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 13 THE ONEIDA GROUP, INC.

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

17 TUXTON CHINA, INC.,  
 18 Plaintiff,

19 vs.

20 THE ONEIDA GROUP, INC.,  
 21 Defendant.

Case No. 2:17-CV-02996-SVW-E

**STIPULATION FOR  
 PROTECTIVE ORDER  
 GOVERNING CONFIDENTIAL  
 INFORMATION**

22 THE ONEIDA GROUP, INC.,  
 23 Counter-plaintiff,

24 vs.

25 TUXTON CHINA, INC.,  
 26 Counter-defendant.

Complaint Filed: April 20, 2017  
 Trial Date: February 20, 2018

1 **1. PURPOSES AND LIMITATIONS AND GOOD CAUSE STATEMENT**

2 **A. PURPOSES AND LIMITATIONS**

3 Disclosure and discovery activity in this action are likely to involve  
4 production of confidential, proprietary, or private information for which special  
5 protection from public disclosure and from use for any purpose other than  
6 prosecuting this litigation may be warranted. Accordingly, the parties hereby  
7 stipulate to and petition the court to enter the following Stipulated Protective Order.

8 The parties further acknowledge, as set forth in Section 11.3, below, that this  
9 Stipulated Protective Order does not entitle them to file confidential information  
10 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed  
11 and the standards that will be applied when a party seeks permission from the court  
12 to file material under seal.

13 **B. GOOD CAUSE STATEMENT**

14 This action is likely to involve trade secrets and other valuable research,  
15 development, commercial, financial, technical, and/or proprietary information for  
16 which special protection from public disclosure and from use for any purpose other  
17 than prosecution of this action is warranted. Such confidential and proprietary  
18 materials and information consist of, among other things, confidential business or  
19 financial information, information regarding confidential business practices, or  
20 other confidential research, development, or commercial information (including  
21 information implicating privacy rights of third parties), information otherwise  
22 generally unavailable to the public, or which may be privileged or otherwise  
23 protected from disclosure under state or federal statutes, court rules, case decisions,  
24 or common law. Accordingly, to expedite the flow of information, to facilitate the  
25 prompt resolution of disputes over confidentiality of discovery materials, to  
26 adequately protect information the parties are entitled to keep confidential, to  
27 ensure that the parties are permitted reasonable necessary uses of such material in  
28 preparation for and in the conduct of trial, to address their handling at the end of the

1 litigation, and serve the ends of justice, a protective order for such information is  
2 justified in this matter.

3 **2. DEFINITIONS**

4 2.1 Action: the above-captioned federal civil action.

5 2.2 Challenging Party: a Party or Non-Party that challenges the  
6 designation of information or items under this Order.

7 2.3 Counsel: Outside Counsel of Record and In-House Counsel (as well  
8 as their support staff).

9 2.4 Designating Party: a Party or Non-Party that designates information or  
10 items that it produces in disclosures or in responses to discovery as  
11 “CONFIDENTIAL” or “CONFIDENTIAL—AEO.”

12 2.5 Disclosure or Discovery Material: all items or information, regardless  
13 of the medium or manner in which it is generated, stored, or maintained (including,  
14 among other things, testimony, transcripts, and tangible things), that are provided,  
15 produced, or generated in relation to the claims and disputes in this matter or in  
16 disclosures or responses to discovery in this matter.

17 2.6 Expert: a person with specialized knowledge or experience in a matter  
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
19 an expert witness or as a consultant in this Action.

20 2.7 In-House Counsel: attorneys, barristers or solicitors who are  
21 employees of a party to this Action

22 2.8 Non-Party: any natural person, partnership, corporation, association,  
23 or other legal entity not named as a Party to this action.

24 2.9 Outside Counsel of Record: attorneys who are not employees of a  
25 party to this Action but are retained to represent or advise a party to this Action and  
26 have appeared in this Action on behalf of that party or are affiliated with a law firm  
27 that has appeared on behalf of that party, and includes support staff.

28 2.10 Party: any party to this Action, including all of its officers, directors,

1 employees, consultants, retained experts, and Outside Counsel of Record (and their  
2 support staffs).

3       2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
4 Discovery Material in this Action.

5       2.12 Professional Vendors: persons or entities that provide litigation  
6 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
7 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
8 and their employees and subcontractors.

9       2.13 Protected Material: any Disclosure or Discovery Material that is  
10 designated as “CONFIDENTIAL” or “CONFIDENTIAL AEO.”

11       2.14 Receiving Party: a Party that receives Disclosure or Discovery  
12 Material from a Producing Party.

