

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

10 1.2 GOOD CAUSE STATEMENT

11 This Action is likely to involve sensitive patent, trade secret, customer, product
12 development, and pricing information, and other valuable research, development,
13 commercial, financial, technical, and/or proprietary information within the meaning of
14 Rule 26(c) of the Federal Rules of Civil Procedure, which must be protected in order to
15 preserve legitimate business interests. Such proprietary materials and information,
16 whether designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY,” under this Order, consist of, among other things, business
18 or financial information, information regarding business practices, or other research,
19 development, or commercial information, information otherwise generally unavailable to
20 the public or that may be privileged or otherwise protected from disclosure under state or
21 federal statutes, court rules, case decisions, or common law.

22 The Parties to this Action were or are competitors, and it is important the Parties
23 are able to produce highly sensitive information on an outside counsel eyes’ only basis in
24 additional to being to produce confidential information, which may be appropriate for
25 access by In-House Counsel to facilitate In-House Counsel’s ability to oversee the
26 developments of this Action. The Parties believe a two-tier protective order balances these
27 competing interests, while protecting the Parties’ confidential and sensitive information
28 that is expected to be produced in this Action.

1 Accordingly, to expedite the flow of information, to facilitate the prompt resolution
2 of disputes over confidentiality of discovery materials, to adequately protect information
3 the Parties are entitled to keep confidential, to ensure the Parties are permitted reasonable
4 necessary uses of such material in preparation for and in the conduct of trial, to address
5 their handling at the end of the litigation, and to serve the ends of justice, a protective
6 order for such information is justified in this Action. It is the intent of the Parties that
7 information will not be designated as “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” for tactical reasons and that nothing
9 will be so designated without a good faith belief it has been maintained in a confidential,
10 non-public manner, and there is good cause why it should not be part of the public record
11 of this Action.

12 2. DEFINITIONS

13 2.1 Action: *Pinkerton Tobacco Co., LP et al., v. Kretek International, Inc. et al.*,
14 2:20-cv-8729-SB-MRWx (C.D. Cal.).

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

17 2.3 “CONFIDENTIAL” Information or Items: any information, document, or
18 thing, or portion of any document or thing, that such Party in good faith believes:
19 (a) contains proprietary business information or technical information or other
20 confidential research, development, or commercial information within the meaning of
21 Federal Rule of Civil Procedure 26(c), (b) contains information received in confidence
22 from Third Parties that contains proprietary business information or technical information
23 relating to trade secrets or other confidential research, development, or commercial
24 information of such Third Parties within the meaning of Federal Rule of Civil Procedure
25 26(c), or (c) is entitled to protection under Federal Rule of Civil Procedure 26(c)(1)(G).

26 2.4 Counsel (without qualifier): Outside Counsel of Record (as well as their
27 support staff) and In-House Counsel.

28 2.5 Designating Party: a Party or Non-Party that designates information or items

1 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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

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

12 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information
13 or Items: material that contains competitive business or financial information, the
14 disclosure of which is highly likely to cause significant harm to an individual or to the
15 business or competitive position of the Designating Party. HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY information and items may include, but are not limited to,
17 sensitive research materials, development and strategic plans, scientific research,
18 customers, pricing and sales information, trade secrets, technical information, technical
19 practices, method, or other know-how, pending but unpublished patent applications,
20 pricing data, financial data, sales information, customer-confidential information,
21 agreements or relationships with Third Parties, market projections or forecasts, strategic
22 business plans, selling or marketing strategies, new product development, testing,
23 manufacturing costs, or information regarding employees. A two-tiered designation
24 system is necessary in this Action because (1) the Parties contemplate allowing In-House
25 Counsel access to certain information and (2) the Parties contemplate production of trade
26 secret information, including, for example, information pertaining to Plaintiffs’ trade
27 secrets related to the method of manufacturing nicotine pouch products.

28 2.9 In-House Counsel: attorneys who are employees of a Party to this Action. In-

1 House Counsel does not include Outside Counsel of Record or any other outside counsel.

2 2.10 Non-Party: any natural person, partnership, corporation, association, or other
3 legal entity not named as a Party to this Action.

4 2.11 Outside Counsel of Record: attorneys who are not employees of a Party to
5 this Action but are retained to represent or advise a Party to this Action and have appeared
6 in this Action on behalf of that Party or are affiliated with a law firm that has appeared on
7 behalf of that Party, and includes support staff.

8 2.12 Party: any party to this Action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their
10 support staffs).

