copy of the Protective Order, and having read and  
understood its contents, I hereby agree to be bound by and to comply with the terms  
and provisions thereof. I further agree that I will not disclose documents or  
information designated Confidential Information or Confidential for Attorneys'  
Eyes Only Information except as specifically permitted by the terms of the  
Protective Order, and that I will use the documents or information solely for  
purposes of this litigation in accordance with the Protective Order. I hereby consent  
to the jurisdiction of the United States District Court for the Central District of  
California for purposes of enforcing the aforesaid Protective Order.

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

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

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

Signature: \_\_\_\_\_