

1 BARCELÓ, HARRISON & WALKER, LLP  
 2 Reynaldo C. Barceló, CA State Bar No. 199741  
 3 E-mail: rey@bhiplaw.com  
 4 2901 West Coast Hwy, Suite 200  
 5 Newport Beach, California 92663  
 6 Telephone: (949) 340-9736  
 7 Facsimile: (949) 258-5752

8 *Attorneys for Plaintiff and Counterclaim Defendant,*  
 9 *TMI Products, Inc.*

10 KOLISCH HARTWELL, P.C.  
 11 Owen W. Dukelow, CA State Bar No. 196265  
 12 E-mail: owen@khpatent.com  
 13 260 Sheridan Avenue, Suite 200  
 14 Palo Alto, California 94306  
 15 Telephone: (503) 224-6655  
 16 Facsimile: (503) 295-6679

17 *Attorneys for Defendant and Counterclaim Plaintiff,*  
 18 *Rosen Electronics L.P., f/k/a Rosen Entertainment Systems, L.P.*

19 UNITED STATES DISTRICT COURT  
 20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 TMI PRODUCTS, INC.,  
 22  
 23 Plaintiff,

24 v.

25 ROSEN ELECTRONICS, L.P., f/k/a  
 26 ROSEN ENTERTAINMENT  
 27 SYSTEMS, L.P.

28 Defendant and  
 Counterclaim  
 Plaintiff,

v.

TMI PRODUCTS, INC.,  
  
 Counterclaim  
 Defendant.

Case No. 5:12-cv-02263-RGK-SP

**STIPULATED PROTECTIVE  
 ORDER**

1 **I. PURPOSES AND LIMITATIONS**

2 The parties, through their respective counsel, hereby stipulate to and petition  
3 the Court to enter the following Stipulated Protective Order. The parties  
4 acknowledge and understand that this Order does not confer blanket protection on  
5 all disclosures or responses to discovery, the protection it affords from public  
6 disclosure and use extends only to the limited information or items that are entitled  
7 to confidential treatment under the applicable legal principles, and it does not  
8 presumptively entitle parties to file confidential information under seal.

9 Nevertheless, the parties agree that good cause exists for this Order and that  
10 such an order is in the best interest of both parties.

11 **II. GOOD CAUSE STATEMENT**

12 Discovery in this action is likely to involve production of confidential,  
13 proprietary, or private information for which special protection may be warranted.

14 The parties have contractual obligations to third parties to keep certain  
15 information confidential. The parties are obliged by the Federal Rules to produce  
16 certain information, which is subject to contractual confidentiality obligations to  
17 third parties. Failure to sufficiently protect such information will create potential  
18 liability to the parties. The parties are also obliged to produce documents containing  
19 confidential sales information, including without limitation pricing, discount  
20 strategies and supply chain information. Public disclosure of such information will  
21 result in competitive disadvantages to the parties from competitors who learn the  
22 parties' confidential business strategies.

23 **III. USE AT TRIAL**

24 This Order governs the use of confidential materials at trial. All documents  
25 designated as trial exhibits shall not be covered by the terms of this Order at the time  
26 of trial, even if they are appropriately designated Confidential or Attorneys'  
27 Eyes Only, unless the party seeking to maintain the confidentiality of documents  
28 makes a showing to the Court of good cause as to why the material should remain

1 confidential, in advance of trial. Notwithstanding the above, the Parties will  
2 maintain as confidential, in accordance with this Order, all Confidential material  
3 exchanged pursuant to this Order before and after trial.

#### 4 **IV. CONFIDENTIAL MATERIAL**

5 Confidential material shall include the following documents and tangible  
6 things produced, disclosed, or otherwise exchanged: documents subject to  
7 confidentiality agreements with third parties, documents containing sales  
8 information, pricing and discount strategies, documents containing or evincing  
9 proprietary business methods and strategies and documents evidencing proprietary  
10 design techniques.

##### 11 **A. SCOPE**

12 The protections conferred by this agreement cover not only confidential  
13 material (as defined above), but also (1) any information copied or extracted from  
14 confidential material; (2) all copies, excerpts, summaries, or compilations of  
15 confidential material; and (3) any testimony, conversations, or presentations by  
16 parties or their counsel that might reveal confidential material.