11 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
12 Material in this Action.

13 2.14 Professional Vendors: persons or entities that provide litigation support
14 services (e.g., stenographers, photocopying, videotaping, interpreting and translating,
15 exhibit and demonstrative preparation, and organizing, storing, or retrieving data in any
16 form or medium) and their employees and subcontractors.

17 2.15 Protected Material: any Disclosure or Discovery Material that is designated
18 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
19 ONLY.”

20 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from
21 a Producing Party.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected
24 Material (as defined above), but also (1) any information copied or extracted from
25 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
26 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
27 that might reveal Protected Material. However, the protections conferred by this Order do
28 not cover the following information: (a) any information that is in the public domain at

1 the time of disclosure to a Receiving Party or becomes part of the public domain after its
2 disclosure to a Receiving Party as a result of publication not involving a violation of this
3 Order, including becoming a part of the public record in this Action; and (b) any
4 information known to the Receiving Party prior to the disclosure or obtained by the
5 Receiving Party after the disclosure from a source who obtained the information lawfully
6 and under no obligation of confidentiality to the Designating Party.

7 Any use of Protected Material at trial will be governed by a separate agreement or
8 order. This Order does not govern the use of Protected Material at trial.

9 4. DURATION

10 The terms and conditions of this Order shall govern the handling of documents,
11 depositions, pleadings, exhibits, and all other information exchanged by the Parties in this
12 litigation or provided by or obtained from Non-Parties in this litigation. This Order shall
13 apply regardless of whether such information was produced prior to or after entry of this
14 Order.

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

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 The Producing Party's designation of information as CONFIDENTIAL or HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY means that such Party believes in good
26 faith, upon reasonable inquiry, that the information qualifies as such. Each Party or Non-
27 Party that designates information or items for protection under this Order must take care
28 to limit any such designation to specific material that qualifies under the appropriate

1 standards. The Designating Party must designate for protection only those parts of
2 material, documents, items, or oral or written communications that qualify so that other
3 portions of the material, documents, items, or communications for which protection is not
4 warranted are not swept unjustifiably within the ambit of this Order.

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

9 A Party who has designated information as CONFIDENTIAL or HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY may withdraw the designation by
11 (a) written notification to all Parties in the above-captioned action and (b) reproducing the
12 information with the proper designation (or with no designation).

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this
14 Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that
15 qualifies for protection under this Order must be clearly so designated before the material
16 is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents,
19 excluding transcripts of depositions or other pretrial or trial proceedings), that the
20 Producing Party affix at a minimum, the legend “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains protected
22 material.

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

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

7 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
8 the Designating Party identify on the record, before the close of the deposition, hearing,
9 or other proceeding, all protected testimony and specify the level of protection being
10 asserted. When it is impractical to identify separately each portion of testimony that is
11 entitled to protection and it appears that substantial portions of the testimony may qualify
12 for protection, the Designating Party may invoke on the record a right to have up to 30
13 calendar days to identify the specific portions of the testimony as to which protection is
14 sought and to specify the level of protection being asserted. Only those portions of the
15 testimony that are appropriately designated for protection within 30 calendar days shall be
16 covered by the provisions of this Order. Alternatively, a Designating Party may specify,
17 at the deposition or up to 30 calendar days afterwards if that period is properly invoked,
18 that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

20 The use of a document as an exhibit at a deposition shall not in any way affect its
21 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY.”

23 Transcripts containing Protected Material shall have an obvious legend on the title
24 page that the transcript contains Protected Material, and the title page shall be followed by
25 a list of all pages (including line numbers as appropriate) that have been designated as
26 Protected Material and the level of protection being asserted by the Designating Party. The
27 Designating Party shall inform the court reporter of these requirements. Any transcript
28 that is prepared before the expiration of a 30-day period for designation shall be treated

1 during that period as if it has been designated “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After expiration of
3 that period, the transcript will be treated only as actually designated.

4 (c) for information produced in some form other than documentary and for any
5 other tangible items, that the Producing Party affix in a prominent place on the exterior of
6 the container or containers in which the information is stored the legend
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
8 If only a portion or portions of the information warrants protection, the Producing Party,
9 to the extent practicable, will identify the protected portion(s) and specify the level of
10 protection being asserted.

11 (d) information and documents exchanged in *Certain Nicotine Pouches and*
12 *Components Thereof and Methods of Making the Same*, ITC Investigation No. 337-TA-
13 1192, that were designated “Confidential Business Information - Subject to Protective
14 Order” and transferred to this proceeding under 28 U.S.C. § 1659 shall be treated as
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

16 (e) in the case of interrogatory answers and the information contained therein,
17 designation shall be made by marking the first page and all subsequent pages containing
18 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY
19 information with the appropriate legend.

