

1 STANLEY M. GIBSON (Bar No. 162329)  
sgibson@jmbm.com  
2 GREGORY S. CORDREY (Bar No. 190144)  
gcordrey@jmbm.com  
3 REMI T. SALTER (Bar No. 316327)  
rsalter@jmbm.com  
4 JEFFER MANGELS BUTLER & MITCHELL LLP  
1900 Avenue of the Stars, 7th Floor  
5 Los Angeles, California 90067-4308  
Telephone: (310) 203-8080  
6 Facsimile: (310) 203-0567

7 Attorneys for Plaintiff Theragun, Inc.

8 ALFRED SHAUMYAN (Bar No. 266908)  
afred.shaumyan @bclplaw.com  
9 J. BENNETT CLARK (Admitted pro hac vice)  
ben.clark@bclplaw.com  
10 ELLEN E. WHITEHORN (Admitted pro hac vice)  
ellen.whitehorn@bclplaw.com  
11 MATTHEW G. MINDER (Admitted pro hac vice)  
matt.minder@bclplaw.com  
12 BRYAN CAVE LEIGHTON PAISNER LLP  
13 120 Broadway, Suite 300  
Santa Monica, CA 90401-2386  
14 Telephone: (310) 576-2100  
Facsimile: (310) 576-2200

15 Attorneys for Defendants Complete  
16 Recovery, Revolution Hustle LLC and  
Elevate Brands, LLC  
17

18 UNITED STATES DISTRICT COURT  
19 CENTRAL DISTRICT OF CALIFORNIA

20 THERAGUN, INC., a Delaware  
21 corporation,

22 Plaintiff,

23 v.

24 COMPLETE RECOVERY, et al,

25 Defendants.  
26  
27  
28

Case No.: 2:20-cv-03821 TJH(Ex)

**~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER**

1     1.     PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve  
3 production of confidential, proprietary, or private information for which special  
4 protection from public disclosure and from use for any purpose other than  
5 prosecuting, defending or attempting to settle this litigation may be warranted. This  
6 Order does not confer blanket protections on all disclosures or responses to  
7 discovery and the protection it affords from public disclosure and use extends only  
8 to the limited information or items that are entitled to confidential treatment under  
9 the applicable legal principles. As set forth in Section 12.4 below, this Protective  
10 Order does not entitle the Parties to file confidential information under seal; the  
11 Local Rules of this Court set forth the procedures that must be followed and the  
12 standards that will be applied when a party seeks permission from the Court to file  
13 material under seal.

14     2.     DEFINITIONS

15           2.1     Challenging Party: a Party or Non-Party that challenges the designation  
16 of information or items under this Order.

17           2.2     “CONFIDENTIAL” Information or Items: any information or material  
18 that constitutes or includes, in whole or in part, confidential or proprietary  
19 information or trade secrets of the Party or a Third Party to whom the Party  
20 reasonably believes it owes an obligation of confidentiality with respect to such  
21 information or material.

22           2.3     Counsel (without qualifier): Outside Counsel of Record and House  
23 Counsel (as well as their support staff).

24           2.4     Designated House Counsel: House Counsel who seek access to  
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this  
26 matter.

27           2.5     Designating Party: a Party or Non-Party that designates information or  
28 items that it produces in disclosures or in responses to discovery as

1 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
2 ONLY”.

3 2.6 Disclosure or Discovery Material: all items or information, regardless  
4 of the medium or manner in which it is generated, stored, or maintained (including,  
5 among other things, testimony, transcripts, and tangible things), that are produced or  
6 generated in disclosures or responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a matter  
8 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve  
9 as an expert witness or as a consultant in this action, (2) is not a past or current  
10 employee of a Party or of a Party's competitor, and (3) at the time of retention, is not  
11 anticipated to become an employee of a Party or of a Party's competitor.

12 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY”  
13 Information or Items: extremely sensitive “Confidential Information or Items,”  
14 disclosure of which to another Party or Non-Party would create a substantial risk of  
15 serious harm that could not be avoided by less restrictive means.

16 2.9 House Counsel: attorneys who are employees of a party to this action.  
17 House Counsel does not include Outside Counsel of Record or any other outside  
18 counsel.

19 2.10 Non-Party: any natural person, partnership, corporation, association, or  
20 other legal entity not named as a Party to this action.

21 2.11 Outside Counsel of Record: attorneys who are not employees of a party  
22 to this action but are retained to represent or advise a party to this action and have  
23 appeared in this action on behalf of that party or are affiliated with a law firm which  
24 has appeared on behalf of that party.

