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

SPIGEN KOREA CO., LTD., a Republic
of Korea corporation,

Plaintiff,

v.

MODNE, INC., a California corporation;
DOES 1 through 10, inclusive,

Defendants.

Case No: 2:17-cv-06674 SJO (FFMx)

Assigned to: Honorable S. James Otero

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

AND RELATED COUNTERCLAIM

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order (“Order” or “Protective Order”). The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public

1 disclosure and use extends only to the limited information or items that are
2 entitled to confidential treatment under the applicable legal principles.

3 GOOD CAUSE STATEMENT

4 This action is likely to involve trade secrets, customer and pricing lists
5 and other valuable research, development, commercial, financial, technical
6 and/or proprietary information for which special protection from public
7 disclosure and from use for any purpose other than prosecution of this action is
8 warranted. Such confidential and proprietary materials and information consist
9 of, among other things, confidential business or financial information,
10 information regarding confidential business practices, or other confidential
11 research, development, or commercial information (including information
12 implicating privacy rights of third parties), information otherwise generally
13 unavailable to the public, or which may be privileged or otherwise protected
14 from disclosure under state or federal statutes, court rules, case decisions, or
15 common law. Accordingly, to expedite the flow of information, to facilitate
16 the prompt resolution of disputes over confidentiality of discovery materials,
17 to adequately protect information the parties are entitled to keep confidential,
18 to ensure that the parties are permitted reasonable necessary uses of such
19 material in preparation for and in the conduct of trial, to address their handling
20 at the end of the litigation, and serve the ends of justice, a protective order for
21 such information is justified in this Action. It is the intent of the parties that
22 information will not be designated as confidential for tactical reasons and that
23 nothing be so designated without a good faith belief that it has been
24 maintained in a confidential, non-public manner, and there is good cause why
25 it should not be part of the public record of this case.

26 ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

27 The parties further acknowledge, as set forth in Section 12.3, below, that
28 this Stipulated Protective Order does not entitle them to file confidential

1 information under seal. Rather, Local Civil Rule 79-5 sets forth the procedures that
2 must be followed and the standards that will be applied when a party seeks
3 permission from the court to file material under seal.

4 Any document that is not confidential, privileged, or otherwise protectable in
5 its entirety will not be filed under seal if the confidential portions can be redacted
6 reasonably. If documents can be so redacted, then a redacted version for public
7 viewing, omitting only the confidential, privileged, or otherwise protectable portions
8 of the document, shall be filed. Any application that seeks to file documents under
9 seal in their entirety should include an explanation of why redaction is not feasible.

10 **2. DEFINITIONS**

11 **2.1 Action**: this pending federal lawsuit, case no. 2:17-cv-06674.

12 **2.2 Challenging Party**: a Party or Non-Party that challenges the designation
13 of information or items under this Order.

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

18 **2.4 Counsel**: Outside Counsel of Record (as well as their support staff).

19 **2.5 Designating Party**: a Party or Non-Party that designates information or
20 items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY.”

23 **2.6 Disclosure or Discovery Material**: all items or information, regardless of
24 the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced or
26 generated in disclosures or responses to discovery in this Action.

27 **2.7 Expert**: a person with specialized knowledge or experience in a matter
28 pertinent to this Action who (1) has been retained by a Party or its Counsel to serve as

1 an expert witness or as a consultant in this Action; (2) is not a past or current
2 employee of a Party; and (3) at the time of retention, is not anticipated to become
3 an employee of a Party.

4 **2.8** “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
5 Information or Items: extremely sensitive “Confidential Information or Items,”
6 disclosure of which to another Party or Non-Party would create a substantial risk of
7 serious harm that could not be avoided by less restrictive means. All documents or
8 items marked as “ATTORNEYS’ EYES ONLY” shall be considered as if they are
9 marked as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

10 **2.9** Non-Party: any natural person, partnership, corporation,
11 association or other legal entity not named as a Party to this Action.

12 **2.10** Outside Counsel of Record: attorneys who are not employees of a
13 party to this Action but are retained to represent or advise a party to this
14 Action and have appeared in this action on behalf of that party or are affiliated
15 with a law firm which has appeared on behalf of that party, including their
16 support staff.

17 **2.11** Party: any party to this Action, including all of its officers,
18 directors, employees, consultants, retained experts, and Outside Counsel of
19 Record (and their support staffs).

20 **2.12** Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this Action.

22 **2.13** Professional Vendors: persons or entities that provide litigation
23 support services (e.g., photocopying, videotaping, translating, preparing
24 exhibits or demonstrations, and organizing, storing, or retrieving data in any
25 form or medium) and their employees and subcontractors.