20 5.3 Inadvertent Failures to Designate. A Producing Party’s failure to designate a
21 document, thing, or testimony as CONFIDENTIAL or HIGHLY CONFIDENTIAL –
22 ATTORNEYS’ EYES ONLY does not constitute forfeiture of a claim of confidentiality
23 as to that material or any other document, thing, or testimony. The Producing Party may
24 subsequently inform the Receiving Party of the CONFIDENTIAL or HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY nature of the disclosed information,
26 and the Receiving Party shall treat the disclosed information as CONFIDENTIAL or
27 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY upon receipt of written
28 notice from the Producing Party. The Receiving Party shall not be held liable to the

1 Producing Party for having previously disclosed such re-designated information, but shall
2 undertake reasonable efforts to ensure that the material is treated in accordance with the
3 provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Nothing in this Order shall prevent a Receiving Party
6 from contending that any or all documents or information designated as CONFIDENTIAL
7 or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY have been improperly
8 designated. A Receiving Party may at any time request that the Producing Party cancel or
9 modify the confidentiality designation with respect to any document or information
10 contained therein.

11 A Party shall not be obligated to challenge the propriety of any CONFIDENTIAL
12 or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY designation at the time
13 made, and a failure to do so shall not preclude a subsequent challenge thereto. The Parties
14 shall use their best efforts to promptly and informally resolve such disputes. If agreement
15 cannot be reached, the Receiving Party may request that the Court revoke or modify the
16 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY
17 designation. The Party or Parties producing the designated documents shall have the
18 burden of establishing that the disputed documents are entitled to the designated treatment.
19 Until such a dispute is resolved, either by the Parties or by direction of the Court, the
20 Receiving Party shall continue to treat the information at issue consistent with its current
21 confidentiality designation under this Order. A Party’s failure to contest a designation of
22 information as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
23 ONLY is not an admission that the information was properly designated as such.

24 6.2 Meet and Confer. The Challenging Party will initiate the dispute resolution
25 process (and, if necessary, file a discovery motion) under Local Rule 37-1 et seq. by
26 providing written notice of each designation it is challenging and describing the basis for
27 each challenge. To avoid ambiguity as to whether a challenge has been made, the written
28 notice must recite that the challenge to confidentiality is being made in accordance with

1 this specific paragraph of the Order. The Parties shall attempt to resolve each challenge in
2 good faith and must begin the process by confirming directly (in voice to voice dialogue;
3 other forms of communication are not sufficient) within 14 calendar days of the date of
4 service of notice. In conferring, the Challenging Party must explain the basis for its belief
5 that the confidentiality designation was not proper and must give the Designating Party an
6 opportunity to review the designated material, to reconsider the circumstances, and, if no
7 change in designation is offered, to explain the basis for the chosen designation. A
8 Challenging Party may proceed to the next stage of the challenge process only if it has
9 engaged in this meet and confer process first or establishes the Designating Party is
10 unwilling to participate in the meet and confer process in a timely manner.

11 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
12 intervention after conducting a meet-and-confer in compliance with Local Rule 37-1, the
13 Parties must submit a joint stipulation setting forth the issues, as required by Local Rule
14 37-2, within 21 calendar days of the initial notice of challenge or within 14 calendar days
15 of the Parties agreeing that the meet-and-confer process will not resolve their dispute,
16 whichever is earlier. Under Local Rule 37-2, each written stipulation must be filed and
17 served with the notice of the motion.

18 The burden of persuasion in any such challenge proceeding will be on the
19 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g. to
20 harass or impose unnecessary expenses and burdens on other Parties) may expose the
21 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
22 confidentiality designation, all Parties will continue to afford the material in question the
23 level of protection to which it is entitled under the Producing Party's designation until the
24 Court rules on the challenge.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Non-Party in connection with this Action
28 only for prosecuting, defending, or attempting to settle this Action. Specifically, all

1 Protected Material shall be used solely for this case or any related appellate proceeding,
2 and not for any other purpose whatsoever, including, for example, but not limited to (a)
3 any business, proprietary, or commercial purpose, (b) any governmental or other legal
4 purpose, including in connection with any other litigation, proceeding, arbitration, or
5 claim, absent the consent of the Producing Party or a court order, (c) use in connection
6 with the prosecution of patent applications, including in connection with the prosecution
7 of patent applications relating to the subject matter of this Action, (d) use in connection
8 with any communications with the U.S. Food and Drug Administration, and/or (e) use in
9 connection with any formulation, scientific research, development, or manufacturing
10 activities concerning the subject matter of this Action.

