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10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 ENTTECH MEDIA GROUP LLC

13 Plaintiff,

14 v.

15 OKULARITY, INC., *et al.*

16 Defendants.  
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Case No. 2:20-cv-06298-JWH (Ex)

**[PROPOSED] PROTECTIVE  
 ORDER**

Hon. Charles F. Eick

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PROTECTIVE ORDER

1 **I. PURPOSES AND LIMITATIONS**

2 A. Because discovery in this action is likely to involve production of  
3 confidential, proprietary, or private information for which special protection from  
4 public disclosure and from use for any purpose other than prosecuting this  
5 litigation may be warranted, this Court enters the following Protective Order. The  
6 parties acknowledge that this Order does not confer blanket protections on all  
7 disclosures or responses to discovery and that the protection it affords from public  
8 disclosure and use extends only to the limited information or items that are entitled  
9 to confidential treatment under the applicable legal principles. The parties further  
10 acknowledge, as set forth in Section XIII(C) below, that this Protective Order does  
11 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  
13 applied when a party seeks permission from the Court to file material under seal.

14 **II. GOOD CAUSE STATEMENT**

15 A. This action is likely to involve the production of confidential records, and in  
16 order to expedite the flow of information, to facilitate the prompt resolution of  
17 disputes over confidentiality of discovery materials, to adequately protect  
18 information the parties are entitled to keep confidential, to ensure that the parties  
19 are permitted reasonable and necessary uses of such material in connection with  
20 this action, to address their handling of such material at the end of the litigation,  
21 and to serve the ends of justice, a protective order for such information is justified  
22 in this matter. The parties shall not designate any information/documents as  
23 confidential without a good faith belief that such information/documents have been  
24 maintained in a confidential, non-public manner, and that there is good cause or a  
25 compelling reason why it should not be part of the public record of this case.

26 **III. DEFINITIONS**

27 A. Action: This pending federal lawsuit.

1 B. Challenging Party: A Party or Non-Party that challenges the designation of  
2 information or items under this Order.

3 C. “CONFIDENTIAL” Information or Items: Information (regardless of how  
4 it is generated, stored or maintained) or tangible things that qualify for protection  
5 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good  
6 Cause Statement.

7 D. Counsel: Outside Counsel of Record and House Counsel (as well as their  
8 support staff).

9 E. Designating Party: A Party or Non-Party that designates information or  
10 items that it produces in disclosures or in responses to discovery as  
11 “CONFIDENTIAL.”

12 F. Disclosure or Discovery Material: All items or information, regardless of  
13 the medium or manner in which it is generated, stored, or maintained (including,  
14 among other things, testimony, transcripts, and tangible things), that are produced  
15 or generated in disclosures or responses to discovery in this matter.

16 G. Expert: A person with specialized knowledge or experience in a matter  
17 pertinent to the litigation who has been retained by a Party or its Counsel to serve  
18 as an expert witness or as a consultant in this Action.

19 H. House Counsel: Attorneys who are employees of a Party to this Action.  
20 House Counsel does not include Outside Counsel of Record or any other outside  
21 counsel.

22 I. Non-Party: Any natural person, partnership, corporation, association, or  
23 other legal entity not named as a Party to this action.

24 J. Outside Counsel of Record: Attorneys who are not employees of a party to  
25 this Action but are retained to represent or advise a party to this Action and have  
26 appeared in this Action on behalf of that party or are affiliated with a law firm  
27 which has appeared on behalf of that party, and includes support staff.  
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1 K. Party: Any party to this Action, including all of its officers, directors,  
2 employees, consultants, retained experts, and Outside Counsel of Record (and their  
3 support staffs).

4 L. Producing Party: A Party or Non-Party that produces Disclosure or  
5 Discovery Material in this Action.

6 M. Professional Vendors: Persons or entities that provide litigation support  
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
9 and their employees and subcontractors.

10 N. Protected Material: Any Disclosure or Discovery Material that is designated  
11 as “CONFIDENTIAL.”

12 O. Receiving Party: A Party that receives Disclosure or Discovery Material  
13 from a Producing Party.

14 **IV. SCOPE**

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

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

22 **V. DURATION**

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

4 **VI. DESIGNATING PROTECTED MATERIAL**

5 A. Exercise of Restraint and Care in Designating Material for Protection

6 1. Each Party or Non-Party that designates information or items for  
7 protection under this Order must take care to limit any such designation to  
8 specific material that qualifies under the appropriate standards. The  
9 Designating Party must designate for protection only those parts of material,  
10 documents, items, or oral or written communications that qualify so that  
11 other portions of the material, documents, items, or communications for  
12 which protection is not warranted are not swept unjustifiably within the  
13 ambit of this Order.

