

1 Alan Engle (Bar No. 224779)
 alan.Engle@meenlegal.com
 2 MEADOR & ENGLE
 5151 California Ave., Suite 100
 3 Irvine, CA 92617
 Telephone: (310) 428-6985
 4 Facsimile: (714) 386-5368

5 Attorneys for Plaintiff and Counter-Defendant
 BLM PRODUCTS, LTD.

6 Stephen C. McArthur (Bar No. 277712)
 stephen@smcarthurlaw.com
 7 Valerie McConnell (State Bar No. 274159)
 8 valerie@smcarthurlaw.com
 THE MCARTHUR LAW FIRM
 9 11400 W. Olympic Blvd., Suite 200
 Los Angeles, CA 90064
 10 Telephone: (323) 639-4455

11 Attorneys for Defendant and Counter-Claimant
 COVVES, LLC

12
 13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA

15
 16 BLM PRODUCTS, LTD.,

17 Plaintiff,

18 v.

19 COVVES, LLC,

20 Defendant.

CASE NO. 2:17-cv-06224-RGK-PLA

**[PROPOSED] STIPULATED
 PROTECTIVE ORDER**

Judge: Hon. R. Gary Klausner
 Magistrate Judge: Paul L. Abrams

21
 22
 23
 24 **1. A. PURPOSES AND LIMITATIONS**

25 Discovery in this action is likely to involve production of confidential, proprietary,
 26 or private information for which special protection from public disclosure and from use for
 27 any purpose other than prosecuting this litigation may be warranted. Accordingly, the
 28

1 parties hereby stipulate to and petition the Court to enter the following Stipulated
2 Protective Order. The parties acknowledge that this Order does not confer blanket
3 protections on all disclosures or responses to discovery and that the protection it affords
4 from public disclosure and use extends only to the limited information or items that are
5 entitled to confidential treatment under the applicable legal principles. The parties further
6 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order
7 does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets
8 forth the procedures that must be followed and the standards that will be applied when a
9 party seeks permission from the court to file material under seal.

10 **B. GOOD CAUSE STATEMENT**

11 This action is likely to involve trade secrets, customer and pricing lists and other
12 valuable research, development, commercial, financial, technical and/or proprietary
13 information for which special protection from public disclosure and from use for any
14 purpose other than prosecution of this action is warranted. Such confidential and
15 proprietary materials and information consist of, among other things, confidential
16 business or financial information, information regarding confidential business practices,
17 or other confidential research, development, or commercial information (including
18 information implicating privacy rights of third parties), information otherwise generally
19 unavailable to the public, or which may be privileged or otherwise protected from
20 disclosure under state or federal statutes, court rules, case decisions, or common law.

21 Accordingly, the parties believe that the designation of certain materials as
22 Confidential Information or Attorneys' Eyes-Only Information is necessary because there is
23 significant risk in disclosing certain highly sensitive information beyond the purposes of this
24 litigation. Any of the parties could be irreparably harmed if designated Confidential
25 Information and Attorneys' Eyes-Only Information is divulged or somehow wrongly misused
26 by the Parties or non-parties
27
28

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

11 **2. DEFINITIONS**

12 2.1 Action: *BLM Products, Ltd. v. Covves, LLC*, Case No.
13 2:17-cv-06224-RGK-PLA.

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

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

20 2.4 "ATTORNEYS' EYES ONLY" Information or Items: a subset of Confidential
21 Information that a party in good faith believes is entitled to heightened protection in order
22 to protect economic, competitive, or sensitive personal information that there is a
23 compelling need to keep confidential from the opposing party and/or its employees and
24 that could materially damage the Designating Party in a manner unrelated to the instant
25 case if revealed.

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 items
2 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

3 2.7 Disclosure or Discovery Material: all items or information, regardless of the
4 medium or manner in which it is generated, stored, or maintained (including, among
5 other things, testimony, transcripts, and tangible things), that are produced or generated
6 in disclosures or responses to discovery in this matter.

7 2.8 Expert: a person with specialized knowledge or experience in a matter
8 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
9 expert witness or as a consultant in this Action.

10 2.9 House Counsel: attorneys who are employees of a party to this Action. House
11 Counsel does not include Outside Counsel of Record or any other outside counsel.

12 2.10 Non-Party: any natural person, partnership, corporation, association, or other
13 legal entity not named as a Party to this action.

14 2.11 Outside Counsel of Record: attorneys who are not employees of a party to
15 this Action but are retained to represent or advise a party to this Action and have
16 appeared in this Action on behalf of that party or are affiliated with a law firm that has
17 appeared on behalf of that party, including support staff.

18 2.12 Party: any party to this Action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their
20 support staffs).

21 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
22 Material in this Action.

23 2.14 Professional Vendors: persons or entities that provide litigation support
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
26 their employees and subcontractors.