13 **3. SCOPE**

14       3.1 To the extent either Party produces documents, materials or  
15 information during discovery that contain trade secrets or other confidential and  
16 proprietary business information that is not publicly available, such documents or  
17 materials shall be clearly marked as “CONFIDENTIAL” at the time production  
18 occurs.

19       3.2 If a party reasonably believes that the particular confidential  
20 documents, materials or information to be produced or disclosed is of such a highly  
21 sensitive nature that their disclosure should be limited only to Counsel, Experts,  
22 Professional Vendors, and the Court, that party shall clearly mark such documents,  
23 materials or information as “CONFIDENTIAL – AEO.”

24       3.3 Protected Materials shall not be used by any party except in the  
25 preparation for, trial of, or conduct of other proceedings in this litigation or as  
26 otherwise agreed to in writing by the parties or ordered by the Court. This Order  
27 has no effect on and shall not apply to a Producing Party’s use of its own Protected  
28 Material for any purpose.

1           3.4 Protected Materials may include (a) such documents, materials or  
2 information; (b) all copies, extracts and complete or partial summaries prepared  
3 from such documents, materials or information; (c) portions of deposition  
4 transcripts and exhibits thereto which contain or reflect the content of any such  
5 documents, materials or information, or copies, extracts or summaries thereof; (d)  
6 portions of briefs, memoranda or any other writing filed with the Court and exhibits  
7 thereto which contain or reflect the content of any such documents, materials or  
8 information, or copies, extracts or summaries thereof; and (d) testimony taken at a  
9 hearing or other proceeding that refers or relates to such documents, materials or  
10 information, consistent with Section 7 below.

11           Any use of Protected Material at trial shall be governed by a separate  
12 agreement or order of the trial judge. This Order does not govern the use of  
13 Protected Material at trial.

14 **4. DURATION**

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

23 **5. DESIGNATING PROTECTED MATERIAL**

24           5.1 Manner and Timing of Designations. Except as otherwise provided in  
25 this Order (see, e.g., second paragraph of section 5.1(a) below), or as otherwise  
26 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
27 under this Order must be clearly so designated before the material is disclosed or  
28 produced.

1 Designation in conformity with this Order requires:

- 2 (a) for information in documentary form (e.g., paper or electronic  
3 documents, but excluding transcripts of depositions or other pretrial or  
4 trial proceedings), that the Producing Party affix the legend  
5 “CONFIDENTIAL” or “CONFIDENTIAL—AEO” to each page that  
6 contains protected material. If only a portion or portions of the  
7 material on a page qualifies for protection, the Producing Party also  
8 must clearly identify the protected portion(s) (e.g., by making  
9 appropriate markings in the margins).
- 10 (b) for testimony given in depositions that the Designating Party identify  
11 the Disclosure or Discovery Material on the record, before the close of  
12 the deposition all protected testimony.
- 13 (c) for information produced in some form other than documentary and  
14 for any other tangible items, that the Producing Party affix in a  
15 prominent place on the media or the exterior of the container or  
16 containers in which the information is stored the legend  
17 “CONFIDENTIAL.” If only a portion or portions of the information  
18 warrants protection, the Producing Party, to the extent practicable,  
19 shall identify the protected portion(s).

20 5.2 Inadvertent Failures to Designate.

21 An inadvertent failure to designate qualified information or items does not,  
22 standing alone, waive the Designating Party’s right to secure protection under this  
23 Order for such material. Upon receiving notice of a correction of a designation, the  
24 Receiving Party must make reasonable efforts to assure that the material is treated  
25 in accordance with the provisions of this Order. No Party shall be held in breach of  
26 this Order if, prior to notification of such later designation, such produced material  
27 had been disclosed or used in a manner inconsistent with such later designation.  
28 The Producing Party shall provide substitute copies bearing the corrected

1 designation. The Receiving Party shall return or certify the destruction of the  
2 undesignated produced material.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
5 designation of confidentiality at any time. The failure to challenge a designation of  
6 confidentiality at the time such designation is made shall not preclude or prejudice a  
7 subsequent challenge.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
9 resolution process under Local Rule 37.1 et seq.

10 6.3 The burden of persuasion in any such challenge proceeding shall be on  
11 the, Designating Party. Frivolous challenges, and those made for an improper  
12 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
13 parties) may expose the Challenging Party to sanctions. Unless the Designating  
14 Party has waived or withdrawn the confidentiality designation, Parties shall  
15 continue to afford the material in question the level of protection to which it is  
16 entitled under the Producing Party's designation until the Court rules on the  
17 challenge.

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

19 7.1 Basic Principles.

