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20 UNITED STATES DISTRICT COURT
 21 CENTRAL DISTRICT OF CALIFORNIA

22 FIH MOBILE, LTD., a Cayman
 23 Islands limited share company, FIH
 24 (Hong Kong) Ltd., a Hong Kong
 25 limited share company, and
 26 Evenwell Digitech Inc., a Taiwan
 27 limited share company,

28 Plaintiffs,

v.

I.AM.PLUS, LLC, a California limited
 liability company,

Defendants.

Case No.: 2:17-cv-08567-SVW (SSx)

STIPULATED PROTECTIVE ORDER

[DISCOVERY DOCUMENT:
 REFERRED TO MAGISTRATE
 JUDGE SUZANNE H. SEGAL]

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A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential and proprietary 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. 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 disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT

This action involves a dispute concerning payment for the manufacture of a smart watch product. Accordingly, it involves and likely will involve information relating to product design specifications and associated costs, consumer preferences, pricing data, trade secrets, and other valuable research, development and proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. More specifically, such confidential and proprietary materials and information consist of, among other things, documents relating to the design of the smart watch and the associated costs of design and manufacture (such as design documents,

1 bill of materials and tooling fees), as well as confidential research and
2 development associated with the product.

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

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16 1. DEFINITIONS

17 2.1 Action: this pending federal law suit, Central District of
18 California Case No. Case No.: 2:17-cv-08567-SVW (SSx).

19 2.2 Challenging Party: a Party or Non-Party that challenges the
20 designation of information or items under this Order.

21 2.3 “CONFIDENTIAL” Information or Items: information
22 (regardless of how it is generated, stored or maintained) or tangible things
23 that qualify for protection under Federal Rule of Civil Procedure 26(c), and
24 as specified above in the Good Cause Statement.

25 2.4 Counsel: Outside Counsel of Record and House Counsel
26 (as well as their support staff).

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1 2.5 Designating Party: a Party or Non-Party that designates
2 information or items that it produces in disclosures or in responses to
3 discovery as “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or information,
5 regardless of the medium or manner in which it is generated, stored, or
6 maintained (including, among other things, testimony, transcripts, and
7 tangible things), that are produced or generated in disclosures or
8 responses to discovery in this matter.

9 2.7 Expert: a person with specialized knowledge or experience
10 in a matter pertinent to the litigation who has been retained by a Party or its
11 counsel to serve as an expert witness or as a consultant in this Action.

12 2.8 House Counsel: attorneys who are employees of a party to
13 this Action. House Counsel does not include Outside Counsel of Record or
14 any other outside
15 counsel.

16 2.9 Non-Party: any natural person, partnership, corporation,
17 association, or other legal entity not named as a Party to this action.

18 2.10 Outside Counsel of Record: attorneys who are not
19 employees of a party to this Action but are retained to represent or advise a
20 party to this Action and have appeared in this Action on behalf of that party
21 or are affiliated with a law firm which has appeared on behalf of that party,
22 and includes support staff.

23 2.11 Party: any party to this Action, including all of its officers,
24 directors, employees, consultants, retained experts, and Outside Counsel
25 of Record (and their support staffs).

26 2.12 Producing Party: a Party or Non-Party that produces
27 Disclosure or Discovery Material in this Action.

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1 2.13 Professional Vendors: persons or entities that provide
2 litigation support services (e.g., photocopying, videotaping, translating,
3 preparing exhibits or demonstrations, and organizing, storing, or retrieving
4 data in any form or medium) and their employees and subcontractors.

5 2.14 Protected Material: any Disclosure or Discovery Material
6 that is designated as “CONFIDENTIAL.”

7 2.15 Receiving Party: a Party that receives Disclosure or
8 Discovery Material from a Producing Party.

9
10 2. SCOPE

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

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

20
21 3. DURATION

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

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5 4. DESIGNATING PROTECTED MATERIAL

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

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

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

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

3 Designation in conformity with this Order requires:

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

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

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

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

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

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14 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may
16 challenge a designation of confidentiality at any time that is consistent with
17 the Court's Scheduling Order.

18 6.2 Meet and Confer. The Challenging Party shall initiate the
19 dispute resolution process under Local Rule 37.1 et seq.

20 6.3 The burden of persuasion in any such challenge proceeding
21 shall be on the Designating Party. Frivolous challenges, and those made
22 for an improper purpose (e.g., to harass or impose unnecessary expenses
23 and burdens on other parties) may expose the Challenging Party to
24 sanctions. Unless the Designating Party has waived or withdrawn the
25 confidentiality designation, all parties shall continue to afford the material in
26 question the level of protection to which it is entitled under the Producing
27 Party's designation until the Court rules on the challenge.