11 Notwithstanding the foregoing, the Receiving Party's Outside Counsel that is
12 permitted to receive and does receive CONFIDENTIAL or HIGHLY CONFIDENTIAL
13 – ATTORNEYS' EYES ONLY information may be involved in domestic or foreign post-
14 grant patent prosecution (e.g., *inter partes* review, reexamination, nullity proceedings,
15 etc.)

16 Protected Material may be disclosed only to the categories of persons and under the
17 conditions described in this Order. When the Action has been terminated, a Receiving
18 Party must comply with the provisions of Section 13, below. It is, however, understood
19 that Counsel for a Party may give advice and opinions to his or her client solely relating
20 to the above-captioned action and any appeal therefrom based on his or her evaluation of
21 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
22 material, provided such advice and opinions shall not reveal the content of such Protected
23 Material, except by prior written agreement of Counsel for the Parties or by Order of the
24 Court. Nothing in this Discovery Confidentiality Order precludes a Producing Party from
25 using or disseminating its own Protected Material.

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

1 Nothing in this Order shall prevent a Party or Third Party from redacting from
2 documents or things, which otherwise contain relevant, discoverable information, any
3 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY
4 information that is irrelevant to this litigation or otherwise not discoverable pursuant to
5 FEDERAL RULE OF CIVIL PROCEDURE 26(b). Further, nothing in this Order shall
6 prevent a Party or Third Party from redacting from documents or things any information
7 that is protected under The Health Insurance Portability and Accountability Act of 1996
8 (HIPAA).

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
10 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party
11 may disclose any information or item designated “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
13 support staff of said Outside Counsel of Record to whom it is reasonably necessary to
14 disclose the information for this Action;

15 (b) Experts (as defined in this Order) of the Receiving Party, as well as the
16 Expert’s staff, (1) to whom it is reasonably necessary to disclose the information for this
17 Action, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
18 A), and (3) to whom the procedure set forth in Section 7.4(a), below, have been followed;

19 (c) the Court and its personnel;

20 (d) court reporters and their staff;

21 (e) professional jury or trial consultants, mock jurors, and Professional Vendors
22 to whom disclosure is reasonably necessary for this Action and who have signed the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A), but no CONFIDENTIAL
24 or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY information shall be
25 permitted to remain in the possession of any mock juror;

26 (f) the author or recipient of a document containing the information or a
27 custodian or other person who otherwise possessed or knew the information.

28 (g) any deponent, during the course of preparing for a deposition or testimony,

1 or during the course of a deposition or testimony, may be shown or examined on any
2 information, document, or thing designated “CONFIDENTIAL” if it appears the witness
3 authored or received a copy of it in the ordinary course of business, was involved in the
4 subject matter described therein or is employed by the Producing Party, or if the Producing
5 Party consents to such disclosure. A deponent who is an officer, director, employee, or
6 witness designated pursuant to Federal Rule of Civil Procedure 30(b)(6) of a
7 Producing Party may be shown “CONFIDENTIAL” material of the Producing Party
8 of which he or she is an officer, director, employee, or witness designated pursuant to
9 Federal Rule of Civil Procedure 30(b)(6); and

10 (h) any mediator or settlement officer, and their supporting personnel,
11 mutually agreed upon by any of the Parties engaged in settlement discussions and who
12 has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

13 (i) any other person with the prior written consent of the Producing Party.

14 (j) up to two designated In-House Counsel of the Receiving Party who either
15 have responsibility for making decisions dealing directly with the litigation of this Action,
16 or who are assisting outside counsel in the litigation of this Action, and to whom the
17 procedures set forth in Section 7.4(b), below, have been followed. Confidential
18 information may be disclosed to In-House Counsel for the sole purpose of assisting in this
19 Action.

20 It is expressly understood between the Parties that the number of such persons may
21 be increased by unanimous, written agreement of the Parties to this Action without leave
22 of the Court, or upon a showing, subject to the approval of the Court, by either Party that
23 such modification is necessary. It is further agreed that a Party may make a substitution
24 for any such persons upon a showing of good cause, and any other Party shall have five
25 (5) business days to object. No Party shall be allowed to use the right of substitution to
26 circumvent the limits on the number of In-House Counsel allowed to receive
27 CONFIDENTIAL information. The burden of proof shall rest on the objecting Party.