17 However, the restrictions set forth in this Order will not apply to information  
18 which is known to the receiving party or the public before the date of its  
19 transmission to the receiving party, or which becomes known to the public after the  
20 date of its transmission to the receiving party, provided that such information does  
21 not become publicly known by any act or omission of the receiving party, its  
22 employees or agents, which would be in violation of this Order; provided, further,  
23 that the provisions of this paragraph are not self-executing and may not be invoked  
24 on a self-help basis. A party who contends that material designated as confidential  
25 (at either level defined herein) under this Order should remain confidential shall  
26 have the burden of proving that contention in any proceeding where a confidentiality  
27 designation is at issue.

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1 **V. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

2 **A. Basic Principles.**

3 A receiving party may use confidential material that is disclosed or produced  
4 by another party or by a non-party in connection with this case only for prosecuting,  
5 defending, or attempting to settle this litigation. Confidential material may be  
6 disclosed only to the categories of persons and under the conditions described in this  
7 agreement. Confidential material must be stored and maintained by a receiving  
8 party at a location and in a secure manner that ensures that access is limited to the  
9 persons authorized under this agreement.

10 **B. Disclosure of Confidential Information or Items.**

11 Unless otherwise ordered by the Court or permitted in writing by the  
12 designating party, any material designated “Confidential,” including copies or  
13 excerpts thereof, or analyses or reports which pertain thereto, may be made available  
14 only to:

- 15 (a) Attorneys of record for the receiving party and their immediate staff  
16 and outside vendors, including e-discovery, graphics, animation,  
17 translation, and jury consultant vendors, assigned to and necessary to  
18 assist such attorneys in the preparation and trial of these actions,  
19 provided such outside vendors agree to maintain the confidentiality of  
20 documents pursuant to this Protective Order by signing the Agreement  
21 attached hereto as Exhibit A. A receiving party’s outside counsel shall  
22 retain any such executed confidentiality agreements, and they need not  
23 be disclosed to the producing party;
- 24 (b) Judges, Magistrates, law clerks and other clerical personnel of the  
25 Court before which this action is pending;
- 26 (c) Independent experts whom the receiving party identifies to the  
27 producing party. If the producing party has any objection to the  
28 proposed independent expert, it shall notify the receiving party in

1 writing within ten (10) days of such identification. The parties will  
2 attempt to resolve any difference concerning such independent experts,  
3 but if they are unable to do so, the receiving party may seek relief from  
4 the Court according to the procedure established in LCR 37. No  
5 disclosure of the information shall be made to the proposed  
6 independent expert until after the Court has ruled upon the issue; and

7 (d) Officers and directors of the parties;

8 (e) An author or recipient, including receipt by copy, of any document,  
9 information therein, or tangible medium, and solely with respect to the  
10 specific document, information therein, or tangible medium; and

11 (f) Any designated Rule 30(b)(6) witnesses of a party producing the  
12 document, who is not a current employee of the party, but is identified  
13 as an author or recipient, including receipt by copy, of a document,  
14 information therein or tangible medium, and who is being examined on  
15 the subject of the document. Parties reserve the right to object and  
16 move for protective order to prevent the disclosure of a document to a  
17 witness, should such disclosure violate a corporate policy precluding  
18 the witness from gaining access to the document.

19 Materials designated “Attorneys’ Eyes Only” as well as any copies or  
20 excerpts thereof, or analyses or reports which pertain thereto, may be made available  
21 only to persons identified in Section V.B(a) through (c) of this Order.

22 **C. Agreement To Be Bound.**

23 Each person permitted by the parties or their counsel to have access to  
24 designated information under the terms of this Order shall, prior to being given such  
25 access, be provided with a copy of this Order for review. Upon receiving this Order,  
26 each person shall sign an “Agreement To Be Bound” (Exhibit A to this Order)  
27 indicating that he has read the Order and agrees to comply with its terms, provided,  
28 however, that partners and employees of counsel of record as well as officers and

1 personnel of the Court shall be exempt from the requirement to sign the Exhibit A  
2 statement.