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

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

23 B. Manner and Timing of Designations

24 1. Except as otherwise provided in this Order (*see, e.g.,*  
25 Section IV(B)(2)(b) and Section IV(C) below), or as otherwise stipulated or  
26 ordered, Disclosure or Discovery Material that qualifies for protection under  
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1 this Order must be clearly so designated before the material is disclosed or  
2 produced.

3 2. Designation in conformity with this Order requires the following:

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

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

1 c. For testimony given in depositions, that the Designating Party  
2 identify the Disclosure or Discovery Material on the record, before  
3 the close of the deposition all protected testimony.

4 d. For information produced in form other than document and for  
5 any other tangible items, that the Producing Party affix in a prominent  
6 place on the exterior of the container or containers in which the  
7 information is stored the legend “CONFIDENTIAL.” If only a  
8 portion or portions of the information warrants protection, the  
9 Producing Party, to the extent practicable, shall identify the protected  
10 portion(s).

11 C. Inadvertent Failure to Designate

12 1. If promptly corrected by notice to a Receiving Party, an inadvertent  
13 failure to designate qualified information or items does not, standing alone,  
14 waive the Designating Party’s right to secure protection under this Order for  
15 such material.

16 2. Upon prompt correction of a designation, the Receiving Party must  
17 make reasonable efforts to assure that the material is treated in accordance  
18 with the provisions of this Order.

19 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

20 A. Timing of Challenges

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

23 B. Meet and Confer

24 The Challenging Party shall initiate the dispute resolution process under  
25 Local Rule 37.1 et seq.

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

6 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

7 A. Basic Principles

8 1. A Receiving Party may use Protected Material that is disclosed or  
9 produced by another Party or by a Non-Party in connection with this Action  
10 only for prosecuting, defending, or attempting to settle this Action. Such  
11 Protected Material may be disclosed only to the categories of persons and  
12 under the conditions described in this Order. When the Action has been  
13 terminated, a Receiving Party must comply with the provisions of Section  
14 XIV below.

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

18 B. Disclosure of “CONFIDENTIAL” Information or Items

19 1. Unless otherwise ordered by the Court or permitted in writing by the  
20 Designating Party, a Receiving Party may disclose any information or item  
21 designated “CONFIDENTIAL” only to:

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

- 1           b.     The officers, directors, and employees (including House  
2 Counsel) of the Receiving Party to whom disclosure is reasonably  
3 necessary for this Action;
- 4           c.     Experts (as defined in this Order) of the Receiving Party to  
5 whom disclosure is reasonably necessary for this Action and who  
6 have signed the “Acknowledgment and Agreement to Be Bound”  
7 (Exhibit A);
- 8           d.     The Court and its personnel;
- 9           e.     Court reporters and their staff;
- 10          f.     Professional jury or trial consultants, mock jurors, and  
11 Professional Vendors to whom disclosure is reasonably necessary for  
12 this Action and who, to the extent practicable, have signed the  
13 “Acknowledgment and Agreement to be Bound” attached as  
14 Exhibit A hereto;
- 15          g.     The author or recipient of a document containing the  
16 information or a custodian or other person who otherwise possessed  
17 or knew the information;
- 18          h.     During their depositions, witnesses in the Action and their  
19 Counsel to whom disclosure is reasonably necessary provided that:  
20 (i) the deposing Party requests that the witness sign the  
21 “Acknowledgment and Agreement to Be Bound” or otherwise obtains  
22 from the witness and their Counsel an on-the-record commitment to  
23 be bound, and (ii) the witness and their Counsel are not permitted to  
24 keep any confidential information unless otherwise agreed by the  
25 Designating Party or ordered by the Court. Pages of transcribed  
26 deposition testimony or exhibits to depositions that reveal Protected  
27 Material may be separately bound by the court reporter and may not  
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1 be disclosed to anyone except as permitted under this Protective  
2 Order; and

3 i. Any mediator or settlement officer, and their supporting  
4 personnel, mutually agreed upon by the Parties engaged in settlement  
5 discussions.

6 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
7 **IN OTHER LITIGATION**

8 A. If a Party is served with a subpoena or a court order issued in other litigation  
9 that compels disclosure of any information or items designated in this Action as  
10 “CONFIDENTIAL,” that Party must:

- 11 1. Promptly notify in writing the Designating Party. Such notification  
12 shall include a copy of the subpoena or court order;
- 13 2. Promptly notify in writing the party who caused the subpoena or order  
14 to issue in the other litigation that some or all of the material covered by the  
15 subpoena or order is subject to this Protective Order. Such notification shall  
16 include a copy of this Protective Order; and
- 17 3. Cooperate with respect to all reasonable procedures sought to be  
18 pursued by the Designating Party whose Protected Material may be affected.

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

1 **X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
2 **PRODUCED IN THIS LITIGATION**

3 A. The terms of this Order are applicable to information produced by a Non-  
4 Party in this Action and designated as “CONFIDENTIAL.” Such information  
5 produced by Non-Parties in this Action is protected by the remedies and relief  
6 provided by this Order. Nothing in these provisions should be construed as  
7 prohibiting a Non-Party from seeking additional protections.

