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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

MAVRIX PHOTOGRAPHS LLC, a
California limited liability company,

Plaintiff,

v.

TREND HUNTER INC., a Canadian
corporation; and DOES 1-10, inclusive,

Defendants.

Case No. 2:17-cv-08703-FMO-SK

**STIPULATED PROTECTIVE
ORDER**

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

14 **B. GOOD CAUSE STATEMENT**

15 This action is likely to involve trade secrets, customer and pricing lists and other
16 valuable research, development, commercial, financial, technical and/or proprietary
17 information for which special protection from public disclosure and from use for any
18 purpose other than prosecution of this action is warranted. Such confidential and
19 proprietary materials and information consist of, among other things, confidential
20 business or financial information, information regarding confidential business practices,
21 or other confidential research, development, or commercial information (including
22 information implicating privacy rights of third parties), information otherwise generally
23 unavailable to the public, or which may be privileged or otherwise protected from
24 disclosure under state or federal statutes, court rules, case decisions, or common law.
25 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
26 disputes over confidentiality of discovery materials, to adequately protect information
27 the parties are entitled to keep confidential, to ensure that the parties are permitted
28 reasonable necessary uses of such material in preparation for and in the conduct of trial,

1 to address their handling at the end of the litigation, and serve the ends of justice, a
2 protective order for such information is justified in this matter. It is the intent of the
3 parties that information will not be designated as confidential for tactical reasons and
4 that nothing be so designated without a good faith belief that it has been maintained in a
5 confidential, non-public manner, and there is good cause why it should not be part of
6 the public record of this case.

7 **2. DEFINITIONS**

8 2.1 Action: this pending federal lawsuit.

9 2.2 Challenging Party: a Party or Non-Party that challenges the
10 designation of information or items under this Order.

11 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for
13 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
14 the Good Cause Statement.

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
16 their support staff).

17 2.5 Designating Party: a Party or Non-Party that designates information
18 or items that it produces in disclosures or in responses to discovery as
19 "CONFIDENTIAL."

20 2.6 Disclosure or Discovery Material: all items or information, regardless
21 of the medium or manner in which it is generated, stored, or maintained
22 (including, among other things, testimony, transcripts, and tangible things), that
23 are produced or generated in disclosures or responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve
26 as an expert witness or as a consultant in this Action.

1 2.8 House Counsel: attorneys who are employees of a party to this
2 Action. House Counsel does not include Outside Counsel of Record or any other
3 outside counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association,
5 or other legal entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a
7 party to this Action but are retained to represent or advise a party to this Action
8 and have appeared in this Action on behalf of that party or are affiliated with a law
9 firm which has appeared on behalf of that party, and includes support staff.

10 2.11 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and
12 their support staffs).

13 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 2.13 Professional Vendors: persons or entities that provide litigation
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits
17 or demonstrations, and organizing, storing, or retrieving data in any form or
18 medium) and their employees and subcontractors.

19 2.14 Protected Material: any Disclosure or Discovery Material that is
20 designated as "CONFIDENTIAL."

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery
22 Material from a Producing Party.

23 **3. SCOPE**

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

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

3 **4. DURATION**

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

11 **5. DESIGNATING PROTECTED MATERIAL**

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

25 If it comes to a Designating Party's attention that information or items that it
26 designated for protection do not qualify for protection, that Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.
28

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

6 Designation in conformity with this Order requires:

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

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

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

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

12 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
14 designation of confidentiality at any time that is consistent with the Court's
15 Scheduling Order.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
17 resolution process under Local Rule 37.1 et seq.

18 6.3 The burden of persuasion in any such challenge proceeding shall be
19 on the Designating Party. Frivolous challenges, and those made for an improper
20 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
21 parties) may expose the Challenging Party to sanctions. Unless the Designating
22 Party has waived or withdrawn the confidentiality designation, all parties shall
23 continue to afford the material in question the level of protection to which it is
24 entitled under the Producing Party's designation until the Court rules on the
25 challenge.