28 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

1 Information or Items. Unless otherwise ordered by the Court or permitted in writing by
2 the Designating Party, a Receiving Party may disclose any information or item designated
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

7 (b) Experts (as defined in this Order) of the Receiving Party (1) to whom
8 disclosure is reasonably necessary for this Action, (2) who are not employed by,
9 consultants to, or otherwise affiliated with a Party (except solely as experts (consulting or
10 testifying) in connection with this, or other, litigation), (3) who have signed the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) to whom the
12 procedure set forth in Section 7.4(a), below, have been followed;

13 (c) the Court and its personnel;

14 (d) court reporters and their staff;

15 (e) professional jury or trial consultants, mock jurors, and Professional Vendors
16 to whom disclosure is reasonably necessary for this Action and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A), but no CONFIDENTIAL
18 or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY information shall be
19 permitted to remain in the possession of any mock juror;

20 (f) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possess or knew the information;

22 (g) any deponent, during the course of preparing for a deposition or testimony,
23 or during the course of a deposition or testimony, may be shown or examined on any
24 information, document, or thing designated “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY” if it appears the witness authored or received a copy of it
26 in the ordinary course of business, was involved in the subject matter described therein or
27 is employed by the Producing Party, or if the Producing Party consents to such disclosure.
28 A deponent who is an officer, director, employee, or witness designated pursuant to

1 Federal Rule of Civil Procedure 30(b)(6) of a Producing Party may be shown “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material of the Producing Party of
3 which he or she is an officer, director, employee, or witness designated pursuant to Federal
4 Rule of Civil Procedure 30(b)(6);

5 (h) any mediator or settlement officer, and their supporting personnel,
6 mutually agreed upon by any of the Parties engaged in settlement discussions and who
7 has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

8 (i) any other person with the prior written consent of the Producing Party.

9 7.4 Procedures for Approving or Objecting to Disclosure of “CONFIDENTIAL”
10 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to
11 Experts or In-House Counsel.

12 (a) Unless otherwise ordered by the Court or otherwise agreed to in writing by
13 the Designating Party, a Party that seeks to disclose to an Expert information that has been
14 designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
15 ONLY” must first make a written request to the Designating Party that (1) sets forth the
16 full name of the Expert, (2) attaches a copy of the Expert’s current resume, (3) identifies
17 the Expert’s current employer(s), (4) identifies (by name and location of court) any
18 litigation in connection with which the Expert has offered testimony, including through a
19 declaration, report, or testimony at a deposition or trial, during the preceding four years,
20 including identification of the parties represented in each case, and (5) any previous or
21 current relationship with any of the parties (excluding confidential non-testifying litigation
22 consulting, the existence of which is protected by attorney work product immunity);

23 (b) Unless otherwise ordered by the Court or otherwise agreed to in writing by
24 the Designating Party, a Party that seeks to disclose to an In-House Counsel information
25 that has been designated “CONFIDENTIAL” must first make a written request to the
26 Designating Party that (1) sets forth the full name of the In-House Counsel, (2) identifies
27 the In-House Counsel’s job title and provides a general description of the In-House
28 Counsel’s duties, (3) provides a list of the In-House Counsel’s employers for the last ten

1 (10) years, and (4) attaches a copy of the signed “Acknowledgment and Agreement to Be
2 Bound” (Exhibit A);

3 (c) A Party that makes a request and provides the information specified in
4 Section 7.4(a) and/or 7.4(b) may disclose the Protected Material to the identified Expert
5 or In-House Counsel unless, within ten (10) calendar days of delivering the request, the
6 Party receives a written objection from the Designating Party. Any such objection must
7 set forth in detail the grounds on which it is based.

8 (d) A Party that receives a timely written objection shall respond in writing to
9 such objection within ten (10) calendar days, and shall state with particularity the grounds
10 for designating the individual. If no timely written response is made to the objection, the
11 challenged designation will be deemed to be void. If the Designating Party or Third Party
12 makes a timely response to such objection, Counsel shall meet and confer with the
13 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
14 agreement within seven calendar days of the written objection. If no agreement is reached,
15 the Party seeking to make the disclosure to the Expert or In-House Counsel may file a
16 motion as provided by Local Rule 7 seeking permission from the Court to do so. Protected
17 Material may not be disclosed to the Expert or In-House Counsel until the dispute is
18 resolved.