27 2.15 Protected Material: any Disclosure or Discovery Material that is designated
28 as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

1 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from
2 a Producing Party.

3 **3. SCOPE**

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

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

11 **4. DURATION**

12 Once a case proceeds to trial, all of the court-filed information to be introduced
13 that was previously designated as confidential or maintained pursuant to this protective
14 order becomes public and will be presumptively available to all members of the public,
15 including the press, unless compelling reasons supported by specific factual findings to
16 proceed otherwise are made to the trial judge in advance of the trial. See Kamakana v.
17 City and County of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing
18 “good cause” showing for sealing documents produced in discovery from “compelling
19 reasons” standard when merits-related documents are part of court record). Accordingly,
20 the terms of this protective order do not extend beyond the commencement of the trial.

21 **5. DESIGNATING PROTECTED MATERIAL**

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
23 Party or Non-Party that designates information or items for protection under this Order
24 must take care to limit any such designation to specific material that qualifies under the
25 appropriate standards. The Designating Party must designate for protection only those
26 parts of material, documents, items, or oral or written communications that qualify so that
27 other portions of the material, documents, items, or communications for which protection
28

1 is not warranted are not swept unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that
3 are shown to be clearly unjustified or that have been made for an improper purpose
4 (e.g., to unnecessarily encumber the case development process or to impose
5 unnecessary expenses and burdens on other parties) may expose the Designating Party
6 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 stipulated
12 or ordered, Disclosure or Discovery Material that qualifies for protection under this Order
13 must be clearly so designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

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

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

1 portions thereof, qualify for protection under this Order. Then, before producing the
2 specified documents, the Producing Party must affix either the “CONFIDENTIAL legend”
3 or the “AEO legend” to each page that contains Protected Material..

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

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

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
13 designate qualified information or items does not, standing alone, waive the Designating
14 Party’s right to secure protection under this Order for such material. Upon timely
15 correction of a designation, the Receiving Party must make reasonable efforts to assure
16 that the material is treated in accordance with the provisions of this Order.

17 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
19 confidentiality at any time that is consistent with the Court’s Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
21 process under Local Rule 37.1, et seq. Any discovery motion must strictly comply with
22 the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

23 6.3 Burden. The burden of persuasion in any such challenge proceeding shall be
24 on the Designating Party. Frivolous challenges, and those made for an improper
25 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties)
26 may expose the Challenging Party to sanctions. Unless the Designating Party has
27 waived or withdrawn the confidentiality designation, all parties shall continue to afford
28

1 the material in question the level of protection to which it is entitled under the Producing
2 Party's designation until the Court rules on the challenge.

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

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this Action
6 only for prosecuting, defending, or attempting to settle this Action. Such Protected
7 Material may be disclosed only to the categories of persons and under the conditions
8 described in this Order. When the Action has been terminated, a Receiving Party must
9 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
14 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party
15 may disclose any information or item designated "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
17 employees of said Outside Counsel of Record to whom it is reasonably necessary to
18 disclose the information for this Action;

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

21 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
22 reasonably necessary for this Action and who have signed the "Acknowledgment and
23 Agreement to Be Bound" (Exhibit A);

24 (d) the Court and its personnel;

25 (e) court reporters and their staff;

26 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
27 whom disclosure is reasonably necessary for this Action and who have signed the
28

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

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

15 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items.

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

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

22 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
23 reasonably necessary for this Action and who have signed the “Acknowledgement and
24 Agreement to be Bound” (Exhibit A);

25 (c) the Court and its personnel; and

26 (d) court reporters and their staff.

27 (e) Limited disclosure for purpose of evaluating settlement: The Receiving Party’s
28

1 Outside Counsel of Record in this Action may disclose overall summaries of total
2 revenue, costs, and profits data related to the Accused Products found in “ATTORNEYS’
3 EYES ONLY” documents to the Receiving Party for the limited purpose of evaluating
4 settlement in this Action.

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

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

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

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

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

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

1 Court of its Protected Material.

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

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

11 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
12 **PROTECTED MATERIAL**

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

22 **12. MISCELLANEOUS**

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
24 to seek its modification by the Court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
26 Order, no Party waives any right it otherwise would have to object to disclosing or
27 producing any information or item on any ground not addressed in this Stipulated
28

1 Protective Order. Similarly, no Party waives any right to object on any ground to use in
2 evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
4 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
5 under seal pursuant to a court order authorizing the sealing of the specific Protected
6 Material at issue; good cause must be shown in the request to file under seal. If a Party's
7 request to file Protected Material under seal is denied by the Court, then the Receiving
8 Party may file the information in the public record unless otherwise instructed by the
9 Court.

10 **13. FINAL DISPOSITION**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 in the case of BLM PRODUCTS, LTD. v. COVVES,
LLC, CASE NO. 2:17-cv-06224-RGK-PLA. 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: _____