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

16 FRENCH WEST, INC.,
 17 Plaintiff,
 18 vs.
 19 SOFT SORROUNDINGS, INC., *et al.*,
 20 Defendants.

Case No.: 17-CV-08188-GW-SSx
Referred to Hon. Suzanne H. Segal

[DISCOVERY MATTER]

**JOINT STIPULATION FOR ENTRY
 OF PROTECTIVE ORDER**

21 1. A. PURPOSES AND LIMITATIONS

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

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles. The parties further acknowledge, as set forth in
3 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
4 file confidential information under seal; Civil Local Rule 79-5 sets forth the
5 procedures that must be followed and the standards that will be applied when a party
6 seeks permission from the court to file material under seal.

7 B. GOOD CAUSE STATEMENT

8 It is the intent of the parties and the Court that information will not be
9 designated as confidential in this case for tactical reasons, and that nothing shall be
10 designated without a good faith belief that there is good cause why it should not be
11 part of the public record. Examples of confidential information that the parties
12 may seek to protect from unrestricted or unprotected disclosure include:

- 13 (a) Information that is the subject of a contractual non-disclosure or
14 confidentiality agreement or obligation, and/or Protective Order
15 issued in another case;
- 16 (b) The names, or other information tending to reveal the identity
17 of a party's supplier, distributor, or designer;
- 18 (c) Agreements with third-parties, including license agreements,
19 distributor agreements, manufacturing agreements, design
20 agreements, development agreements, supply agreements, sales
21 agreements, or service agreements;
- 22 (d) Research and development information;
- 23 (e) Proprietary engineering or technical information, including
24 product design, manufacturing techniques, processing
25 information, drawings, memoranda and reports;
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- 1 (f) Information related to budgets, sales, profits, costs, margins,
2 licensing of technology or designs, product pricing, or other
3 internal financial/accounting information, including non-public
4 information related to financial condition or performance and
5 income or other non-public tax information;
- 6 (g) Information related to internal operations including personnel
7 information;
- 8 (h) Information related to past, current and future product
9 development;
- 10 (i) Information related to past, current and future market analyses
11 and business and marketing development, including plans,
12 strategies, forecasts and competition; and
- 13 (j) Trade secrets (as defined by the jurisdiction in which the
14 information is located).
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18 Unrestricted or unprotected disclosure of such confidential technical,
19 commercial or personal information would, in the producing party's opinion, result
20 in prejudice or harm to the producing party by revealing the producing party's
21 competitive confidential information, which has been developed at the expense of
22 the producing party and which represents valuable tangible and intangible assets of
23 that party. Additionally, legitimate privacy interests must be safeguarded.
24 Accordingly, the parties respectfully submit that there is good cause for the entry
25 of this Protective Order.

26 The parties agree, subject to the Court's approval, that the following terms
27 and conditions shall apply to this civil action.

28 2. DEFINITIONS

1 2.1 Action: this pending federal law suit.

2 2.2 Challenging Party: a Party or Non-Party that challenges the designation
3 of information or items under this Order.

4 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
5 how it is generated, stored or maintained) or tangible things that qualify for
6 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
7 the Good Cause Statement.

8 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
9 support staff).

10 2.5 Designating Party: a Party or Non-Party that designates information or
11 items that it produces in disclosures or in responses to discovery as
12 “CONFIDENTIAL.”

13 2.6 Disclosure or Discovery Material: all items or information, regardless of
14 the medium or manner in which it is generated, stored, or maintained (including,
15 among other things, testimony, transcripts, and tangible things), that are produced
16 or generated in disclosures or responses to discovery in this matter.

17 2.7 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
19 as an expert witness or as a consultant in this Action.

20 2.8 House Counsel: attorneys who are employees of a party to this Action.
21 House Counsel does not include Outside Counsel of Record or any other outside
22 counsel.

23 2.9 Non-Party: any natural person, partnership, corporation, association, or
24 other legal entity not named as a Party to this action.

25 2.10 Outside Counsel of Record: attorneys who are not employees of a party
26 to this Action but are retained to represent or advise a party to this Action and have
27 appeared in this Action on behalf of that party or are affiliated with a law firm
28 which has appeared on behalf of that party, and includes support staff.

1 2.11 Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

6 2.13 Professional Vendors: persons or entities that provide litigation support
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.14 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL.”

12 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
13 from a Producing Party.

14 3. SCOPE

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

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

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees
25 otherwise in writing or a court order otherwise directs. Final disposition shall be
26 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
27 with or without prejudice; and (2) final judgment herein after the completion and
28 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,

1 including the time limits for filing any motions or applications for extension of
2 time pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

5 Each Party or Non-Party that designates information or items for protection under
6 this Order must take care to limit any such designation to specific material that
7 qualifies under the appropriate standards. The Designating Party must designate for
8 protection only those parts of material, documents, items, or oral or written
9 communications that qualify so that other portions of the material, documents,
10 items, or communications for which protection is not warranted are not swept
11 unjustifiably within the ambit of this Order.