20 A Receiving Party may use Protected Material that is disclosed or produced  
21 by another Party or by a Non-Party in connection with this Action only for  
22 prosecuting, defending, or attempting to settle this Action. Such Protected Material  
23 may be disclosed only to the categories of persons and under the conditions  
24 described in this Order. If an additional entity becomes a Party or is joined in this  
25 Action, the newly joined Party shall not have access to Protected Material disclosed  
26 or produced in connection with this Action until all Parties agree to a supplemental  
27 Order governing the protection of Protected Material. When the Action has been  
28 terminated, a Receiving Party must comply with the provisions of Section 13 below

1 (FINAL DISPOSITION).

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

5 7.2 Disclosure of Material Marked “CONFIDENTIAL”

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 “CONFIDENTIAL” only to:

- 9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
10 as employees of said Outside Counsel of Record to whom it is  
11 reasonably necessary to disclose the information for this Action;
- 12 (b) the officers, directors, and employees (including In-House Counsel) of  
13 the Receiving Party to whom disclosure is reasonably necessary for  
14 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  
17 the “Acknowledgment and Agreement to Be Bound” (attached hereto  
18 as Exhibit A);
- 19 (d) the court and its personnel;
- 20 (e) court reporters and their staff,
- 21 (f) professional jury or trial consultants, mock jurors, licensed private  
22 investigators retained by Counsel, and Professional Vendors to whom  
23 disclosure is reasonably necessary for this Action and who have signed  
24 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 25 (g) the author or recipient of a document containing the information or a  
26 custodian or other person who otherwise possessed or knew the  
27 information;
- 28 (h) during their depositions, witnesses, and attorneys for witnesses, in the



- 1 Action to whom disclosure is reasonably necessary, provided that:  
2 (1) the deposing party requests that the witness sign the  
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and  
4 (2) they will not be permitted to keep any confidential information  
5 unless they sign the “Acknowledgment and Agreement to Be  
6 Bound” (Exhibit A), unless otherwise agreed by the Designating Party  
7 or ordered by the court;
- 8 (i) any mediator or settlement officer, and their supporting personnel,  
9 mutually agreed upon by any of the Parties engaged in settlement  
10 discussions; and  
11 (j) any other person agreed to by the Parties or allowed by the Court.

12 **7.5 Disclosure of Marked “CONFIDENTIAL AEO”**

13 Unless otherwise ordered by the court or permitted in writing by the  
14 Designating Party, a Receiving Party may disclose any information or item  
15 designated “CONFIDENTIAL--AEO” only individuals listed in Section 7.4(a), (c)-  
16 (j) and In-House Counsel.

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

19 If a Receiving Party is served with a subpoena or court order issued in other  
20 litigation that seeks to compel disclosure of a Designating Party’s information or  
21 items designated in this Action as “CONFIDENTIAL” or “CONFIDENTIAL—  
22 AEO,” that Party must:

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

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

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

**9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

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

Pursuant to Rule 502 of the Federal Rules of Evidence, the production of documents, electronically stored information (“ESI”), or other information subject to the attorney-client privilege or the work-product doctrine, whether inadvertent or otherwise, will not waive the attorney-client privilege or the work-product doctrine.

1 In addition, the Parties agree that if a document, ESI or other information subject to  
2 the attorney-client privilege or the work product doctrine is included in documents,  
3 ESI or other information made available for inspection, such disclosure shall be  
4 considered not a waiver of the attorney-client privilege or the work-product  
5 doctrine. Upon entry by this court of the present Protective Order, the privilege or  
6 protection is deemed not waived by disclosure in connection with this Action, as  
7 well as any other Federal or State proceeding. This Protective Order shall be  
8 interpreted to provide the maximum protection allowed by Federal Rule of  
9 Evidence 502(d).

10 If a Party believes that it has inadvertently produced any document, ESI or  
11 other information that it believes may be subject to the attorney-client privilege or  
12 work-product doctrine (“Protected Document”), the Party may claw back the  
13 Protected Document by making a written request to the Receiving Party specifically  
14 identifying the Protected Document, including the date, author, addressees, and  
15 topic of the document as well as a brief explanation of the reason for the claim of  
16 privilege. Upon receipt of this written request, each Party receiving said document,  
17 ESI or other information shall immediately cease use of this document, ESI or other  
18 information and information contained therein and shall return it and all physical  
19 copies and delete all electronic copies within three (3) business days to the  
20 Producing Party. The record of the identity and nature of an inadvertently produced  
21 document, ESI or other information may not be used for any purpose other than in  
22 preparation of a motion to compel the production of the same document in this  
23 Action. No information in an inadvertently produced document, ESI or other  
24 information may be used or relied upon for any other purpose in this Action until  
25 the court so orders. After the return of the document(s), ESI or other information,  
26 the Receiving Party may challenge the Producing Party’s claim(s) of privilege or  
27 work-product by making a motion to the court.