19 In any such proceeding, the Party opposing the disclosure shall bear the burden of
20 proving the risk of harm that the disclosure would entail outweighs the Receiving Party’s
21 need to disclose the Protected Material to its Expert or In-House Counsel.

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

24 If a Party is served with a subpoena or a court order issued in other litigation that
25 compels disclosure of any information or items designated in this Action as
26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”
27 that Party must:

28 (a) promptly notify in writing the Designating Party. Such notification will

1 include a copy of the subpoena or court order;

2 (b) promptly notify in writing the entity who caused the subpoena or order to
3 issue in the other litigation that some or all of the material covered by the subpoena or
4 order is subject to this Protective Order. Such notification will include a copy of this
5 Stipulated Protective Order; and

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

8 If the Designating Party seeks a protective order within 30 business days of
9 receiving written notice, the Party served with the subpoena or court order will not produce
10 any information designated in this Action as “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court
12 from which the subpoena or order issued, unless the Party has obtained the Designating
13 Party’s permission. The Designating Party will bear the burden and expense of seeking
14 protection in that court of its confidential material. If the Designating Party does not move
15 for a protective order within 30 business days of receiving written notice, the Party served
16 with the subpoena or court order may produce the requested material.

17 Nothing in these provisions should be construed as authorizing or encouraging a
18 Receiving Party in this Action to disobey a lawful directive from another court.

19 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
20 THIS ACTION

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

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

1 agreement with the Non-Party not to produce the Non-Party's confidential information,
2 while complying with any other Notice obligations that may apply, then the Party will:

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

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

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

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

19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
21 Protected Material to any person or in any circumstance not authorized under this
22 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
23 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
24 unauthorized copies of the Protected Material and ensure that no further or greater
25 unauthorized disclosure and/or use thereof occurs, (c) inform the person or persons to
26 whom unauthorized disclosures were made of all of the terms of this Order, and (d) request
27 such person(s) to execute the "Acknowledgment and Agreement to Be Bound" that is
28 attached hereto as Exhibit A.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 To the extent consistent with applicable law, the inadvertent or unintentional
4 disclosure of Protected Material that should have been designated as such, regardless of
5 whether the material was so designated at the time of disclosure, shall not be deemed a
6 waiver in whole or in part of a Party's claim of confidentiality, either as to the specific
7 material or as to any other material or information concerning the same or related subject
8 matter. Such inadvertent or unintentional disclosure may be rectified by notifying in
9 writing Counsel for all Parties to whom the material was disclosed that the material should
10 have been designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
11 ATTORNEYS' EYES ONLY" within a reasonable time after disclosure. Such notice shall
12 constitute a designation of the information, document, or thing as "CONFIDENTIAL" or
13 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" under this Order.

14 The inadvertent production of documents subject to attorney-client privilege or
15 work product immunity will not waive attorney-client privilege or work product
16 immunity. In addition, the fact a document was inadvertently produced shall not be used
17 in any manner as evidence in support of any such alleged waiver of attorney-client
18 privilege or work product immunity.

19 If a Party has inadvertently produced a document it believes in good-faith is subject
20 to a claim of attorney-client privilege or work product immunity, the Producing Party shall
21 make a representation in writing that such documents may be subject to the attorney-client
22 privilege or work product doctrine. Any such claim by the Producing Party shall be made
23 with sufficient information to meet the requirements of Federal Rule of Civil Procedure
24 26(b)(5)(A), including the information subject to the claim, the author, date, address of
25 recipient of the document (if applicable), the claim of privilege or protection being
26 asserted, and the basis for that claim of privilege or protection. If a Party has inadvertently
27 produced a document subject to a claim of attorney-client privilege or work product
28 immunity, upon request, the document and all copies thereof shall be destroyed or returned

1 promptly, and in no event later than five calendar days after a request is made by the
2 Producing Party in accordance with Rule 26(b)(5)(B). Moreover, any notes or summaries,
3 other than those expressly permitted under this section, referring to or relating to any such
4 inadvertently produced document subject to a claim of attorney-client privilege or work
5 product immunity shall be destroyed. Nothing herein shall prevent the Receiving Party
6 from preparing a record for its own use containing the date, author, address(es), and such
7 other information as is reasonably necessary to identify the document and generally
8 describe its nature to the Court in any motion to compel production of the document. Such
9 a record of the identity and nature of the document may not be used for any purpose other
10 than for preparing and supporting a motion to compel production of that document in this
11 Action. After the return of the document(s), the Receiving Party may challenge the
12 Producing Party's claim(s) of attorney-client privilege or work product immunity by
13 making a motion to the Court.