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6. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

7.2 Disclosure of "CONFIDENTIAL" Information or Items.

Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

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

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

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

(d) the court and its personnel;

(e) court reporters and their staff;

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

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

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

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

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22 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
23 PRODUCED IN OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in
25 other litigation that compels disclosure of any information or items
26 designated in this Action as “CONFIDENTIAL,” that Party must:
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1 (a) promptly notify in writing the Designating Party. Such
2 notification shall include a copy of the subpoena or court order;

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

8 (c) cooperate with respect to all reasonable procedures sought
9 to be pursued by the Designating Party whose Protected Material may be
10 affected. If the Designating Party timely seeks a protective order, the Party
11 served with the subpoena or court order shall not produce any information
12 designated in this action as "CONFIDENTIAL" before a determination by
13 the court from which the subpoena or order issued, unless the Party has
14 obtained the Designating Party's permission. The Designating Party shall
15 bear the burden and expense of seeking protection in that court of its
16 confidential material and nothing in these provisions should be construed
17 as authorizing or encouraging a Receiving Party in this Action to disobey a
18 lawful directive from another court.

19
20 8. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
21 PRODUCED IN THIS LITIGATION

22 (a) The terms of this Order are applicable to information
23 produced by a Non-Party in this Action and designated as
24 "CONFIDENTIAL." Such information produced by Non-Parties in
25 connection with this litigation is protected by the remedies and relief
26 provided by this Order. Nothing in these provisions should be construed as
27 prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

22
23 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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7 10. INADVERTENT PRODUCTION OF PRIVILEGED OR
8 OTHERWISE PROTECTED MATERIAL

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

20
21 11. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the
23 right of any person to seek its modification by the Court in the future.

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

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

10
11 12. FINAL DISPOSITION

12 After the final disposition of this Action, as defined in paragraph
13 4, within 60 days of a written request by the Designating Party, each
14 Receiving Party must return all Protected Material to the Producing Party or
15 destroy such material. As used in this subdivision, "all Protected Material"
16 includes all copies, abstracts, compilations, summaries, and any other
17 format reproducing or capturing any of the Protected Material. Whether the
18 Protected Material is returned or destroyed, the Receiving Party must
19 submit a written certification to the Producing Party (and, if not the same
20 person or entity, to the Designating Party) by the 60 day deadline that (1)
21 identifies (by category, where appropriate) all the Protected Material that
22 was returned or destroyed and (2) affirms that the Receiving Party has not
23 retained any copies, abstracts, compilations, summaries or any other
24 format reproducing or capturing any of the Protected Material.

25 Notwithstanding this provision, Counsel are entitled to retain an archival
26 copy of all pleadings, motion papers, trial, deposition, and hearing
27 transcripts, legal memoranda, correspondence, deposition and trial
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1 exhibits, expert reports, attorney work product, and consultant and expert
2 work product, even if such materials contain Protected Material. Any such
3 archival copies that contain or constitute Protected Material remain subject
4 to this Protective Order as set forth in Section 4 (DURATION).

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6 13. Any violation of this Order may be punished by any and all
7 appropriate measures including, without limitation, contempt proceedings
8 and/or monetary sanctions.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: May 15, 2018

3 /s/ Matthew A. Lesnick

4 _____
5 Matthew A. Lesnick
6 Lesnick Prince & Pappas LLP
7 Attorneys for Plaintiffs FIH Mobile, Ltd., FIH (Hong Kong) Ltd., and
8 Evenwell Digitech Inc.

7 DATED: May 15, 2018

8 /s/ Jennifer L. Kelly

9 _____
10 Jennifer L. Kelly
11 Fenwick & West LLP
12 Attorneys for Defendant i.am.plus, LLC

12 Pursuant to Local Rule 5-4.3.4, I attest that Jennifer L. Kelly concurs in the
13 filing's content and has authorized this filing with her electronic signature.
14

15 DATED: May 15, 2018

16 /s/ Matthew A. Lesnick

17 _____
18 Matthew A. Lesnick
19 Lesnick Prince & Pappas LLP
20 Attorneys for Plaintiffs FIH Mobile, Ltd., FIH (Hong Kong) Ltd., and
21 Evenwell Digitech Inc.

22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23 DATED: 5/21/18

24 _____ /S/

25 Honorable Suzanne H. Segal
26 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: _____