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8 CORP., MASAI MARKETING & TRADING AG

9

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE

12

13 ROBIN BERKOFF, on behalf of  
14 herself, and all others similarly  
situated, and the general public,

15 Plaintiff,

16 v.

17 MASAI USA CORP. d/b/a MBT  
18 MASAI USA CORP., MASAI  
MARKETING & TRADING AG, and  
19 DOES 1-100, Inclusive,

20 Defendants.

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Case No. EDCV 10-00969 VAP (OPx)

CLASS ACTION

~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER

Discovery Matter: Assigned to the  
Honorable Oswald Parada

1 **I. PURPOSES AND LIMITATIONS**

2 Defendants Masai USA Corp. (“Masai USA”) and Masai Marketing &  
3 Trading AG (“Masai M&T”) (together, “Masai” or “Defendants”), assert that  
4 disclosure and discovery proceedings in the above-captioned action are likely to  
5 involve production of confidential, proprietary, and private information for which  
6 special protection from public disclosure and from use for any purpose other than  
7 prosecuting this litigation may be warranted. Plaintiff Robin Berkoff does not  
8 challenge this assertion at this time. Accordingly, the parties hereby stipulate to  
9 and petition the Court to enter the following Stipulated Protective Order. The  
10 parties acknowledge that this Order does not confer blanket protections on all  
11 disclosures or responses to discovery and that the protection it affords from public  
12 disclosure and use extends only to the limited information or items that are entitled  
13 to confidential treatment under the applicable legal principles. The parties further  
14 acknowledge, as set forth in Section XIII.C, below, that this Stipulated Protective  
15 Order does not entitle them to file confidential information under seal; Civil Local  
16 Rule 79-5.1 and the Standing Order of Judge Virginia A. Phillips (“Standing  
17 Order”) sets forth the procedures that must be followed and the standards that will  
18 be applied when a party seeks permission from the Court to file material under seal.

19 **II. GOOD CAUSE STATEMENT**

20 Defendants believe that good cause exists to enter this Stipulated Protective  
21 Order in order to protect confidential information from public disclosure. That  
22 confidential information includes information and data that could be used by actual  
23 or potential competitors to gain an improper and unlawful competitive advantage in  
24 the marketplace. For example, confidential information relevant to this action may  
25 include, among other things, scientific studies and analyses concerning the  
26 effectiveness of MBTs, Masai footwear; internal research and development  
27 regarding MBTs; details of Masai’s development and manufacturing of its  
28 footwear; and sensitive pricing information, none of which is available to the

1 general public, including Masai’s competitors. This Stipulated Protective Order is  
2 necessary to prevent harm to Defendants that will result if Masai’s competitors in  
3 this sector of the footwear market gain access to Masai’s confidential, non-public  
4 information. Plaintiff Robin Berkoff does not challenge these assertions at this  
5 time. The Parties have attempted to draft this Stipulated Protective Order narrowly  
6 and in a manner no more restrictive than necessary to protect confidential  
7 information from public disclosure.

### 8 **III. DEFINITIONS**

9 **A.** Challenging Party: a Party or Non-Party that challenges the  
10 designation of information or items under this Order.

11 **B.** “CONFIDENTIAL” Information or Items: information (regardless of  
12 how it is generated, stored or maintained) or tangible things that qualify for  
13 protection under Federal Rule of Civil Procedure 26(c), including but not limited to  
14 confidential trade secrets, research, design, development, financial, technical,  
15 marketing, planning, personal, or commercial information, as such terms are used in  
16 Rule 26(c)(1)(G) and California Civil Code section 3426.1 and any applicable case  
17 law interpreting the same (or their predecessors).

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

21 **D.** Disclosure or Discovery Material: all items or information, regardless  
22 of the medium or manner in which it is generated, stored, or maintained (including,  
23 among other things, testimony, transcripts, and tangible things), that are produced  
24 or generated in disclosures or responses to discovery in this matter.

25 **E.** Expert: a person with specialized knowledge or experience in a matter  
26 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
27 an expert witness or as a consultant in this action.