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

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

20 5.2 Manner and Timing of Designations. Except as otherwise provided in
21 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
22 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
23 under this Order must be clearly so designated before the material is disclosed or
24 produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic
27 documents, but excluding transcripts of depositions or other pretrial or trial
28 proceedings), that the Producing Party affix at a minimum, the legend

1 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
2 contains protected material. If only a portion or portions of the material on a page
3 qualifies for protection, the Producing Party also must clearly identify the
4 protected portion(s) (e.g., by making appropriate markings in the margins).

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

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

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

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items does not, standing alone, waive
28 the Designating Party’s right to secure protection under this Order for such

1 material. Upon timely correction of a designation, the Receiving Party must make
2 reasonable efforts to assure that the material is treated in accordance with the
3 provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order.

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, all 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. A Receiving Party may use Protected Material that is
20 disclosed or produced by another Party or by a Non-Party in connection with this
21 Action only for prosecuting, defending, or attempting to settle this Action. Such
22 Protected Material may be disclosed only to the categories of persons and under
23 the conditions described in this Order. When the Action has been terminated, a
24 Receiving Party must comply with the provisions of section 13 below (FINAL
25 DISPOSITION).

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

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated

4 “CONFIDENTIAL” only to:

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

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

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

13 (d) the court and its personnel;

14 (e) court reporters and their staff;

15 (f) professional jury or trial consultants, mock jurors, and Professional
16 Vendors to whom disclosure is reasonably necessary for this Action and who have
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

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

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 other litigation
6 that compels disclosure of any information or items designated in this Action as
7 “CONFIDENTIAL,” that Party must:

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

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

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

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

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

26 (a) The terms of this Order are applicable to information produced by a Non-
27 Party in this Action and designated as “CONFIDENTIAL.” Such information
28 produced by Non-Parties in connection with this litigation is protected by the

1 remedies and relief provided by this Order. Nothing in these provisions should be
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to
4 produce a Non-Party's confidential information in its possession, and the Party is
5 subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

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

10 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
11 Order in this Action, the relevant discovery request(s), and a reasonably specific
12 description of the information requested; and

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

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

23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has
25 disclosed Protected Material to any person or in any circumstance not authorized
26 under this Stipulated Protective Order, the Receiving Party must immediately (a)
27 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
28 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform

1 the person or persons to whom unauthorized disclosures were made of all the terms
2 of this Order, and (d) request such person or persons to execute the
3 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
4 A.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

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

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
19 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 this
21 Protective Order no Party waives any right it otherwise would have to object to
22 disclosing or producing any information or item on any ground not addressed in
23 this Stipulated Protective Order. Similarly, no Party waives any right to object on
24 any ground to use in evidence of any of the material covered by this Protective
25 Order.

26 12.3 Filing Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Civil Local Rule 79-5. Protected Material
28 may only be filed under seal pursuant to a court order authorizing the sealing of the

1 specific Protected Material at issue. If a Party's request to file Protected Material
2 under seal is denied by the court, then the Receiving Party may file the information
3 in the public record unless otherwise instructed by the court.

4 13. FINAL DISPOSITION

5 After the final disposition of this Action, as defined in paragraph 4, within
6 60 days of a written request by the Designating Party, each Receiving Party must
7 return all Protected Material to the Producing Party or destroy such material. As
8 used in this subdivision, “all Protected Material” includes all copies, abstracts,
9 compilations, summaries, and any other format reproducing or capturing any of the
10 Protected Material. Whether the Protected Material is returned or destroyed, the
11 Receiving Party must submit a written certification to the Producing Party (and, if
12 not the same person or entity, to the Designating Party) by the 60 day deadline that
13 (1) identifies (by category, where appropriate) all the Protected Material that was
14 returned or destroyed and (2) affirms that the Receiving Party has not retained any
15 copies, abstracts, compilations, summaries or any other format reproducing or
16 capturing any of the Protected Material. Notwithstanding this provision, Counsel
17 are entitled to retain an archival copy of all pleadings, motion papers, trial,
18 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
19 and trial exhibits, expert reports, attorney work product, and consultant and expert
20 work product, even if such materials contain Protected Material. Any such archival
21 copies that contain or constitute Protected Material remain subject to this
22 Protective Order as set forth in Section 4 (DURATION).

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

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5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6
7 Dated: April 17, 2018 By: /s/ Trevor W. Barrett
8 Scott A. Burroughs, Esq.
9 Trevor W. Barrett, Esq.
10 DONIGER /BURROUGHS
11 Attorneys for Plaintiff

12 Dated: April 17, 2018 By: /s/ Keith A. Rabenberg
13 Keith A. Rabenberg
14 Attorney for Defendant

15 Pursuant to Civil L.R. 5-4.3.4(a)(2)(i), the filer attests that all other
16 signatories listed, and on whose behalf this filing is submitted, concur in the
17 filing's content and have authorized the filing.

18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

19
20 DATED: 4/17/18

21
22 _____ /S/

23 Hon. Suzanne Segal
24 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 _____ [insert formal name of the case and the
number and initials assigned to it by the court]. 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: _____