25 2.12 Party: any party to this action, including all of its officers, directors,  
26 employees, consultants, retained experts, and Outside Counsel of Record (and their  
27 support staffs).

28 2.13 Producing Party: a Party or Non-Party that produces Disclosure or

1 Discovery Material in this action.

2       2.14 Professional Vendors: persons or entities that provide litigation support  
3 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
4 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
5 and their employees and subcontractors.

6       2.15 Protected Material: any Disclosure or Discovery Material that is  
7 designated as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –  
8 ATTORNEYS’ EYES ONLY.”

9       2.16 Receiving Party: a Party that receives Disclosure or Discovery Material  
10 from a Producing Party.

11 3. SCOPE

12       The protections conferred by this Order cover not only Protected Material (as  
13 defined above), but also (1) any information copied or extracted from Protected  
14 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;  
15 and (3) any testimony, conversations, or presentations by Parties or their Counsel  
16 that might reveal Protected Material. However, the protections conferred by this  
17 Order do not cover the following information: (a) any information that is in the  
18 public domain at the time of disclosure to a Receiving Party or becomes part of the  
19 public domain after its disclosure to a Receiving Party as a result of publication not  
20 involving a violation of this Order, including becoming part of the public record  
21 through trial or otherwise; and (b) any information known to the Receiving Party  
22 prior to the disclosure or obtained by the Receiving Party after the disclosure from a  
23 source who obtained the information lawfully and under no obligation of  
24 confidentiality to the Designating Party. Any use of Protected Material at trial shall  
25 be governed by a separate agreement or order.

26 4. DURATION

27       Even after final disposition of this litigation, the confidentiality obligations  
28 imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing or a court order otherwise directs. Final disposition shall be  
2 deemed to be the later of (1) dismissal of all claims and defenses in this action, with  
3 or without prejudice; and (2) final judgment herein after the completion and  
4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
5 including the time limits for filing any motions or applications for extension of time  
6 pursuant to applicable law.

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.

9 Each Party or Non-Party that designates information or items for protection  
10 under this Order must take care to limit any such designation to specific material  
11 that qualifies under the appropriate standards. To the extent it is practical to do so,  
12 the Designating Party must designate for protection only those parts of material,  
13 documents, items, or oral or written communications that qualify – so that other  
14 portions of the material, documents, items, or communications for which protection  
15 is not warranted are not swept unjustifiably within the ambit of this Order. Mass,  
16 indiscriminate, or routinized designations are prohibited. Designations that are  
17 shown to be clearly unjustified or that have been made for an improper purpose  
18 (e.g., to unnecessarily encumber or retard the case development process or to  
19 impose unnecessary expenses and burdens on other parties) may expose the  
20 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 at all or do not qualify for the  
23 level of protection initially asserted, that Designating Party must promptly notify all  
24 other Parties that it is withdrawing the mistaken designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in  
26 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
28

1 under this Order must be clearly so designated before the material is disclosed or  
2 produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents,  
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that  
6 the Producing Party affix the legend “CONFIDENTIAL,” or “HIGHLY  
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains  
8 protected material. If only a portion or portions of the material on a page qualifies  
9 for protection, the Producing Party also must clearly identify the protected portion(s)  
10 (e.g., by making appropriate markings in the margins) and must specify, for each  
11 portion, the level of protection being asserted.

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

26 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
27 that the Designating Party identify on the record, before the close of the deposition,  
28 hearing, or other proceeding, all protected testimony and specify the level of

1 protection being asserted. When it is impractical to identify separately each portion  
2 of testimony that is entitled to protection and it appears that substantial portions of  
3 the testimony may qualify for protection, the Designating Party may invoke on the  
4 record (before the deposition, hearing, or other proceeding is concluded) a right to  
5 have up to 21 days to identify the specific portions of the testimony as to which  
6 protection is sought and to specify the level of protection being asserted. Only those  
7 portions of the testimony that are appropriately designated for protection within the  
8 21 days shall be covered by the provisions of this Protective Order. Alternatively,  
9 and subject to Section 5.1, a Designating Party may specify, at the deposition or up  
10 to 21 days afterwards if that period is properly invoked, that the entire transcript  
11 shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
12 ATTORNEYS’ EYES ONLY.”