3 **D. Filing Confidential Material.**

4 Before filing confidential material or discussing or referencing such material  
5 in court filings, the filing party shall confer with the designating party to determine  
6 whether the designating party will remove the confidential designation, whether the  
7 document can be redacted, or whether a motion to seal or stipulation and proposed  
8 order is warranted. Local Civil Rule 79-5 and Judge Klausner's instructions  
9 pursuant to the Court's pilot program (Dkt. No. 37) sets forth the procedures that  
10 must be followed and the standards that will be applied in this action when a party  
11 seeks permission from the court to file material under seal (*e.g.*, "all proposed sealed  
12 documents must be submitted via e-mail to the Judge's Chambers email at  
13 RGK\_chambers@cacd.uscourts.gov").

14 **VI. DESIGNATING PROTECTED MATERIAL**

15 **A. Governing Standards.**

16 Any information produced by any party or nonparty as part of discovery in  
17 this action may be designated by the producing party(ies) as "Confidential" or  
18 "Attorneys' Eyes Only." A document should be designated "Confidential" when it  
19 contains confidential information (as listed above) that may be reviewed by a  
20 designated manager of the receiving party but must be protected against disclosure  
21 to unauthorized third parties. A document should be designated "Attorneys' Eyes  
22 Only" when it contains trade secrets of a technical nature, such as information  
23 relating to product formulas, manufacturing methods, product development plans, or  
24 confidential business information such as marketing plans, customer lists, pricing  
25 plans, financial statements, supplier identifiers or other information which would put  
26 the producing person or entity at a competitive disadvantage if the information  
27 become known to the receiving party.

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1           **B. Exercise of Restraint and Care in Designating Material for**  
2           **Protection.**

3           Each party or non-party that designates information or items for protection  
4 under this Order must take care to limit any such designation to specific material  
5 that qualifies under the appropriate standards. The designating party must designate  
6 for protection only those parts of material, documents, items, or oral or written  
7 communications that qualify, so that other portions of the material, documents,  
8 items, or communications for which protection is not warranted are not swept  
9 unjustifiably within the ambit of this Order.

10           Mass, indiscriminate, or routinized designations are prohibited. Designations  
11 that are shown to be clearly unjustified or that have been made for an improper  
12 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or  
13 to impose unnecessary expenses and burdens on other parties) expose the  
14 designating party to sanctions.

15           Any document containing only information which is publicly available,  
16 including any information which can be ascertained from examination of a product  
17 sold by any party, should not be designated as “Confidential” or “Attorneys’ Eyes  
18 Only.”

19           If it comes to a designating party’s attention that information or items that it  
20 designated for protection do not qualify for protection, the designating party must  
21 promptly notify all other parties that it is withdrawing the mistaken designation.

22           **C. Manner and Timing of Designations.**

23           Any party or non-party wishing to invoke the confidentiality provisions of  
24 this Order as to produced things and documents may designate, in writing, the things  
25 and documents (as defined in Rule 34 Fed. R. Civ. P. and Rule 1001 Fed. R. Evid.)  
26 or portions thereof which it considers confidential at the time the things and  
27 documents are produced. Such designation must be clear and unambiguous.

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1           **(a) Information in documentary form:**

2           In designating documents (as defined in Rule 34 Fed. R. Civ. P. and Rule  
3 1001 Fed. R. Evid.), the designating party must affix the word(s)  
4 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” to each page that contains  
5 confidential material. If only a portion or portions of the material on a page  
6 qualifies for protection, the producing party also must clearly identify the protected  
7 portions) (*e.g.*, by making appropriate markings in the margins).

8           **(b) Testimony given in deposition or in other pretrial proceedings:**

9           The witness or his or her counsel may invoke the provisions of this Order by  
10 claiming confidentiality in a timely manner and designating the level of restriction.  
11 During the deposition, parties shall be excluded only from testimony designated  
12 “Attorneys’ Eyes Only.” The witness under deposition or his or her counsel may,  
13 within ten (10) days of receiving a deposition transcript, designate portions of the  
14 transcript, or exhibits thereto, as confidential, or change the level of restriction of the  
15 transcript or any portion thereof. During the ten-day (10-day) period, counsel for  
16 the parties shall treat the entire transcript as if it had been designated “Attorneys’  
17 Eyes Only.” Testimony that has been designated “Confidential” or “Attorneys’  
18 Eyes Only” on the record of the deposition shall be transcribed in a separate booklet  
19 marked accordingly on each page.

