

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

NOTE: CHANGES MADE BY THE COURT

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

LESLIE FRAM, an individual,
Plaintiff,

vs.

MEMORY ENTERPRISES, LLC, a
Delaware corporation; MICHAEL
DOTTINO, an individual; LYNN
WILLIAMS, and individual; and DOES
1 through 10, inclusive,
Defendants.

Case No. 2:17-cv-07172-MWF-JPR

PROTECTIVE ORDER

Complaint Filed: September 28, 2017
Trial Date: January 8, 2019

MEMORY ENTERPRISES, LLC, a
Florida limited liability company;
MICHAEL DOTTINO, an individual,
Counter-Claimants,

vs.

LESLIE FRAM, an individual,
NUROWAVE, INC., a Delaware
corporation, and ROES 1-10, inclusive
Counter-
Defendants.

1 1. PURPOSES AND LIMITATIONS

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

15 A. GOOD CAUSE STATEMENT

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

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

10 2. DEFINITIONS

11 2.1. Action: *Leslie Fram v. Memory Enterprises, LLC et al.* –
12 Central District of California Case Number 2:17-cv-07172-MWF-JPR.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 2.14. Protected Material: any Disclosure or Discovery Material that is
22 designated as “CONFIDENTIAL.”

23 2.15. Receiving Party: a Party that receives Disclosure or Discovery
24 Material from a Producing Party.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only
27 Protected Material (as defined above), but also (1) any information copied or
28 extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material.

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

5 4. DURATION

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

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1. Exercise of Restraint and Care in Designating Material for
16 Protection.

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

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

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

4 5.2. Manner and Timing of Designations.

5 Except as otherwise provided in this Order (see, e.g., second paragraph of
6 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
7 Discovery Material that qualifies for protection under this Order must be clearly so
8 designated before the material is disclosed or produced.

9 Designation in conformity with this Order requires:

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

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

1 (b) for testimony given in depositions that the Designating
2 Party identify the Disclosure or Discovery Material on the record, before the close
3 of the deposition all protected testimony.

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

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

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court’s
19 Scheduling Order.

20 6.2. Meet and Confer. The Challenging Party shall initiate the
21 dispute resolution process under Local Rule 37.1 et seq.

22 6.3. The burden of persuasion in any such challenge proceeding shall
23 be on the Designating Party. Frivolous challenges, and those made for an improper
24 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
25 parties) may expose the Challenging Party to sanctions. Unless the Designating
26 Party has waived or withdrawn the confidentiality designation, all parties shall
27 continue to afford the material in question the level of protection to which it is
28 entitled under the Producing Party’s designation until the Court rules on the

1 challenge.

2 7. ACCESS TO AND USE OF PROTECTED MATERIAL

3 7.1. Basic Principles. A Receiving Party may use Protected Material
4 that is disclosed or produced by another Party or by a Non-Party in connection with
5 this Action only for prosecuting, defending, or attempting to settle this Action.
6 Such Protected Material may be disclosed only to the categories of persons and
7 under the conditions described in this Order. When the Action has been terminated,
8 a Receiving Party must comply with the provisions of section 13 below (FINAL
9 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
14 otherwise ordered by the court or permitted in writing by the Designating Party, a
15 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
18 Action, as well as employees of said Outside Counsel of Record to whom it is
19 reasonably necessary to disclose the information for this Action;

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

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

26 (d) the court and its personnel;

27 (e) court reporters and their staff;

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

1 Professional Vendors to whom disclosure is reasonably necessary for this Action
2 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
3 A);

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

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

16 (i) any mediator or settlement officer, and their supporting
17 personnel, mutually agreed upon by any of the parties engaged in settlement
18 discussions or appointed by the Court.

19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
20 PRODUCED IN OTHER LITIGATION

21 If a Party is served with a subpoena or a court order issued in other litigation
22 that compels disclosure of any information or items designated in this Action as
23 “CONFIDENTIAL,” that Party must:

24 (a) promptly notify in writing the Designating Party. Such
25 notification shall include a copy of the subpoena or court order unless prohibited by
26 law;

27 (b) promptly notify in writing the party who caused the
28 subpoena or order to issue in the other litigation that some or all of the material

1 covered by the subpoena or order is subject to this Protective Order. Such
2 notification shall include a copy of this Stipulated Protective Order; and

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

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

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

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

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

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

28 (2) promptly provide the Non-Party with a copy of the

1 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
2 reasonably specific description of the information requested; and

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

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

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
24 OTHERWISE PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other
27 protection, the obligations of the Receiving Parties are those set forth in Federal
28 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify

1 whatever procedure may be established in an e-discovery order that provides for
2 production without prior privilege review. Pursuant to Federal Rule of Evidence
3 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
4 of a communication or information covered by the attorney-client privilege or work
5 product protection, the parties may incorporate their agreement in the stipulated
6 protective order submitted to the court provided the Court so allows.

7 12. MISCELLANEOUS

8 12.1. Right to Further Relief. Nothing in this Order abridges the right
9 of any person to seek its modification by the Court in the future.

10 12.2. Right to Assert Other Objections. By stipulating to the entry of
11 this Protective Order no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in
13 this Stipulated Protective Order. Similarly, no Party waives any right to object on
14 any ground to use in evidence of any of the material covered by this Protective
15 Order.

16 12.3. Filing Protected Material. A Party that seeks to file under seal
17 any Protected Material must comply with Civil Local Rule 79-5. Protected
18 Material may only be filed under seal pursuant to a court order authorizing the
19 sealing of the specific Protected Material at issue. If a Party's request to file
20 Protected Material under seal is denied by the court, then the Receiving Party may
21 file the information in the public record unless otherwise instructed by the court.

22 13. FINAL DISPOSITION

23 After the final disposition of this Action, as defined in paragraph 4, within 60
24 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 14. Any violation of this Order may be punished by any and all
14 appropriate measures including, without limitation, contempt proceedings and/or
15 monetary sanctions.

16
17 The Stipulated Protective Order, having been stipulated by all parties, and the
18 Court having found good cause, IT IS SO ORDERED.

19
20
21 DATED: April 9, 2018



22 _____
23 Honorable Jean P. Rosenbluth
24 United States Magistrate Judge

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

Respectfully submitted by:

BLANK ROME LLP

By: /s/ Nadia D. Adams

Cheryl S. Chang

Nadia D. Adams

Attorneys for Defendants & Counter-Claimants,
Memory Enterprises, LLC and Michael Dottino

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its
5 entirety and understand the Stipulated Protective Order that was issued by the
6 United States District Court for the Central District of California on [date] in the
7 case of _____ [**insert formal name of the case and the number and**
8 **initials assigned to it by the court**], I agree to comply with and to be bound by all
9 the terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any
12 information or item that is subject to this Stipulated Protective Order to any person
13 or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint _____ [print or type full
18 name] of _____ [print or type full address and telephone
19 number] as my California agent for service of process in connection with this action
20 or any proceedings related to enforcement of this Stipulated Protective Order.

21
22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____