13 Transcripts containing Protected Material shall have an obvious legend on the  
14 title page that the transcript contains Protected Material, and the title page shall be  
15 followed by a list of all pages (including line numbers as appropriate) that have been  
16 designated as Protected Material and the level of protection being asserted by the  
17 Designating Party. The Designating Party shall inform the court reporter of these  
18 requirements. Any transcript that is prepared before the expiration of a 21-day  
19 period for designation shall be treated during that period as if it had been designated  
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
21 otherwise agreed. After the expiration of that period, the transcript shall be treated  
22 only as actually designated.

23 (c) for information produced in some form other than documentary and/or any  
24 other tangible items, that the Producing Party affix in a prominent place on the  
25 exterior of the container or containers in which the information or item is stored the  
26 legend “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
27 EYES ONLY.” If only a portion or portions of the information or item warrant  
28

1 protection, the Producing Party, to the extent practicable, shall identify the protected  
2 portion(s) and specify the level of protection being asserted.

3 5.3 Inadvertent Failures to Designate. If corrected immediately upon  
4 learning of an inadvertent failure to designate qualified information or items, such  
5 inadvertency does not, standing alone, waive the Designating Party's right to secure  
6 protection under this Order for such material. Upon such an immediate correction of  
7 a designation, the Receiving Party must make its best efforts to assure that the  
8 material is treated in accordance with the provisions of this Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
11 designation of confidentiality at any time. Unless a prompt challenge to a  
12 Designating Party's confidentiality designation is necessary to avoid foreseeable,  
13 substantial unfairness, unnecessary economic burdens, or a significant disruption or  
14 delay of the litigation, a Party does not waive its right to challenge a confidentiality  
15 designation by electing not to mount a challenge promptly after the original  
16 designation is disclosed.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
18 resolution process by providing written notice of each designation it is challenging  
19 and describing the basis for each challenge. The parties shall attempt to resolve each  
20 challenge in good faith and must begin the process by conferring directly (in voice  
21 to voice dialogue; other forms of communication are not sufficient) within 14 days  
22 of the date of service of notice. In conferring, the Challenging Party must explain  
23 the basis for its belief that the confidentiality designation was not proper and must  
24 give the Designating Party an opportunity to review the designated material, to  
25 reconsider the circumstances, and, if no change in designation is offered, to explain  
26 the basis for the chosen designation. A Challenging Party may proceed to the next  
27 stage of the challenge process only if it has engaged in this meet and confer process  
28



1 first or establishes that the Designating Party is unwilling to participate in the meet  
2 and confer process in a timely manner.

3       6.3   Judicial Intervention. If the Parties cannot resolve a challenge without  
4 court intervention, the Designating Party shall file and serve a motion to retain  
5 confidentiality in compliance with Local Rule 37 within 21 days of the initial notice  
6 of challenge or within 14 days of the parties agreeing that the meet and confer  
7 process will not resolve their dispute, whichever is earlier. Each such motion must  
8 be accompanied by a competent declaration affirming that the movant has complied  
9 with the meet and confer requirements imposed in the preceding paragraph. Failure  
10 by the Designating Party to make such a motion including the required declaration  
11 within 21 days (or 14 days, if applicable) shall automatically waive the  
12 confidentiality designation for each challenged designation.     The burden of  
13 persuasion in any such challenge proceeding shall be on the Designating Party.  
14 Frivolous challenges and those made for an improper purpose (e.g., to harass or  
15 impose unnecessary expenses and burdens on other parties) may expose the  
16 Challenging Party to sanctions. Unless the Designating Party has waived the  
17 confidentiality designation by failing to file a motion to retain confidentiality as  
18 described above, all parties shall continue to afford the material in question the level  
19 of protection to which it is entitled under the Producing Party's designation until the  
20 court rules on the challenge.

21   7.    ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
5 otherwise ordered by the court or permitted in writing by the Designating Party, a  
6 Receiving Party may disclose any information or item designated  
7 “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
9 as employees of said Outside Counsel of Record to whom it is reasonably necessary  
10 to disclose the information for this litigation;

11 (b) the officers, directors, and employees (including House Counsel) of the  
12 Receiving Party to whom disclosure is reasonably necessary for this litigation and  
13 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

17 (d) the court and its personnel;

18 (e) court reporters and their staff, professional jury or trial consultants,  
19 and Professional Vendors to whom disclosure is reasonably necessary for this  
20 litigation and who agree to be bound by this Protective Order;

21 (f) during their depositions, witnesses in the action to whom disclosure is  
22 reasonably necessary. Pages of transcribed deposition testimony or exhibits to  
23 depositions that reveal Protected Material must be separately bound by the court  
24 reporter and may not be disclosed to anyone except as permitted under this  
25 Protective Order;

