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Attorneys for Plaintiff, PETER KREDENSER

10 UNITED STATES DISTRICT COURT  
 11 CENTRAL DISTRICT OF CALIFORNIA

13 PETER KREDENSER,  
 14 Plaintiff,  
 15 vs.  
 16 BSX RECORDS, ET AL..  
 17 Defendants.

Case No.: 2:18-cv-0657 JAK (SSx)

DISCOVERY DOCUMENT:  
 REFERRED TO MAGISTRATE  
 JUDGE SUZANNE H. SEGAL

**STIPULATED PROTECTIVE  
 ORDER**

23 1. A. PURPOSES AND LIMITATIONS

24 Discovery in this action is likely to involve production of confidential,  
 25 proprietary, or private information for which special protection from public  
 26 disclosure and from use for any purpose other than prosecuting this litigation may  
 27 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
 28

1 enter the following Stipulated Protective Order. The parties acknowledge that this  
2 Order does not confer blanket protections on all disclosures or responses to  
3 discovery and that the protection it affords from public disclosure and use extends  
4 only to the limited information or items that are entitled to confidential treatment  
5 under the applicable legal principles. The parties further acknowledge, as set forth  
6 in Section 12.3, below, that this Stipulated Protective Order does not entitle them  
7 to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
8 procedures that must be followed and the standards that will be applied when a  
9 party seeks permission from the court to file material under seal.

10 B. GOOD CAUSE STATEMENT

11 This action is likely to involve proprietary and confidential  
12 information about the parties' business practices, customer pricing, and licensing  
13 history, as well as trade secrets, and other valuable research, development,  
14 commercial, financial, technical and/or proprietary information for which special  
15 protection from public disclosure and from use for any purpose other than  
16 prosecution of this action is warranted. Such confidential and proprietary materials  
17 and information consist of, among other things, licensing agreements, settlement  
18 agreements, customer pricing data, delivery documents, photographs of celebrities,  
19 invoices, litigation documents, confidential business or financial information,  
20 information regarding confidential business practices, or other confidential  
21 research, development, or commercial information (including information  
22 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  
25 law. Accordingly, to expedite the flow of information, to facilitate the prompt  
26 resolution of disputes over confidentiality of discovery materials, to adequately  
27 protect information the parties are entitled to keep confidential, to ensure that the  
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1 parties are permitted reasonable necessary uses of such material in preparation for  
2 and in the conduct of trial, to address their handling at the end of the litigation, and  
3 serve the ends of justice, a protective order for such information is justified in this  
4 matter. It is the intent of the parties that information will not be designated as  
5 confidential for tactical reasons and that nothing be so designated without a good  
6 faith belief that it has been maintained in a confidential, non-public manner, and  
7 there is good cause why it should not be part of the public record of this case.

## 8 2. DEFINITIONS

9 2.1 Action: this pending federal law suit styled *Kredenser v. BSX*  
10 *Records, et. al.*, 2:18-cv-657-JAK-SS.

11 2.2 Challenging Party: a Party or Non-Party that challenges the  
12 designation of information or items under this Order.

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

17 2.4 Counsel: Outside Counsel of Record and House Counsel (as well  
18 as their support staff).

19 2.5 Designating Party: a Party or Non-Party that designates  
20 information or items that it produces in disclosures or in responses to discovery as  
21 “CONFIDENTIAL.”

22 2.6 Disclosure or Discovery Material: all items or information,  
23 regardless of the medium or manner in which it is generated, stored, or maintained  
24 (including, among other things, testimony, transcripts, and tangible things), that are  
25 produced or generated in disclosures or responses to discovery in this matter.  
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1           2.7 Expert: a person with specialized knowledge or experience in a  
2 matter pertinent to the litigation who has been retained by a Party or its counsel to  
3 serve as an expert witness or as a consultant in this Action.

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

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

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

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

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

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

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

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

26  
27 **3.     SCOPE**

1 The protections conferred by this Stipulation and Order cover not only  
2 Protected Material (as defined above), but also:

3 (1) any information copied or extracted from Protected  
4 Material;

5 (2) all copies, excerpts, summaries, or compilations of  
6 Protected Material; and

7 (3) any testimony, conversations, or presentations by Parties or  
8 their Counsel that might reveal Protected Material. Any use of Protected Material  
9 at trial shall be governed by the orders of the trial judge. This Order does not  
10 govern the use of Protected Material at trial.