8 B. In the event that a Party is required, by a valid discovery request, to produce  
9 a Non-Party’s confidential information in its possession, and the Party is subject to  
10 an agreement with the Non-Party not to produce the Non-Party’s confidential  
11 information, then the Party shall:

- 12 1. Promptly notify in writing the Requesting Party and the Non-Party  
13 that some or all of the information requested is subject to a confidentiality  
14 agreement with a Non-Party;
- 15 2. Promptly provide the Non-Party with a copy of the Protective Order  
16 in this Action, the relevant discovery request(s), and a reasonably specific  
17 description of the information requested; and
- 18 3. Make the information requested available for inspection by the Non-  
19 Party, if requested.

20 C. If the Non-Party fails to seek a protective order from this court within 14  
21 days of receiving the notice and accompanying information, the Receiving Party  
22 may produce the Non-Party’s confidential information responsive to the discovery  
23 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
24 not produce any information in its possession or control that is subject to the  
25 confidentiality agreement with the Non-Party before a determination by the court.  
26 Absent a court order to the contrary, the Non-Party shall bear the burden and  
27 expense of seeking protection in this court of its Protected Material.  
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1 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
3 Protected Material to any person or in any circumstance not authorized under this  
4 Protective Order, the Receiving Party must immediately (1) notify in writing the  
5 Designating Party of the unauthorized disclosures, (2) use its best efforts to  
6 retrieve all unauthorized copies of the Protected Material, (3) inform the person or  
7 persons to whom unauthorized disclosures were made of all the terms of this  
8 Order, and (4) request such person or persons to execute the “Acknowledgment  
9 and Agreement to be Bound” that is attached as Exhibit A.

10 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
11 **PROTECTED MATERIAL**

12 A. When a Producing Party gives notice to Receiving Parties that certain  
13 inadvertently produced material is subject to a claim of privilege or other  
14 protection, the obligations of the Receiving Parties are those set forth in Federal  
15 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
16 whatever procedure may be established in an e-discovery order that provides for  
17 production without prior privilege review.

18 B. In accordance with Federal Rule of Evidence 502(d) and (e), the Parties  
19 agree to and the Court orders protection of privileged and otherwise protected  
20 documents against claims of waiver (including as against third parties and in other  
21 proceedings) as follows:

22 1. The production of documents by a Producing Party subject to a  
23 legally recognized claim of privilege, including without limitation attorney-  
24 client privilege and the work-product doctrine, to a Receiving Party, does  
25 not constitute the voluntary disclosure of such document.

26 2. The inadvertent production of any documents in this action does not  
27 result in the waiver of any privilege, evidentiary protection, or other  
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1 protection associated with such document as to the Receiving Party or any  
2 third Parties and does not result in any waiver, including subject-matter  
3 waiver, of any kind.

4 Accordingly, by operation of the Parties' agreement and Court order, the Parties  
5 are afforded the protections of Federal Rule of Evidence 502(d) and (e).

6 **XIII. MISCELLANEOUS**

7 A. Right to Further Relief

8 Nothing in this Order abridges the right of any person to seek its  
9 modification by the Court in the future.

10 B. Right to Assert Other Objections

11 By stipulating to the entry of this Protective Order, no Party waives any  
12 right it otherwise would have to object to disclosing or producing any  
13 information or item on any ground not addressed in this Protective Order.  
14 Similarly, no Party waives any right to object on any ground to use in  
15 evidence of any of the material covered by this Protective Order.

16 C. Filing Protected Material

17 A Party that seeks to file under seal any Protected Material must comply  
18 with Civil Local Rule 79-5. Protected Material may be filed under only seal  
19 pursuant to a court order authorizing the sealing of the specific Protected  
20 Material at issue. If a Party's request to file Protected Material under seal is  
21 denied by the Court, then the Receiving Party may file the information in the  
22 public record unless otherwise instructed by the Court.

23 **XIV. FINAL DISPOSITION**

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

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

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20 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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22  
23 Dated: 3/31/21

/S/ CHARLES F. EICK

24 CHARLES F. EICK

25 United States Magistrate Judge  
26  
27  
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

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4  
5 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
6 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read  
7 in its entirety and understand the Protective Order that was issue by the United States  
8 District Court for the Central District of California on \_\_\_\_\_ in the case of  
9 \_\_\_\_\_ . I agree to comply with and to be bound by all the  
10 terms of this Protective Order and I understand and acknowledge that failure to so  
11 comply could expose me to sanctions and punishment in the nature of contempt. I  
12 solemnly promise that I will not disclose in any manner any information or item that is  
13 subject to this Protective Order to any person or entity except in strict compliance with  
14 the provisions of this Order.

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

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

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

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

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