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; and

28 (h) any other person with the prior written consent of the Designating

1 Party.

2       7.3    Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
3 ONLY” and Information or Items. Unless otherwise ordered by the court or  
4 permitted in writing by the Designating Party, a Receiving Party may disclose any  
5 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
6 EYES ONLY” only to:

7       (a)    the Receiving Party’s Outside Counsel of Record in this action, as well  
8 as employees of said Outside Counsel of Record to whom it is reasonably necessary  
9 to disclose the information for this litigation;

10       (b)    Experts of the Receiving Party (1) to whom disclosure is reasonably  
11 necessary for this litigation, (2) who have signed the “Acknowledgment and  
12 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth  
13 in paragraph 7.4(a)(2), below, have been followed;

14       (c)    the court and its personnel;

15       (d)    court reporters and their staff, professional jury or trial consultants,  
16 and Professional Vendors to whom disclosure is reasonably necessary for this  
17 litigation and who agree to be bound by this Protective Order;

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

20       (f)    any other person with the prior written consent of the Designating  
21 Party.

22       7.4    Procedures for Approving or Objecting to Disclosure of “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to  
24 Experts.

25       (a) Unless otherwise ordered by the court or agreed to in writing by the  
26 Designating Party, a Party that seeks to disclose to an Expert (as defined in this  
27 Order) any information or item that has been designated “HIGHLY  
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c)

1 first must make a written request to the Designating Party that (1) identifies the  
2 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
3 ONLY” information that the Receiving Party seeks permission to disclose to the  
4 Expert, (2) sets forth the full name of the Expert and the city and state of his or her  
5 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies  
6 the Expert’s current employer(s), (5) identifies each person or entity from whom the  
7 Expert has received compensation or funding for work in his or her areas of  
8 expertise in connection with a litigation, at any time during the preceding five  
9 years,<sup>1</sup> and (6) identifies (by name and number of the case, filing date, and location  
10 of court) any litigation in connection with which the Expert has offered expert  
11 testimony, including through a declaration, report, or testimony at a deposition or  
12 trial, during the preceding five years.

13 (b) A Party that makes a request and provides the information specified in  
14 the preceding respective paragraphs may disclose the subject Protected Material to  
15 the identified Expert unless, within 14 days of delivering the request, the Party  
16 receives a written objection from the Designating Party. Any such objection must  
17 set forth in detail the grounds on which it is based.

18 (c) A Party that receives a timely written objection must meet and confer  
19 with the Designating Party (through direct voice to voice dialogue) to try to resolve  
20 the matter by agreement within seven days of the written objection. If no agreement  
21 is reached, the Party seeking to make the disclosure the Expert may file a motion as  
22 provided in the Local Rules of this Court seeking permission from the court to do  
23 so. Any such motion must describe the circumstances with specificity, set forth in  
24 detail the reasons why disclosure to the Expert is reasonably necessary, assess the  
25

26  
27 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality  
28 obligation to a third party, the Expert should provide whatever information the  
Expert believes can be disclosed without violating any confidentiality agreements,  
and the Party seeking to disclose to the Expert shall make itself available to meet  
and confer with the Designating Party regarding any such engagement.

1 risk of harm that the disclosure would entail, and suggest any additional means that  
2 could be used to reduce that risk. In addition, any such motion must be  
3 accompanied by a competent declaration describing the parties' efforts to resolve  
4 the matter by agreement (i.e., the extent and the content of the meet and confer  
5 discussions) and setting forth the reasons advanced by the Designating Party for its  
6 refusal to approve the disclosure.

7 In any such proceeding, the Party opposing disclosure to the Expert shall  
8 bear the burden of proving that the risk of harm that the disclosure would entail  
9 (under the safeguards proposed) outweighs the Receiving Party's need to disclose  
10 the Protected Material to its Expert.

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

13 If a Party is served with a subpoena or a court order issued in other litigation  
14 that compels disclosure of any information or items designated in this action as  
15 "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
16 ONLY" 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 order  
20 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  
22 a copy of this 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.<sup>2</sup>

25 If the Designating Party timely seeks a protective order, the Party served with  
26 \_\_\_\_\_

27 <sup>2</sup> The purpose of imposing these duties is to alert the interested parties to the  
28 existence of this Protective Order and to afford the Designating Party an opportunity  
to try to protect its confidentiality interests in the court from which the subpoena or  
order issued.