11 4. DURATION

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

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for  
22 Protection. Each Party or Non-Party that designates information or items for  
23 protection under this Order must take care to limit any such designation to specific  
24 material that qualifies under the appropriate standards. The Designating Party must  
25 designate for protection only those parts of material, documents, items, or oral or  
26 written communications that qualify so that other portions of the material,  
27 documents, items, or communications for which protection is not warranted are not  
28

1 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or  
2 routinized designations are prohibited. Designations that are shown to be clearly  
3 unjustified or that have been made for an improper purpose (e.g., to unnecessarily  
4 encumber the case development process or to impose unnecessary expenses and  
5 burdens on other parties) may expose the Designating Party to sanctions. If it  
6 comes to a Designating Party's attention that information or items that it  
7 designated for protection do not qualify for protection, that Designating Party must  
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9           5.2 Manner and Timing of Designations. Except as otherwise  
10 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as  
11 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for  
12 protection under this Order must be clearly so designated before the material is  
13 disclosed or produced. Designation in conformity with this Order requires:

14           (a) for information in documentary form (e.g., paper or electronic  
15 documents, but excluding transcripts of depositions or other pretrial or trial  
16 proceedings), that the Producing Party affix at a minimum, the legend  
17 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
18 contains protected material. If only a portion or portions of the material on a page  
19 qualifies for protection, the Producing Party also must clearly identify the  
20 protected portion(s) (e.g., by making appropriate markings in the margins). A  
21 Party or Non-Party that makes original documents available for inspection need not  
22 designate them for protection until after the inspecting Party has indicated which  
23 documents it would like copied and produced. During the inspection and before the  
24 designation, all of the material made available for inspection shall be deemed  
25 "CONFIDENTIAL." After the inspecting Party has identified the documents it  
26 wants copied and produced, the Producing Party must determine which documents,  
27 or portions thereof, qualify for protection under this Order. Then, before producing  
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1 the specified documents, the Producing Party must affix the “CONFIDENTIAL  
2 legend” to each page that contains Protected Material. If only a portion or portions  
3 of the material on a page qualifies for protection, the Producing Party also must  
4 clearly identify the protected portion(s) (e.g., by making appropriate markings in  
5 the margins).

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

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

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

## 21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
23 designation of confidentiality at any time that is consistent with the Court’s  
24 Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
26 resolution process under Local Rule 37.1 et seq.  
27  
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1           6.3 The burden of persuasion in any such challenge proceeding shall  
2 be on the Designating Party. Frivolous challenges, and those made for an improper  
3 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
4 parties) may expose the Challenging Party to sanctions. Unless the Designating  
5 Party has waived or withdrawn the confidentiality designation, all parties shall  
6 continue to afford the material in question the level of protection to which it is  
7 entitled under the Producing Party’s designation until the Court rules on the  
8 challenge.

9       7.     ACCESS TO AND USE OF PROTECTED MATERIAL

10           7.1 Basic Principles. A Receiving Party may use Protected Material  
11 that is disclosed or produced by another Party or by a Non-Party in connection  
12 with this Action only for prosecuting, defending, or attempting to settle this  
13 Action. Such Protected Material may be disclosed only to the categories of persons  
14 and under the conditions described in this Order. When the Action has been  
15 terminated, a Receiving Party must comply with the provisions of section 13 below  
16 (FINAL DISPOSITION). Protected Material must be stored and maintained by a  
17 Receiving Party at a location and in a secure manner that ensures that access is  
18 limited to the persons authorized under this Order.