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

27 7.1 Basic Principles. A Receiving Party may use Protected Material that
28 is disclosed or produced by another Party or by a Non-Party in connection with

1 this Action only for prosecuting, defending, or attempting to settle this Action.
2 Such Protected Material may be disclosed only to the categories of persons and
3 under the conditions described in this Order. When the Action has been
4 terminated, a Receiving Party must comply with the provisions of section 13
5 below (FINAL DISPOSITION).

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

9 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
10 otherwise ordered by the court or permitted in writing by the Designating Party, a
11 Receiving Party may disclose any information or item designated
12 "CONFIDENTIAL" only to:

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

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

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

21 (d) the court and its personnel;

22 (e) court reporters and their staff;

23 (f) professional jury or trial consultants, mock jurors, and Professional
24 Vendors to whom disclosure is reasonably necessary for this Action and who have
25 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (g) the author or recipient of a document containing the information or a
27 custodian or other person who otherwise possessed or knew the information;
28

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

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

12 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
13 **IN OTHER LITIGATION**

14 If a Party is served with a subpoena or a court order issued in other litigation that
15 compels disclosure of any information or items designated in this Action as
16 "CONFIDENTIAL," that Party must:

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

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

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

25 If the Designating Party timely seeks a protective order, the Party served with the
26 subpoena or court order shall not produce any information designated in this action as
27 "CONFIDENTIAL" before a determination by the court from which the subpoena or
28 order issued, unless the Party has obtained the Designating Party's permission. The

1 Designating Party shall bear the burden and expense of seeking protection in that court
2 of its confidential material and nothing in these provisions should be construed as
3 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
4 directive from another court.

5 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
6 **PRODUCED IN THIS LITIGATION**

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

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

16 (1) 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 (2) promptly provide the Non-Party with a copy of the Stipulated
20 Protective Order in this Action, the relevant discovery request(s), and a reasonably
21 specific description of the information requested; and

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

24 (c) If the Non-Party fails to seek a protective order from this court
25 within 14 days of receiving the notice and accompanying information, the Receiving
26 Party may produce the Non-Party's confidential information responsive to the discovery
27 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
28 produce any information in its possession or control that is subject to the confidentiality

1 agreement with the Non-Party before a determination by the court. Absent a court
2 order to the contrary, the Non-Party shall bear the burden and expense of seeking
3 protection in this court of its Protected Material.

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

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

13 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
14 **PROTECTED MATERIAL**

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

25 **12. MISCELLANEOUS**

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of
27 any person to seek its modification by the Court in the future.
28

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

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

13 **13. FINAL DISPOSITION**

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

1 Protected Material. Any such archival copies that contain or constitute Protected
2 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 Dated: August 28, 2018

Respectfully submitted,

7 ONE LLP

8
9 By: /s/ Peter R. Afrasiabi

10 Peter R. Afrasiabi

11 Joanna Ardalan

12 Oscar M. Orozco-Botello

13 Attorneys for MAVRIX PHOTOGRAPHS
LLC

14 Dated: August 28, 2018

Respectfully submitted,

15
16 CLYDE & CO US LLP

17
18 By: /s/ James J.S. Holmes

19 James J.S. Holmes

20 Veena A. Mitchell

21 Attorneys for Defendant TREND
HUNTER, INC.

22 I, James J.S. Holmes, attest that all other signatories listed, and on whose behalf
23 the stipulated protective order is submitted, concur in the content and have authorized
24 the filing/lodging of said document.

25 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

26 DATED: August 31, 2018



27 Hon. Steve Kim

28 U.S. Magistrate Judge

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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [name], of _____ [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 *Mavrix Photographs LLC v. Trend Hunter, Inc., et al.*, Case No. 2:17-cv-08703-FMO-SK. 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 _____ [name] of _____ [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: _____