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

3           **G.**    Counsel of Record: attorneys who are not employees of a party to this  
4 action but are retained to represent or advise a party to this action and have  
5 appeared in this action on behalf of that party or are affiliated with a law firm which  
6 has appeared on behalf of that party.

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

10          **I.**    Producing Party: a Party or Non-Party that produces Disclosure or  
11 Discovery Material in this action.

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

16          **K.**    Protected Material: any Disclosure or Discovery Material that is  
17 designated as "CONFIDENTIAL."

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

20    **IV.   SCOPE**

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

1 domain after its disclosure to a Receiving Party as a result of publication not  
2 involving a violation of this Stipulated Protective Order, including becoming part of  
3 the public record through trial or otherwise; and (b) any information known to the  
4 Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
5 disclosure from a source who obtained the information lawfully and under no  
6 obligation of confidentiality to the Designating Party. Any use of Protected  
7 Material at trial shall be governed by a separate agreement or order.

8 **V. DURATION**

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

17 **VI. DESIGNATING PROTECTED MATERIAL**

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

19 Each Party or Non-Party that designates information or items for protection under  
20 this Order must take care to limit any such designation to specific material that  
21 qualifies under the appropriate standards. The Designating Party must designate for  
22 protection only those parts of material, documents, items, or oral or written  
23 communications that qualify—so that other portions of the material, documents,  
24 items, or communications for which protection is not warranted are not swept  
25 unjustifiably within the ambit of this Stipulated Protective Order. Mass,  
26 indiscriminate, or routinized designations are prohibited. If it comes to a  
27 Designating Party’s attention that information or items that it designated for  
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1 protection do not qualify for protection, that Designating Party must promptly  
2 notify every other Party that it is withdrawing the mistaken designation.

3 **B. Manner and Timing of Designations.** Except as otherwise provided in  
4 this Order (*see, e.g.*, second paragraph of section VI.B.1 below), or as otherwise  
5 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
6 under this Order must be clearly so designated before the material is disclosed or  
7 produced.

8 Designation in conformity with this Order requires:

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

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

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1                   2.     For testimony given in deposition or in other pretrial  
2 proceedings, that the Designating Party identify on the record, before the close of  
3 the deposition, hearing, or other proceeding, all protected testimony.

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

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

16 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17           A.     Timing of Challenges. Any Party may challenge a designation of  
18 confidentiality at any time. A Party does not waive its right to challenge a  
19 confidentiality designation by electing not to mount a challenge promptly after the  
20 original designation is disclosed.

21           B.     Meet and Confer. The Challenging Party shall initiate the dispute  
22 resolution process by providing written notice of each designation it is challenging  
23 and describing the basis for each challenge. To avoid ambiguity as to whether a  
24 challenge has been made, the written notice must recite that the challenge to  
25 confidentiality is being made in accordance with this specific paragraph of the  
26 Protective Order. The parties shall attempt to resolve each challenge in good faith  
27 and must begin the process by conferring directly (in voice to voice dialogue; other  
28 forms of communication are not sufficient) within 14 days of the date of service of

1 notice. In conferring, the Challenging Party must explain the basis for its belief that  
2 the confidentiality designation was not proper and must give the Designating Party  
3 an opportunity to review the designated material, to reconsider the circumstances,  
4 and, if no change in designation is offered, to explain the basis for the chosen  
5 designation. A Challenging Party may proceed to the next stage of the challenge  
6 process only if it has engaged in this meet and confer process first or establishes  
7 that the Designating Party is unwilling to participate in the meet and confer process  
8 in a timely manner.