26 **2.14** Protected Material: any Disclosure or Discovery Material that is
27 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY.”

1 **2.15** Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 **3. SCOPE**

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

9 However, the protections conferred by this Order do not cover the following
10 information: (a) any information that is in the public domain at the time of disclosure
11 to a Receiving Party or becomes part of the public domain after its disclosure to a
12 Receiving Party as a result of publication not involving a violation of this Order,
13 including becoming part of the public record through trial or otherwise; and (b) any
14 information known to the Receiving Party prior to the disclosure or obtained by the
15 Receiving Party after the disclosure from a source who obtained the information
16 lawfully and under no obligation of confidentiality to the Designating Party.

17 Any use of Protected Material at trial shall be governed by a separate
18 agreement or the orders of the trial judge. This Order does not govern the use of
19 Protected Material at trial.

20 **4. DURATION**

21 Once a case proceeds to trial, information that was designated as
22 CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY or
23 maintained pursuant to this protective Order used or introduced as an exhibit at trial
24 becomes public and will be presumptively available to all members of the public,
25 including the press, unless compelling reasons supported by specific factual findings
26 to proceed otherwise are made to the trial judge in advance of the trial. *See*
27 *Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing
28 documents produced in discovery from “compelling reasons” standard when merits-

1 related documents are part of court record). Accordingly, the terms of this
2 protective Order do not extend beyond the commencement of the trial for such
3 exhibits so used or introduced at trial.

4 **5. DESIGNATING PROTECTED MATERIAL**

5 **5.1 Exercise of Restraint and Care in Designating Material for**
6 **Protection.** Each Party or Non-Party that designates information or items for
7 protection under this Order must take care to limit any such designation to
8 specific material that qualifies under the appropriate standards. To the extent it
9 is practical to do so, the Designating Party must designate for protection only
10 those parts of material, documents, items, or oral or written communications
11 that qualify so that other portions of the material, documents, items, or
12 communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this Order.

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

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

23 **5.2 Manner and Timing of Designations.** Except as otherwise
24 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or
25 as otherwise stipulated or ordered, Disclosure or Discovery Material that
26 qualifies for protection under this Order must be clearly so designated before
27 the material is disclosed or produced.

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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 trial
4 proceedings), that the Producing Party affix at a minimum, the legend
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” to each page that contains protected material. If only a portion of the
7 material on a page qualifies for protection, the Producing Party also must clearly
8 identify the protected portion(s) (e.g., by making appropriate markings in the
9 margins).

10 A Party or Non-Party that makes original documents available for inspection
11 need not designate them for protection until after the inspecting Party has indicated
12 which documents it would like copied and produced. During the inspection and
13 before the designation, all of the material made available for inspection shall be
14 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
15 inspecting Party has identified the documents it wants copied and produced, the
16 Producing Party must determine which documents, or portions thereof, qualify for
17 protection under this Order. Then, before producing the specified documents, the
18 Producing Party must affix the appropriate legend to each page that contains
19 Protected Material. If only a portion of the material on a page qualifies for
20 protection, the Producing Party also must clearly identify the protected portion(s)
21 (e.g., by making appropriate markings in the margins).

22 (b) for testimony given in depositions, that the Designating Party identifies
23 the Disclosure or Discovery Material on the record, before the close of the
24 deposition, all protected testimony and specific the level of protection being asserted.
25 When it is impractical to identify separately each portion of testimony that is entitled
26 to protection and it appears that substantial portions of the testimony may qualify for
27 protection, the Designating Party may invoke on the record (before the deposition is
28 concluded) a right to have up to 21 days to identify the specific portions of the

1 testimony as to which protection is sought and to specify the level of
2 protection being asserted. Only those portions of the testimony that are
3 appropriately designated for protection within the 21 days shall be covered by
4 the provisions of this Protective Order.

5 Alternatively, a Designating Party may specify, at the deposition or up
6 to 21 days afterwards if that period is properly invoked, that the entire
7 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Parties shall give the
9 other parties notice if they reasonably expect a deposition, hearing, or other
10 proceeding to include Protected Material so that the other parties can ensure
11 that only authorized individuals who have signed the “Acknowledgment and
12 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The
13 use of a document as an exhibit at a deposition shall not in any way affect its
14 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY.”