28 Nothing contained herein is intended to or shall serve to limit a Party’s right

1 to conduct a review of documents, ESI, or other information (including metadata)  
2 for relevance, responsiveness, and/or segregation of privileged and/or protected  
3 information prior to production.

4 **11. MISCELLANEOUS**

5 11.1 Right to Further Relief. Nothing in this Order abridges the right of any  
6 person to seek its modification by the Court in the future.

7 11.2 Right to Assert Other Objections. By stipulating to the entry of this  
8 Protective Order, no Party waives any right it otherwise would have to object to  
9 disclosing or producing any information or item on any ground not addressed in  
10 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
11 any ground to use in evidence of any of the material covered by this Protective  
12 Order.

13 11.3 Filing Protected Material. Without written permission from the  
14 Designating Party or a court order secured after appropriate notice to all interested  
15 persons, a Party may not file in the public record in this action any Protected  
16 Material. A Party that seeks to file under seal any Protected Material must comply  
17 with Local Civil Rule 79-5. Protected Material may only be filed under seal  
18 pursuant to a court order authorizing the sealing of the specific Protected Material  
19 at issue. If a Party's request to file Protected Material under seal is denied by the  
20 court, then the Receiving Party may not file the information in the public record  
21 unless otherwise instructed by the court.

22 **12. FINAL DISPOSITION**

23 After the final disposition of this Action, as defined in paragraph 4, within  
24 60 days of a written request by the Designating Party, each Receiving Party must  
25 return all Protected Material to the Producing Party or destroy such material. As  
26 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
27 compilations, summaries, and any other format reproducing or capturing any of the  
28 Protected Material. Whether the Protected Material is returned or destroyed, the

1 Receiving Party must submit a written certification to the Producing Party (and, if  
2 not the same person or entity, to the Designating Party) by the 60-day deadline that  
3 (1) identifies (by category, where appropriate) all the Protected Material that was  
4 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
5 copies, abstracts, compilations, summaries, or any other format reproducing or  
6 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
7 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
8 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
9 and trial exhibits, expert reports, attorney work product, and consultant and expert  
10 work product, even if such materials contain Protected Material. Any such archival  
11 copies that contain or constitute Protected Material remain subject to this Protective  
12 Order as set forth in Section 4 (DURATION).

13 **13. VIOLATION OF THIS PROTECTIVE ORDER**

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

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18 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:**

19 Dated: November 27, 2017

FOX ROTHSCHILD LLP

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By: /s/ Jeff Grant

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Jeff Grant

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John Shaeffer

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Attorneys for Plaintiff and Counter-  
defendant TUXTON CHINA, INC.

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Dated: November 27, 2017

HOLLAND & KNIGHT LLP

By: /s/ Vito A. Costanzo  
Vito A. Costanzo  
Stacey H. Wang  
Attorneys for Defendant and  
Counter-plaintiff THE ONEIDA  
GROUP, INC.

**FOR GOOD CAUSE SHOWN, IT IS SO ORDERED:**

DATED: 11/27/17

By:   
Honorable Charles F. Eick  
United States Magistrate Judge

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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under  
penalty of perjury that I have read in its entirety and understand the Stipulated  
Protective Order that was issued by the United States District Court for the Central  
District of California on [date] in the case of *Tuxton China, Inc. v. The Oneida  
Group, Inc.* (U.S. Dist. Court, C.D. Cal. Case No. 2:17-cv-2996-SVW). I agree to  
comply with and to be bound by all the terms of this Stipulated Protective Order  
and I understand and acknowledge that failure to so comply could expose me to  
sanctions and punishment in the nature of contempt. I solemnly promise that I will  
not disclose in any manner any information or item that is subject to this Stipulated  
Protective Order to any person or entity except in strict compliance with the  
provisions of this Order. I further agree to submit to the jurisdiction of the United  
States District Court for the Central District of California for the purpose of  
enforcing the terms of this Stipulated Protective Order, even if such enforcement  
proceedings occur after termination of this action. I hereby appoint  
\_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full  
address and telephone number] as my California agent for service of process in  
connection with this action or any proceedings related to enforcement of this  
Stipulated Protective Order.

Date: \_\_\_\_\_  
City and State where sworn and signed: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Signature: \_\_\_\_\_

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**DECLARATION OF CONSENT TO ELECTRONIC SIGNATURE:**

Pursuant to Central Dist. LR 5-4.3.4(a)(2), the electronic filer of this Stipulation, Stacey H. Wang, hereby attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized this filing.

Dated: November 27, 2017

/s/ Stacey H. Wang  
Stacey H. Wang