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 CRITICAL MASS INDUSTRIES, LLC

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 7
 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA
 10

11 ROBERT GAUDIO, *an individual*,
 12 Plaintiff,

13 v.

14 CRITICAL MASS INDUSTRIES, *a*
Colorado Limited Liability Company
 15 D/B/A Good Meds, and DOES 1-100,
 16 Defendants.

Case No. 2:19-cv-08214-MWF-AGR

**ORDER GRANTING STIPULATED
 PROTECTIVE ORDER**

Action Filed: August 7, 2019
 Action Removed: September 23, 2019
 FAC Filed: December 23, 2019

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1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential, proprietary,
3 or private information for which special protection from public disclosure and from use
4 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
5 parties hereby stipulate to and petition the Court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket
7 protections on all disclosures or responses to discovery and that the protection it affords
8 from public disclosure and use extends only to the limited information or items that are
9 entitled to confidential treatment under the applicable legal principles. The parties further
10 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order
11 does not entitle them to file confidential information under seal; Civil Local Rule 79-5
12 sets forth the procedures that must be followed and the standards that will be applied
13 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 the
27 parties are entitled to keep confidential, to ensure that the parties are permitted reasonable
28 necessary uses of such material in preparation for and in the conduct of trial, to address

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

7 2. DEFINITIONS

8 2.1 Action: *Gaudio v. Critical Mass Industries*, USDC Central District of
9 California Case No. 2:19-cv-08214-MWF-AGR.

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

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

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

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

20 2.6 Disclosure or Discovery Material: all items or information, regardless of the
21 medium or manner in which it is generated, stored, or maintained (including, among
22 other things, testimony, transcripts, and tangible things), that are produced or generated in
23 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 as an
26 expert witness or as a consultant in this Action.

27 2.8 House Counsel: attorneys who are employees of a party to this Action.
28 House Counsel does not include Outside Counsel of Record or any other outside counsel.

1 2.9 Non-Party: any natural person, partnership, corporation, association, or other
2 legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
4 this Action but are retained to represent or advise a party to this Action and have
5 appeared in this Action on behalf of that party or are affiliated with a law firm which has
6 appeared on behalf of that party, and includes support staff.

7 2.11 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.13 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
15 their employees and subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is designated
17 as “CONFIDENTIAL.”

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
19 a Producing Party.

20 3. SCOPE

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

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

1 4. DURATION

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

9 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

1 Designation in conformity with this Order requires:

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

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

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

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

28

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
2 to designate qualified information or items does not, standing alone, waive the
3 Designating Party’s right to secure protection under this Order for such material. Upon
4 timely correction of a designation, the Receiving Party must make reasonable efforts to
5 assure that the material is treated in accordance with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
10 process under Local Rule 37.1 et seq.

11 6.3 The burden of persuasion in any such challenge proceeding shall be on the
12 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
13 harass or impose unnecessary expenses and burdens on other parties) may expose the
14 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
15 the confidentiality designation, all parties shall continue to afford the material in question
16 the level of protection to which it is entitled under the Producing Party’s designation until
17 the Court rules on the challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is
20 disclosed or produced by another Party or by a Non-Party in connection with this Action
21 only for prosecuting, defending, or attempting to settle this Action. Such Protected
22 Material may be disclosed only to the categories of persons and under the conditions
23 described in this Order. When the Action has been terminated, a Receiving Party must
24 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

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

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

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

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

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

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

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

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

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

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
4 OTHER LITIGATION

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

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

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

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

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

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

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

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

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

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

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

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

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

23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

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

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
17 person to seek its modification by the Court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this
19 Protective Order no Party waives any right it otherwise would have to object to disclosing
20 or producing any information or item on any ground not addressed in this Stipulated
21 Protective Order. Similarly, no Party waives any right to object on any ground to use in
22 evidence of any of the material covered by this Protective Order.

23 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
24 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
25 under seal pursuant to a court order authorizing the sealing of the specific Protected
26 Material at issue. If a Party's request to file Protected Material under seal is denied by the
27 court, then the Receiving Party may file the information in the public record unless
28 otherwise instructed by the court.

1 13. FINAL DISPOSITION

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

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

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4 FOR GOOD CAUSE SHOWN, IT IS HEREBY ORDERED that the Stipulated
5 Protective Order is GRANTED.

6 DATED: December 2, 2020

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9 Hon. Alicia G. Rosenberg
10 United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California on
7 [date] in the case of *Gaudio v. Critical Mass Industries*, Case Number 2:19-cv-08214-
8 MWF-AGR. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
11 that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for
15 the Central District of California for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this
17 action. I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone
19 number] as my California agent for service of process in connection with this action or
20 any proceedings related to enforcement of this Stipulated Protective Order.

21
22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____