

1 Daniel D. Harshman [SBN #177139]
daniel.harshman@fisherbroyles.com

2 FISHERBROYLES, LLP
2110 Artesia Blvd., #606
3 Redondo Beach, CA 90278
4 Bus: 310-400-5668
Fax: 310-400-5669

5 Attorneys for Defendant,
Scandinavian Tobacco Group Lane, Ltd.

6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

9
10 ABC DISTRIBUTING, INC.,
11 Plaintiff,

Case No. 2:18-cv-00140 PA (Ex)

12 vs.

13 SCANDINAVIAN TOBACCO
GROUP LANE, LTD.,
14 Defendant.

~~PROPOSED~~ PROTECTIVE ORDER

15 The Court having considered the parties' Stipulated Protective Order, and good
16 cause appearing thereto, hereby grants the following Protective Order:

17 1. A. PURPOSES AND LIMITATIONS

18 Discovery in this action is likely to involve production of confidential, proprietary
19 or private information for which special protection from public disclosure and from use
20 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
21 parties hereby stipulate to and petition the Court to enter the following Stipulated
22 Protective Order. The parties acknowledge that this Order does not confer blanket
23 protections on all disclosures or responses to discovery and that the protection it affords
24 from public disclosure and use extends only to the limited information or items that are
25 entitled to confidential treatment under the applicable legal principles.

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1 B. GOOD CAUSE STATEMENT

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

24 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

25 The parties further acknowledge, as set forth in Section 12.3, below, that this
26 Stipulated Protective Order does not entitle them to file confidential information under
27 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
28

1 standards that will be applied when a party seeks permission from the court to file material
2 under seal.

3 The parties acknowledge that, in connection with non-dispositive motions, good
4 cause must be shown to support a filing under seal. *See Kamakana v. City and County of*
5 *Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d
6 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577
7 (E.D. Wis. 1999) (even stipulated protective orders require good cause showing), The
8 parties' mere designation of Disclosure or Discovery Material as CONFIDENTIAL does
9 not—without the submission of competent evidence by declaration, establishing that the
10 material sought to be filed under seal qualifies as confidential, privileged, or otherwise
11 protectable—constitute good cause.

12 2. DEFINITIONS

13 2.1 Action: *ABC Distributing, Inc. v. Scandinavian Tobacco Group Lane, Ltd.*,
14 Case no. 2:18-cv-00140 PA (Ex) (C.D. Calif.).

15 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

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

21 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
22 support staff).

23 2.5 Designating Party: a Party or Non-Party that designates information or items
24 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

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

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
3 expert witness or as a consultant in this Action.

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

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

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

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

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

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

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

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

25 3. SCOPE

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

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

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

5 4. DURATION

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

14 Provided, however, once a case proceeds to trial, information designated as
15 CONFIDENTIAL or maintained pursuant to this protective order that was used or
16 introduced as an exhibit at trial becomes public and will be presumptively available to all
17 members of the public, including the press, unless compelling reasons supported by
18 specific factual findings to proceed otherwise are made to the trial judge in advance of the
19 trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for
20 sealing documents produced in discovery from “compelling reasons” standard when
21 merits-related documents are part of court record). Accordingly, as to those
22 CONFIDENTIAL materials that are used or introduced at trial, the terms of this protective
23 order do not extend beyond the commencement of the trial.

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
26 Party or Non-Party that designates information or items for protection under this Order
27 must take care to limit any such designation to specific material that qualifies under the
28 appropriate standards. The Designating Party must designate for protection only those

1 parts of material, documents, items or oral or written communications that qualify so that
2 other portions of the material, documents, items or communications for which protection
3 is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this
12 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
13 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
14 must be clearly so designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

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

23 A Party or Non-Party that makes original documents available for inspection need
24 not designate them for protection until after the inspecting Party has indicated which
25 documents it would like copied and produced. During the inspection and before the
26 designation, all of the material made available for inspection shall be deemed
27 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
28 copied and produced, the Producing Party must determine which documents, or portions

1 thereof, qualify for protection under this Order. Then, before producing the specified
2 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
3 that contains Protected Material. If only a portion of the material on a page qualifies for
4 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
5 making appropriate markings in the margins).

6 (b) for testimony given in depositions that the Designating Party identifies the
7 Disclosure or Discovery Material on the record, before the close of the deposition all
8 protected testimony.

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

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

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
21 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
23 process under Local Rule 37.1 et seq.

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

1 the level of protection to which it is entitled under the Producing Party's designation until
2 the Court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this Action
6 only for prosecuting, defending or attempting to settle this Action. Such Protected
7 Material may be disclosed only to the categories of persons and under the conditions
8 described in this Order. When the Action has been terminated, a Receiving Party must
9 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

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

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

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

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

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

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

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

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

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

14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
15 IN OTHER LITIGATION

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

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

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

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

27 If the Designating Party timely seeks a protective order, the Party served with the
28 subpoena or court order shall not produce any information designated in this action as

1 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
2 issued, unless the Party has obtained the Designating Party’s permission. The Designating
3 Party shall bear the burden and expense of seeking protection in that court of its
4 confidential material and nothing in these provisions should be construed as authorizing
5 or encouraging a Receiving Party in this Action to disobey a lawful directive from another
6 court.

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

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

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

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

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

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

26 (c) If the Non-Party fails to seek a protective order from this court within 14 days
27 of receiving the notice and accompanying information, the Receiving Party may produce
28 the Non-Party’s confidential information responsive to the discovery request. If the Non-

1 Party timely seeks a protective order, the Receiving Party shall not produce any
2 information in its possession or control that is subject to the confidentiality agreement
3 with the Non-Party before a determination by the court. Absent a court order to the
4 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
5 court of its Protected Material.

6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

15 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
16 PROTECTED MATERIAL

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

26 12. MISCELLANEOUS

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

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 disclosing
3 or producing any information or item on any ground not addressed in this Stipulated
4 Protective Order. Similarly, no Party waives any right to object on any ground to use in
5 evidence of any of the material covered by this Protective Order.

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

12 13. FINAL DISPOSITION

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

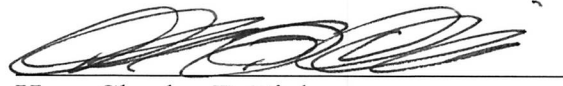
1 in Section 4 (DURATION).

2 14. VIOLATION

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

5 IT IS SO ORDERED

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7 Dated: 4/11/18



Hon. Charles F. Eick
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [*print or type full name*], of
5 _____ [*print or type full*
6 *address*], declare under penalty of perjury that I have read in its entirety and understand
7 the Stipulated Protective Order that was issued by the United States District Court for the
8 Central District of California on _____ [*date*] in the case of *ABC*
9 *Distributing, Inc. v. Scandinavian Tobacco Group Lane, Ltd.*, Case no. 2:18-cv-00140
10 PA (Ex)(C.D. Calif.). I agree to comply with and to be bound by all the terms of this
11 Stipulated Protective Order and I understand and acknowledge that failure to so comply
12 could expose me to sanctions and punishment in the nature of contempt. I solemnly
13 promise that I will not disclose in any manner any information or item that is subject to
14 this Stipulated Protective Order to any person or entity except in strict compliance with
15 the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court for
17 the Central District of California for enforcing the terms of this Stipulated Protective
18 Order, even if such enforcement proceedings occur after termination of this action.

19 Date when signed: _____

20 City and State where sworn and signed: _____

21
22 Printed name: _____

23
24 Signature: _____

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