9 C. Judicial Intervention. If the Parties cannot resolve a challenge without  
10 court intervention, the Designating Party shall file and serve a motion to retain  
11 confidentiality within 21 days of the initial notice of challenge or within 14 days of  
12 the parties agreeing that the meet and confer process will not resolve their dispute,  
13 whichever is earlier. Each such motion must be accompanied by a competent  
14 declaration affirming that the movant has complied with the meet and confer  
15 requirements imposed in the preceding paragraph. Failure by the Designating Party  
16 to make such a motion including the required declaration within 21 days (or 14  
17 days, if applicable) shall automatically waive the confidentiality designation for  
18 each challenged designation. In addition, the Challenging Party may file a motion  
19 challenging a confidentiality designation at any time if there is good cause for doing  
20 so, including a challenge to the designation of a deposition transcript or any  
21 portions thereof. Any motion brought pursuant to this provision must be  
22 accompanied by a competent declaration affirming that the movant has complied  
23 with the meet and confer requirements imposed by the preceding paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on the  
25 Designating Party. Unless the Designating Party has waived the confidentiality  
26 designation by failing to file a motion to retain confidentiality as described above,  
27 all parties shall continue to afford the material in question the level of protection to  
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1 which it is entitled under the Producing Party's designation until the Court rules on  
2 the challenge.

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

4 **A. Basic Principles.** A Designating Party may use its own Protected  
5 Material for any purpose. A Receiving Party may use Protected Material that is  
6 disclosed or produced by another Party or by a Non-Party in connection with this  
7 case only for prosecuting (including on appeal), defending, or attempting to settle  
8 this litigation. Such Protected Material may be disclosed only to the categories of  
9 persons and under the conditions described in this Order. When the litigation has  
10 been terminated, a Receiving Party must comply with the provisions of Section  
11 XIV below (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a  
13 location and in a secure manner reasonably calculated to ensure that access is  
14 limited to the persons authorized under this Order.

15 **B. Disclosure of "CONFIDENTIAL" Information or Items.** Unless  
16 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
17 Receiving Party may disclose any information or item designated  
18 "CONFIDENTIAL" only to:

19 **1.** the Receiving Party's Counsel of Record in this action, as well  
20 as agents and employees of said Counsel of Record to whom it is reasonably  
21 necessary to disclose the information for this litigation;

22 **2.** the officers, directors, employees and agents of the Receiving  
23 Party to whom disclosure is reasonably necessary for this litigation and who have  
24 signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto  
25 as Exhibit A;

26 **3.** Experts (as defined in this Order) of the Receiving Party to  
27 whom disclosure is reasonably necessary for this litigation and who have signed the  
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

1           4.     the Court and its personnel, who need not sign the  
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3           5.     court reporters and their staff, professional jury or trial  
4 consultants, mock jurors, and Professional Vendors to whom disclosure is  
5 reasonably necessary for this litigation and who have signed the “Acknowledgment  
6 and Agreement to Be Bound” (Exhibit A);

7           6.     during their depositions, witnesses in the action to whom  
8 disclosure is reasonably necessary. Pages of transcribed deposition testimony or  
9 exhibits to depositions that reveal Protected Material must be separately bound by  
10 the court reporter and may not be disclosed to anyone except as permitted under  
11 this Stipulated Protective Order.

12           7.     the author or recipient of a document containing the information  
13 or a custodian or other person who otherwise possessed or knew the information.

14 **IX.   PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
15 **PRODUCED IN OTHER LITIGATION**

16           If a Party is served with a subpoena or a court order issued in other litigation  
17 that compels disclosure of any information or items designated in this action as  
18 “CONFIDENTIAL,” that Party must:

19           A.     promptly notify in writing the Designating Party. Such notification  
20 shall include a copy of the subpoena or court order;

21           B.     promptly notify in writing the party who caused the subpoena or order  
22 to issue in the other litigation that some or all of the material covered by the  
23 subpoena or order is subject to this Protective Order. Such notification shall  
24 include a copy of this Stipulated Protective Order; and

25           C.     cooperate with respect to all reasonable procedures to preserve the  
26 confidentiality of the Protected Material sought to be pursued by the Designating  
27 Party whose Protected Material may be affected.

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1 If the Designating Party timely seeks a protective order, the Party served with  
2 the subpoena or court order shall not produce any information designated in this  
3 action as "CONFIDENTIAL" before a determination by the Court from which the  
4 subpoena or order issued, unless the Party has obtained the Designating Party's  
5 permission. The Designating Party shall bear the burden and expense of seeking  
6 protection in that Court of its confidential material. Nothing in this Stipulated  
7 Protective Order shall be construed as authorizing, requiring or encouraging a Party  
8 or Non-Party to disobey a lawful subpoena issued in another action or order from  
9 another court.