20           **(c) Other tangible items:**

21           The producing party must affix in a prominent place on the exterior of the  
22 container or containers in which the information or item is stored the word(s)  
23 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only a portion or  
24 portions of the information or item warrant protection, the producing party, to the  
25 extent practicable, shall identify the protected portions.

26           **D. Inadvertent Failures to Designate.**

27           If timely corrected, an inadvertent failure to designate qualified information  
28 or items does not, standing alone, waive the designating party’s right to secure

1 protection under this agreement for such material. Upon timely correction of a  
2 designation, the receiving party must make reasonable efforts to ensure that the  
3 material is treated in accordance with the provisions of this agreement.

4 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 If, at any time during preparation for trial, any party believes that any other  
6 party or non-party has unreasonably designated certain material as “Confidential” or  
7 “Attorneys’ Eyes Only,” or believes that it is necessary to disclose designated  
8 material to persons other than those permitted by this Order, and the producing party  
9 does not agree to change the designation or to further disclosure, the objecting party  
10 may make an appropriate application to this Court in accordance with the  
11 procedures established in LCR 37 and upon notice to all parties and to any non-party  
12 who designated the material.

13 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
14 **PRODUCED IN OTHER LITIGATION**

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

- 18 (a) Promptly notify the designating party in writing and include a copy of  
19 the subpoena or court order;
- 20 (b) Promptly notify in writing the party who caused the subpoena or order  
21 to issue in the other litigation that some or all of the material covered  
22 by the subpoena or order is subject to this agreement. Such notification  
23 shall include a copy of this agreement; and
- 24 (c) Cooperate with respect to all reasonable procedures sought to be  
25 pursued by the designating party whose confidential material may be  
26 affected.

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1 **IX. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
3 confidential material to any person or in any circumstance not authorized under this  
4 agreement, the receiving party must immediately: (a) notify in writing the  
5 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve  
6 all unauthorized copies of the protected material, (c) inform the person or persons to  
7 whom unauthorized disclosures were made of all the terms of this agreement, and  
8 (d) request that such person or persons execute the “Agreement to Be Bound” that is  
9 attached hereto as Exhibit A.

10 **X. NON-TERMINATION AND RETURN OF DOCUMENTS**

11 Within 30 days after the termination of this action, including all appeals, each  
12 receiving party must return all confidential material, including material designated  
13 “Attorneys’ Eyes Only,” to the producing party, including all copies, extracts and  
14 summaries thereof. Alternatively, the parties may agree upon appropriate methods  
15 of destruction.

16 Notwithstanding this provision, the attorney of record may retain one (1) copy  
17 of any designated documents attached to any pleading filed with the Court.

18 The confidentiality obligations imposed by this Order shall remain in effect in  
19 perpetuity, to the extent permitted by the Court, or until the Court orders otherwise.  
20 Pursuant to Section III above, no confidentiality obligations will apply to materials  
21 made public during the trial of this action. The parties agree to maintain as  
22 confidential any designated materials exchanged during preparation for trial but not  
23 made public.

24 **XI. CONTINUATION OF OTHER PRIVILEGES AND PROTECTIONS**

25 This Order shall not prejudice the right of any party or non-party to oppose  
26 production of any material on the ground of attorney-client privilege, work product  
27 immunity, or any other protection provided under the law.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: September 25, 2013.

\_\_\_\_\_/s/\_\_\_\_\_  
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The Honorable Sheri Pym

**EXHIBIT A**  
**AGREEMENT TO BE BOUND**

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I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on September \_\_, 2013, in the case of *TMI Products, Inc. v. Rosen Electronics, L.P.*, No. 5:12-cv-02263-RGK-SP. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

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

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

Printed name: \_\_\_\_\_

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

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**CERTIFICATE OF SERVICE**

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system and that counsel for each party currently in this litigation have consented to electronic service via the Court's CM/ECF system.

Dated: September 23, 2013

By: \_\_\_\_\_/s/\_\_\_\_\_  
Reynaldo C. Barceló

BARCELÓ, HARRISON & WALKER, LLP  
Reynaldo C. Barceló (199741)  
2901 West Coast Hwy, Suite 200  
Newport Beach, CA 92663  
(949) 340-9736

*Attorneys for TMI Products, Inc.*