14 Nothing in this Order shall require disclosure of material that a Party contends is
15 protected from disclosure by attorney-client privilege, attorney work-product immunity,
16 or any other applicable form of immunity. This shall not preclude any Party from moving
17 the Court for an order to disclose such material.

18 12. MISCELLANEOUS

19 12.1 Unique Identifier. To avoid any confusion and ensure there is no inadvertent
20 use of CONFIDENTIAL information or HIGHLY CONFIDENTIAL – ATTORNEYS'
21 EYES ONLY information produced in this Action in any related action, the Parties agree
22 to use a unique Bates stamp (e.g., "-TS") for documents produced in this Action so that
23 they can be readily identified and distinguished from documents production in any related
24 action.

25 12.2 Potential Consolidation or Coordination. In the event that this Action is
26 consolidated or coordinated with any other actions, including, but not limited to, *Pinkerton*
27 *Tobacco Co., LP et al., v. The Art Factory AB et al.*, 2:20-cv-1322-SB-MRWx (C.D. Cal.)
28 and/or *Modoral Brands Inc. v. Swedish Match North America LLC et al.*, 2:21-cv-05013-

1 SB-MRWx (C.D. Cal.), the Parties agree to meet and confer to discuss any modifications
2 to the protective order that might be needed. The Parties will not disclose
3 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY
4 information produced, served, or filed in this Action to any other parties involved in the
5 consolidated or coordinated action(s) or that may become involved in this Action as a
6 result of consolidation or coordination until any necessary modifications to the protective
7 order in this Action and the protective order(s) in the consolidated or coordinated action(s)
8 have been made.

9 12.3 Discovery Rules Remain Unchanged. Nothing herein shall alter or change
10 in any way the discovery provisions of the FEDERAL RULES OF CIVIL PROCEDURE,
11 the Local Rules of Civil Practice and Procedure of the United States District Court for the
12 Central District of California, or the Court’s Scheduling Order. Identification of any
13 individual pursuant to this Order does not make that individual available for deposition or
14 any other form of discovery outside of the restrictions and procedures of the FEDERAL
15 RULES OF CIVIL PROCEDURE, the Local Rules of Civil Practice and Procedure of the
16 United States District Court for the Central District of California, or the Court’s
17 Scheduling Order. Nothing in this Order shall be construed to require a party to produce
18 or disclose information not otherwise required to be produced under the applicable rules
19 or orders of this Court.

20 12.4 Right to Further Relief. Nothing in this Order abridges the right of any person
21 to seek its modification by the Court in the future.

22 12.5 Right to Assert Other Objections. By stipulating to the entry of this Protective
23 Order, no Party waives any right it otherwise would have to object to disclosing or
24 producing any information or item on any ground not addressed in this Stipulated
25 Protective Order. Similarly, no Party waives any right to object on any ground to use in
26 evidence of any of the material covered by this Protective Order. Nothing in this Order
27 shall be deemed to bar or preclude any producing Party from seeking such additional
28

1 protection, including, without limitation, an order that certain information may not be
2 discovered at all.

3 12.6 Filing Protected Material. Without written permission from the Designating
4 Party or a court order secured after appropriate notice to all interested persons, a Party
5 may not file in the public record in this Action any Protected Material. In order to file
6 Protected Material, Parties must do one of the following: (1) with the consent of the
7 Designating Party, file only a redacted copy of the Protected Material; (2) where
8 appropriate (e.g., in connection with discovery and evidentiary motions) provide the
9 Protected Material solely for *in camera* review; or (3) file such Protected Material under
10 seal with the Court consistent with the sealing requirements set forth in Local Rule 79-5.
11 If the Party's request to file Protected Material under seal is denied by the Court with
12 prejudice, then the Receiving Party may file the information in the public record unless
13 otherwise instructed by the Court.

14 If a Party files Protected Material without a motion to seal, the Designating Party or
15 any Party to this action may move that the Court place the designated materials under seal.
16 The Clerk of the Court is directed to comply with any such request until such time as the
17 motion is decided.