10 **X. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**  
11 **PRODUCED IN THIS LITIGATION**

12 **A.** The terms of this Order are applicable to information produced by a  
13 Non-Party in this action and designated as "CONFIDENTIAL." Such information  
14 produced by Non-Parties in connection with this litigation is protected by the  
15 remedies and relief provided by this Order. Nothing in these provisions should be  
16 construed as 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 confidentiality  
23 agreement with a Non-Party;
- 24 2. promptly provide the Non-Party with a copy of the Stipulated  
25 Protective Order in this litigation, the relevant discovery request(s), and a  
26 reasonably specific description of the information requested; and
- 27 3. make the information requested available for inspection by the  
28 Non-Party.

1           C.     If the Non-Party fails to object or seek a protective order from this  
2 Court within 7 days of receiving the notice and accompanying information, the  
3 Receiving Party may produce the Non-Party’s confidential information responsive  
4 to the discovery request. If the Non-Party timely objects or seeks a protective  
5 order, the Receiving Party shall not produce any information in its possession or  
6 control that is subject to the confidentiality agreement with the Non-Party before a  
7 determination by the Court.<sup>1</sup> Absent a court order to the contrary, the Non-Party  
8 shall bear the burden and expense of seeking protection in this Court of its  
9 Protected Material.

10           **XI.   UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

19           **XII.  INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
20           **PROTECTED MATERIAL**

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

27           <sup>1</sup> The purpose of this provision is to alert the interested parties to the  
28 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 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of  
2 disclosure of a communication or information covered by the attorney-client  
3 privilege or work product protection, the parties may incorporate their agreement in  
4 the Stipulated Protective Order submitted to the Court.

### 5 **XIII. MISCELLANEOUS**

6 **A. Right to Further Relief.** Nothing in this Stipulated Protective Order  
7 abridges the right of any person to seek its modification by the Court in the future.

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

14 **C. Filing Protected Material.** Without written permission from the  
15 Designating Party or a court order secured after appropriate notice to all interested  
16 persons, a Party may not file in the public record in this action any Protected  
17 Material. A Party that seeks to file under seal any Protected Material must comply  
18 with Civil Local Rule 79-5.1 and the Standing Order. Protected Material may only  
19 be filed under seal pursuant to a court order authorizing the sealing of the specific  
20 Protected Material at issue. If a Receiving Party's request to file Protected Material  
21 under seal is denied by the Court, then the Receiving Party may file the information  
22 in the public record unless otherwise instructed by the Court.

### 23 **XIV. FINAL DISPOSITION**

24 Within 60 days after the Final Disposition of this action, as defined above,  
25 each Receiving Party must return all Protected Material to the Producing Party or  
26 destroy such material. As used in this subdivision, "all Protected Material"  
27 includes all copies, abstracts, compilations, summaries, and any other format  
28 reproducing or capturing any of the Protected Material. Whether the Protected



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**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

DATED: 11/30/11



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OSWALD PARADA  
UNITED STATES  
MAGISTRATE JUDGE

**EXHIBIT "A"**



1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE  
3

4 ROBIN BERKOFF, on behalf of  
5 herself, and all others similarly  
6 situated, and the general public,

6 Plaintiff,

7 v.

8 MASAI USA CORP. d/b/a MBT  
9 MASAI USA CORP., MASAI  
10 MARKETING & TRADING AG, and  
11 DOES 1-100, Inclusive,

10 Defendants.

Case No. EDCV 10-00969 VAP (OPx)

CLASS ACTION

**ACKNOWLEDGMENT AND  
AGREEMENT TO BE BOUND BY  
STIPULATED PROTECTIVE  
ORDER**

12  
13 I have reviewed the Stipulated Protective Order in the above-captioned  
14 action. I understand its terms and agree to be fully bound by them and hereby  
15 submit to the jurisdiction of the United States District Court for the Central District  
16 of California for purposes of enforcement of this Agreement.  
17

18 DATED: \_\_\_\_\_

\_\_\_\_\_  
(Name)  
(Title)  
(Address)  
(Address)  
(Phone Number)

26  
27 69070-0003/LEGAL21167784