19           7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
20 otherwise ordered by the court or permitted in writing by the Designating Party, a  
21 Receiving Party may disclose any information or item designated  
22 “CONFIDENTIAL” only to:

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

26           (b) the officers, directors, and employees (including House Counsel)  
27 of the Receiving Party to whom disclosure is reasonably necessary for this Action;  
28



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

4 (d) the court and its personnel;

5 (e) court reporters and their staff;

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

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

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

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

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

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
24 IN OTHER LITIGATION  
25

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

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 subpoena or  
4 order to issue in the other litigation that some or all of the material covered by the  
5 subpoena or order is subject to this Protective Order. Such notification shall  
6 include a copy of this Stipulated Protective Order; and

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

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

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

26 (b) In the event that a Party is required, by a valid discovery request,  
27 to produce a Non-Party’s confidential information in its possession, and the Party  
28

1 is subject to an agreement with the Non-Party not to produce the Non-Party's  
2 confidential information, then the Party shall:

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

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

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

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

## 20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has  
22 disclosed Protected Material to any person or in any circumstance not authorized  
23 under this Stipulated Protective Order, the Receiving Party must immediately  
24

25 (a) notify in writing the Designating Party of the unauthorized  
26 disclosures,

27 (b) use its best efforts to retrieve all unauthorized copies of the  
28 Protected Material,

1 (c) inform the person or persons to whom unauthorized disclosures  
2 were made of all the terms of this Order, and

3 (d) request such person or persons to execute the “Acknowledgment  
4 and Agreement to Be Bound” that is attached hereto as Exhibit 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  
19 of any 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  
21 this 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

27 12.3 Filing Protected Material. A Party that seeks to file under seal  
28 any Protected Material must comply with Civil Local Rule 79-5. Protected

1 Material may only be filed under seal pursuant to a court order authorizing the  
2 sealing of the specific Protected Material at issue. If a Party's request to file  
3 Protected Material under seal is denied by the court, then the Receiving Party may  
4 file the information in the public record unless otherwise instructed by the court.

5 13. FINAL DISPOSITION

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

24 14. Any violation of this Order may be punished by any and all appropriate  
25 measures including, without limitation, contempt proceedings and/or monetary  
26 sanctions.  
27  
28

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
2

3 Dated: May 10, 2018

GAFNI & LEVIN LLP

4  
5 By: /s/ Adam I. Gafni

6 Adam I. Gafni  
7 Attorneys for Plaintiff  
8 PETER KREDENSER

9 Dated: May 10, 2018

**ROME & ASSOCIATES, A.P.C.**

10  
11 By: /s/ Brianna Dahlberg

12 BRIANNA DAHLBERG  
13 Attorneys for Defendants  
14 Mafy, Inc., Ford Thaxton, Mark  
15 Banning, and Walmart Inc.

16 **ATTESTATION**

17  
18 I attest that all other signatories listed, and on whose behalf the filing is  
19 submitted, concur in the filing's content and have authorized the filing.

20 Dated: May 10, 2018

GAFNI & LEVIN LLP

21  
22 By: /s/ Adam I. Gafni

23 Attorneys for Plaintiff  
24 PETER KREDENSER

25  
26 /S/

27 The Honorable Suzanne H. Segal

28 United States District/Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1  
2  
3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare  
5 under penalty of perjury that I have read in its entirety and understand the  
6 Stipulated Protective Order that was issued by the United States District Court for  
7 the Central District of California on \_\_\_\_\_ [date] in the case of *Kredenser v. BSX*  
8 *Records, et. al.*, Case No.: 2:18-cv-657-JAK-SS. I agree to comply with and to be  
9 bound by all the terms of this Stipulated Protective Order and I understand and  
10 acknowledge that failure to so comply could expose me to sanctions and  
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in  
12 any manner any information or item that is subject to this Stipulated Protective  
13 Order to any person or entity except in strict compliance with the provisions of this  
14 Order. I further agree to submit to the jurisdiction of the United States District  
15 Court for the Central District of California for the purpose of enforcing the terms  
16 of this Stipulated Protective Order, even if such enforcement proceedings occur  
17 after termination of this action. I hereby appoint \_\_\_\_\_  
18 [print or type full name] of \_\_\_\_\_ [print  
19 or type full address and telephone number] as my California agent for service of  
20 process in connection with this action or any proceedings related to enforcement of  
21 this Stipulated Protective Order.  
22  
23  
24

25 Date: \_\_\_\_\_

26 City and State where sworn and signed: \_\_\_\_\_

27 Printed name: \_\_\_\_\_

28 Signature: \_\_\_\_\_