18 12.7 Entering into, producing and/or receiving CONFIDENTIAL information or
19 HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY information or otherwise
20 complying with the terms of this Order shall not:

21 (a) operate as an admission by any Party that any material designated as
22 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY
23 contains or reflects trade secrets or any other type of confidential or proprietary
24 information entitled to protection under applicable law;

25 (b) prejudice in any way the rights of any Party to object to the production of
26 documents, electronically stored information and things it considers not subject to
27 discovery, or operate as an admission by any Party that the restrictions and procedures set
28 forth herein constitute adequate protection for any particular information deemed by any

1 Party to be CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY information;

3 (c) prejudice in any way the rights of any Party to object to the authenticity or
4 admissibility into evidence of any document, testimony or the evidence subject to this
5 Order;

6 (d) prejudice in any way the rights of any Party to seek a determination by the
7 Court whether any discovery material or designated material should be subject to the terms
8 of this Order;

9 (e) prejudice in any way the rights of any Party to petition the Court for a further
10 protective order related to any purportedly CONFIDENTIAL or HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY information;

12 (f) prejudice in any way the rights of any Party to petition the Court for
13 permission to disclose or use particular CONFIDENTIAL or HIGHLY CONFIDENTIAL
14 – ATTORNEYS’ EYES ONLY information more broadly than would otherwise be
15 permitted by the terms of this Order; or

16 (g) prevent any Party from agreeing to alter or waive the provisions or
17 protections provided for herein with respect to any particular discovery material
18 designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
19 ONLY information by that Party.

20 13. FINAL DISPOSITION

21 Within 60 calendar days of termination of the Action, as defined in Section 4, each
22 Receiving Party must return all Protected Material to the Producing Party or destroy such
23 material. As used in this subdivision, “all Protected Material” includes all copies,
24 abstracts, compilations, summaries, and any other format reproducing or capturing any of
25 the Protected Material. Whether the Protected Material is returned or destroyed, the
26 Receiving Party must submit a written certification to the Producing Party (and, if not the
27 same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies
28 (by category, where appropriate) all Protected Material that was returned or destroyed and

1 (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations,
2 summaries, or any other format reproducing or capturing any of the Protected Material.

3 Notwithstanding this provision, Counsel are entitled to retain, for archival purposes,
4 subject to the provisions of this Order, complete copies of, and copies of all exhibits to,
5 all transcripts, pleading papers filed with the Court, motions and any responses and replies,
6 expert reports, discovery requests and responses, correspondence, and their own work
7 product, and consultant and expert work product, even if such materials contain Protected
8 Material. Any such archival copies that contain or constitute Protected Material remain
9 subject to this Protective Order as set forth in Section 4.

10 To the extent a Party requests the return of Protected Material from the Court after
11 the termination of the Action, the Party shall file a motion seeking such relief.

12 14. VIOLATION

13 Any willful violation of this Order may be punished by civil or criminal contempt
14 proceedings, financial or evidentiary sanctions, reference to disciplinary authorities, or
15 other appropriate action at the discretion of the Court.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 Dated: July 16, 2021

CLARK HILL LLP

18 By: /s/ Donald L. Ridge
19 Donald L. Ridge

20 Attorneys for Plaintiffs
21 Pinkerton Tobacco Co., LP, Swedish Match North
22 America LLC, and NYZ AB

23 Dated: July 16, 2021

GREENBERG TRAUERIG, LLP

24 By: /s/ David S. Bloch
25 David S. Bloch

26 Attorneys for Defendants
27 Kretek International, Inc. and Dryft Sciences,
28 LLC

SIGNATURE ATTESTATION PURSUANT TO L.R. 5-4.3.4(a)(2)(i)

Pursuant to Local Civil Rule 5-4.3.4(a)(2)(i), I hereby attest that the other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized this filing.

Dated: July 16, 2021

CLARK HILL LLP

By: /s/ Donald L. Ridge
Donald L. Ridge

IT IS SO ORDERED.

Dated: July 19, 2021



HONORABLE MICHAEL R. WILNER
UNITED STATES MAGISTRATE JUDGE

Presented by:

/s/ Donald L. Ridge

Donald L. Ridge

Attorneys for Plaintiffs
Pinkerton Tobacco Co., LP,
Swedish Match North America LLC,
and NYZ AB

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3
4 I, _____ [**full name**], of _____ [**full**
5 **address**], declare under penalty of perjury that I have read in its entirety and understand
6 the 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 _____ [**insert case**
8 **name and number**]. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply
10 could expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is subject to
12 this Stipulated Protective Order to any person or entity except in strict compliance with
13 the 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 _____ [**full name**] of
18 _____ [**full address and telephone number**]
19 as my California agent for service of process in connection with this action or any
20 proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where signed: _____

24 Printed name: _____

26 Signature: _____