16 Transcripts containing Protected Material shall have an obvious legend
17 on the title page that the transcript contains Protected Material, and the title
18 page shall be followed by a list of all pages (including line numbers as
19 appropriate) that have been designated as Protected Material and the level of
20 protection being asserted by the Designating Party. The Designating Party
21 shall inform the court reporter of these requirements. Any transcript that is
22 prepared before the expiration of a 21-day period for designation shall be
23 treated during that period as if it had been designated “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
25 otherwise agreed. After the expiration of that period, the transcript shall be
26 treated only as actually designated

27 (c) for information produced in some form other than documentary
28 and for any other tangible items, that the Producing Party affix in a prominent

1 place on the exterior of the container or containers in which the information is stored
2 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
3 EYES ONLY.” If only a portion or portions of the information warrants protection,
4 the Producing Party, to the extent practicable, shall identify the protected portion(s).

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

11 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court’s
14 Scheduling Order. Unless a prompt challenge to a Designating Party’s confidentiality
15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
16 economic burdens, or a significant disruption or delay of the litigation, a Party does
17 not waive its right to challenge a confidentiality designation by electing not to mount
18 a challenge promptly after the original designation is disclosed.

19 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37-1 et seq.

21 **6.3 Joint Stipulation.** Any challenge submitted to the Court shall be via a
22 joint stipulation pursuant to Local Rule 37-2.

23 **6.4** The burden of persuasion in any such challenge proceeding shall be on
24 the Designating Party. Frivolous challenges, and those made for an improper purpose
25 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
26 expose the Challenging Party to sanctions. Unless the Designating Party has waived
27 or withdrawn the confidentiality designation, all parties shall continue to afford the

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1 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
5 that is disclosed or produced by another Party or by a Non-Party in connection
6 with this Action only for prosecuting, defending, or attempting to settle this
7 Action. Such Protected Material may be disclosed only to the categories of
8 persons and under the conditions described in this Order. When the Action has
9 been terminated, a Receiving Party must comply with the provisions of section
10 13 below (FINAL DISPOSITION). Protected Material must be stored and
11 maintained by a Receiving Party at a location and in a secure manner that
12 ensures that access is limited to the persons authorized under this Order.

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

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

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

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

25 (d) the court and its personnel;

26 (e) court reporters and their staff;

27 (f) professional jury or trial consultants, mock jurors, and

28 Professional Vendors to whom disclosure is reasonably necessary for this

1 Action and who have signed the “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A);

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

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

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

16 **7.3** Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
18 writing by the Designating Party, a Receiving Party may disclose any information or
19 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only
20 to:

21 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
22 as employees of said Outside Counsel of Record to whom it is reasonably necessary
23 to disclose the information for this litigation and who have signed the
24 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

25 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
26 necessary for this litigation, (2) who have signed the “Acknowledgment and
27 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
28 paragraph 7.4(a)(2), below, have been followed;

1 (c) the court and its personnel;
2 (d) court reporters and their staff, professional jury or trial
3 consultants, and Professional Vendors to whom disclosure is reasonably
4 necessary for this litigation and who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A); and

6 (e) the author or recipient of a document containing the information
7 or a custodian or other person who otherwise possessed or knew the
8 information.

9 **7.4** Procedures for Approving or Objecting to Disclosure of
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
11 Items to Experts.

12 (a) Unless otherwise ordered by the court or agreed to in writing by the
13 Designating Party, a Party that seeks to disclose to an Expert (as defined in
14 this Order) any information or item that has been designated “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph
16 7.3(c) first must make a written request to the Designating Party that (1)
17 identifies the general categories of “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks
19 permission to disclose to the Expert, (2) sets forth the full name of the Expert
20 and the city and state of his or her primary residence, (3) attaches a copy of the
21 Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
22 identifies each person or entity from whom the Expert has received
23 compensation or funding for work in his or her areas of expertise or to whom
24 the expert has provided professional services, including in connection with a
25 litigation, at any time during the preceding five years,¹ and (6) identifies (by

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27 ¹ If the Expert believes any of this information is subject to a confidentiality
28 obligation to a third-party, then the Expert should provide whatever information the

1 name and number of the case, filing date, and location of court) any litigation in
2 connection with which the Expert has offered expert testimony, including through a
3 declaration, report, or testimony at a deposition or trial, during the preceding five
4 years.

5 (b) A Party that makes a request and provides the information specified in
6 the preceding respective paragraphs may disclose the subject Protected Material to
7 the identified Expert unless, within 14 days of delivering the request, the Party
8 receives a written objection from the Designating Party. Any such objection must set
9 forth in detail the grounds on which it is based.