1 the subpoena or court order shall not produce any information designated in this  
2 action as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
3 EYES ONLY” before a determination by the court from which the subpoena or  
4 order issued, unless the Party has obtained the Designating Party’s permission. The  
5 Designating Party shall bear the burden and expense of seeking protection in that  
6 court of its confidential material – and nothing in these provisions should be  
7 construed as authorizing or encouraging a Receiving Party in this action to disobey  
8 a lawful directive from another court.

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

11 (a) The terms of this Order are applicable to information produced by a  
12 Non-Party in this action and designated as “CONFIDENTIAL,” or “HIGHLY  
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by  
14 Non-Parties in connection with this litigation is protected by the remedies and relief  
15 provided by this Order. Nothing in these provisions should be construed as  
16 prohibiting a Non-Party from seeking additional protections.

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

21 1. promptly notify in writing the Requesting Party and the Non-  
22 Party that some or all of the information requested is subject to a  
23 confidentiality agreement with a Non-Party;

24 2. promptly provide the Non-Party with a copy of the Protective  
25 Order in this litigation, the relevant discovery request(s), and a reasonably  
26 specific description of the information requested; and

27 3. make the information requested available for inspection by the  
28 Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.<sup>3</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for

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<sup>3</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 production without prior privilege review. Pursuant to Federal Rule of Evidence  
2 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
3 of a communication or information covered by the attorney-client privilege or work  
4 product protection, the parties may incorporate their agreement in a stipulated  
5 protective order submitted to the court.

6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
8 person to seek its modification by the court in the future.

9 12.2 Right to Assert Other Objections. No Party waives any right it  
10 otherwise would have to object to disclosing or producing any information or item  
11 on any ground not addressed in this Protective Order. Similarly, no Party waives  
12 any right to object on any ground to use in evidence of any of the material covered  
13 by this Protective Order.

14 12.3 Export Control. Disclosure of Protected Material shall be subject to all  
15 applicable laws and regulations relating to the export of technical data contained in  
16 such Protected Material, including the release of such technical data to foreign  
17 persons or nationals in the United States or elsewhere. The Producing Party shall be  
18 responsible for identifying any such controlled technical data, and the Receiving  
19 Party shall take measures necessary to ensure compliance.

20 12.4 Filing Protected Material. Without written permission from the  
21 Designating Party or a court order secured after appropriate notice to all interested  
22 persons, a Party may not file in the public record in this action any Protected  
23 Material. A Party that seeks to file under seal any Protected Material must comply  
24 with any applicable Local Rules. Protected Material may only be filed under seal  
25 pursuant to a court order authorizing the sealing of the specific Protected Material  
26 at issue.

27 13. FINAL DISPOSITION

28 Within 60 days after the final disposition of this action, as defined in Section



4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.

DATED: September 10, 2020    STANLEY M. GIBSON  
GREGORY S. CORDREY  
REMI SALTER  
JEFFER MANGELS BUTLER & MITCHELL LLP

By: /s/ Gregory S. Cordrey  
GREGORY S. CORDREY  
Attorneys for Plaintiff Theragun, Inc.

DATED: September 10, 2020    ALFRED SHAUMYAN  
J. BENNETT CLARK  
ELLEN E. WHITEHORN  
MATTHEW G. MINDER  
BRYAN CAVE LEIGHTON PAISNER LLP

By: /s/ Alfred Shaumyan (with permission)  
ALFRED SHAUMYAN  
Attorneys for Defendants Complete Recovery,  
Revolution Hustle LLC and Elevate Brands, LLC

1 IT IS SO ORDERED.

2 DATED: 9/14/20

/S/ CHARLES F. EICK  
UNITED STATES  
MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_[print or type full name], of \_\_\_\_\_  
 \_\_\_\_\_[print or type full address], declare under penalty of  
 perjury that I have read in its entirety and understand the Stipulated Protective Order  
 that was issued by the United State District Court for the Central District of  
 California on \_\_\_\_\_[date] in the case of Theragun, Inc. v. Complete  
 Recovery, et al., Case No. 2:20-cv-03821 TJH(Ex). I agree to comply with and to be  
 bound by all the term of tis 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 enforcing the terms of this Stipulated  
 Protective Order, even if such enforcement proceeding occur after termination of  
 this action.

I hereby appoint \_\_\_\_\_[print or type full name] of \_\_\_\_\_  
 \_\_\_\_\_[print or type full address and telephone number] as  
 my California agent for service of process in connection with this action or any  
 proceeding related to enforcement of this Stipulated Protective Order.

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

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

Printed Name: \_\_\_\_\_

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