10 (c) A Party that receives a timely written objection must meet and confer
11 with the Designating Party in person (preferred), over the phone, or using video
12 conferencing to try to resolve the matter by agreement within seven days of the
13 written objection. If no agreement is reached, the Party seeking to make the
14 disclosure to the Expert may file a motion, as provided by the local rules, seeking
15 permission from the court to do so. Any such motion must describe the
16 circumstances with specificity, set forth in detail the reasons why disclosure to the
17 Expert is reasonably necessary, assess the risk of harm that the disclosure would
18 entail, and suggest any additional means that could be used to reduce that risk. In
19 addition, any such motion must be accompanied by a competent declaration
20 describing the parties' efforts to resolve the matter by agreement (i.e., the extent and
21 the content of the meet and confer discussions) and setting forth the reasons
22 advanced by the Designating Party for its refusal to approve the disclosure.

23 In any such proceeding, the Party opposing disclosure to the Expert shall bear
24 the burden of proving that the risk of harm that the disclosure would entail (under the

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27 Expert believes can be disclosed without violating any confidentiality agreements,
28 and the Party seeking to disclose to the Expert shall be available to meet and confer
with the Designating Party regarding any such engagement.

1 safeguards proposed) outweighs the Receiving Party’s need to disclose the Protected
2 Material to its Expert.

3 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
4 **PRODUCED IN OTHER LITIGATION**

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

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

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

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

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

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1 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by
6 Non-Parties in connection with this litigation is protected by the remedies and relief
7 provided by this Order. Nothing in these provisions should be construed as
8 prohibiting a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to
10 produce a Non-Party’s confidential information in its possession, and the Party is
11 subject to an agreement with the Non-Party not to produce the Non-Party’s
12 confidential information, then the Party shall:

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

16 (2) promptly notify in writing the Requesting Party and the Non-
17 Party that some or all of the information requested is subject to a confidentiality
18 agreement with a Non-Party;

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

21 (c) If the Non-Party fails to object or seek a protective order from this court
22 within 14 days of receiving the notice and accompanying information, the Receiving
23 Party may produce the Non-Party’s confidential information responsive to the
24 discovery request. If the Non-Party timely seeks a protective order, the Receiving
25 Party shall not produce any information in its possession or control that is subject to
26 the confidentiality agreement with the Non-Party before a determination by the court.
27 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
28 of seeking protection in this court of its Protected Material.

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

2 If a Receiving Party learns that, by inadvertence or otherwise, it has
3 disclosed Protected Material to any person or in any circumstance not
4 authorized under this Protective Order, the Receiving Party must immediately
5 (a) notify in writing the Designating Party of the unauthorized disclosures, (b)
6 use its best efforts to retrieve all unauthorized copies of the Protected Material,
7 (c) inform the person or persons to whom unauthorized disclosures were made
8 of all the terms of this Order, and (d) request such person or persons to execute
9 the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
10 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
15 protection, the obligations of the Receiving Parties are those set forth in
16 Federal Rule of Civil Procedure 26(b)(5)(B).

17 **12. MISCELLANEOUS**

18 **12.1** Right to Further Relief. Nothing in this Order abridges the right
19 of any person to seek its modification by the court in the future.

20 **12.2** Right to Assert Other Objections. By stipulating to the entry of
21 this Protective Order, no Party waives any right it otherwise would have to
22 object to disclosing or producing any information or item on any ground not
23 addressed in this Protective Order. Similarly, no Party waives any right to
24 object on any ground to use in evidence of any of the material covered by this
25 Protective Order.

26 **12.3** Filing Protected Material. Without written permission from the
27 Designating Party or a court order secured after appropriate notice to all
28 interested persons, a Party may not file in the public record in this action any

1 Protected Material. A Party that seeks to file under seal any Protected Material must
2 comply with Local Civil Rule 79-5. Protected Material may only be filed under seal
3 pursuant to a court order authorizing the sealing of the specific Protected Material at
4 issue. If a Party’s request to file Protected Material under seal is denied by the court,
5 then the Receiving Party may file the information in the public record unless
6 otherwise instructed by the court.

7 **13. FINAL DISPOSITION**

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

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1 14. **VIOLATION**

2 Any violation of this Order may be punished by appropriate measures
3 including, without limitation, contempt proceedings and/or monetary
4 sanctions.

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6 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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8 DATED: June 29, 2018

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/s/ Frederick F. Mumm

HON. FREDERICK F. MUMM
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 Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *Spigen Korea Co., Ltd. v. Modne, Inc.*, Case No. 2:17-cv-06674-SJO-FFM. I agree to comply with and to be bound by all the terms of this 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 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 enforcing the terms of this 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 Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____