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19 **UNITED STATES DISTRICT COURT**

20 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

21 OTTER PRODUCTS, LLC, a  
 22 Colorado Limited Liability Company,

23 Plaintiff,

24 vs.

25 A2Z BUSINESS GROUP dba AZ  
 26 WIRELESS aka AZ ART GROUP,  
 27 an unknown business entity; and  
 28 DOES 1-10, inclusive,

Defendant

CASE NO. CV 13-01776-VAP-SPx

**PROTECTIVE ORDER**

[NOTE CHANGES MADE BY  
 COURT IN PARAGRAPHS 6, 7, 8,  
 AND 21]



1 sales information, sensitive strategic planning information and competitively  
2 sensitive information.

3  
4 2. CONFIDENTIAL or HIGHLY CONFIDENTIAL Discovery

5 Material may be designated as subject to this Discovery Protective Order as  
6 follows:

7  
8 a. With respect to documents or copies provided by one  
9 party or its licensees to the other, by marking the document with the legend  
10 “SUBJECT TO PROTECTIVE ORDER or CONFIDENTIAL or HIGHLY  
11 CONFIDENTIAL” or a marking of like import at the time of production of  
12 the documents. In the case of tangible things: by placing a label or tag on  
13 the object or on its container containing the legend “SUBJECT TO  
14 PROTECTIVE ORDER or CONFIDENTIAL or HIGHLY  
15 CONFIDENTIAL,” or, if not practicable, as otherwise agreed, at the time of  
16 production, disclosure or inspection.  
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20 b. In the event that a Producing Party elects to produce  
21 documents or things for inspection, no confidentiality designation need be  
22 made prior to the inspection. For purposes of the inspection, all documents  
23 and things shall be considered “SUBJECT TO PROTECTIVE ORDER,”  
24 thereby making them subject to this Order. However, upon production of  
25 such documents the Producing Party shall mark CONFIDENTIAL or  
26  
27  
28 HIGHLY CONFIDENTIAL Discovery Material in accordance with

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1 subparagraph (a) above.

2  
3 c. Testimony or information disclosed at a deposition may  
4 be designated by a party as CONFIDENTIAL or HIGHLY  
5 CONFIDENTIAL by indicating on the record at the deposition those  
6 portions of the testimony which contain CONFIDENTIAL or HIGHLY  
7 CONFIDENTIAL information that is to be made subject to the provisions of  
8 this Order. Alternatively, a party may designate testimony or information  
9 disclosed at a deposition as CONFIDENTIAL or HIGHLY  
10 CONFIDENTIAL by notifying the other parties, in writing, within thirty  
11 (30) days of receipt of the transcript of the deposition, those portions of the  
12 testimony that are to be designated SUBJECT TO PROTECTIVE ORDER.  
13  
14 Each party shall attach a copy of such written statement to the face of the  
15 transcript and each copy thereof in its possession, custody, or control.  
16  
17 Whether or not designation is made at the time of a deposition, all  
18 depositions shall be treated as CONFIDENTIAL from the taking of the  
19 deposition until thirty (30) days after receipt of the transcript.  
20  
21

22  
23 Notwithstanding the foregoing, any employee, agent, advisor,  
24 representative, or person affiliated with a party who is not authorized to  
25 receive CONFIDENTIAL or HIGHLY CONFIDENTIAL Discovery  
26 Material under paragraphs 3-5 may attend a deposition at which  
27 CONFIDENTIAL or HIGHLY CONFIDENTIAL Discovery Material may  
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1 be disclosed. However, the designating party shall have the right to exclude  
2 such persons from the deposition during the period any CONFIDENTIAL or  
3  
4 HIGHLY CONFIDENTIAL Discovery Material is disclosed or discussed.

5 d. In the case of responses to interrogatories, other  
6 discovery requests or responses, affidavits, briefs, memoranda, or other  
7 papers filed with the Court, those materials and all information contained  
8 therein may be designated as CONFIDENTIAL or HIGHLY  
9 CONFIDENTIAL by prominently marking such paper with the legend  
10 “SUBJECT TO PROTECTIVE ORDER” and CONFIDENTIAL or  
11 HIGHLY CONFIDENTIAL or a marking of like import.  
12  
13

14 3. CONFIDENTIAL Discovery Material and any analysis or  
15 report containing CONFIDENTIAL Discovery Material may be made  
16 available to and inspected by Plaintiff’s outside counsel of record, including  
17 lawyers, employees and staff of the law firm working under the supervision  
18 of such outside counsel, including regular and temporary employees,  
19 contractors and agents, court reporters, and photocopying and/or graphics  
20 services, provided however that such counsel will not make such  
21 CONFIDENTIAL Discovery Material available to employees of the  
22 Plaintiff, including legal personnel in the legal department of Plaintiff. The  
23 current Plaintiff’s outside counsel of record are listed below:  
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6 Manhattan Beach, CA  
7 90266

8 4. CONFIDENTIAL Discovery Material, and any analysis or  
9 report containing CONFIDENTIAL Discovery Material may be made  
10 available to and inspected by any of Defendant's outside counsel of record,  
11 including lawyers, employees and staff of the law firm working under the  
12 supervision of such outside counsel, including regular and temporary  
13 employees, contractors and agents, court reporters, and photocopying and/or  
14 graphics services, provided however that such counsel will not make such  
15 CONFIDENTIAL Discovery Material available to employees of the  
16 Defendant, including legal personnel in the legal department of Defendant.  
17 The current Defendant's outside counsel of record are listed below:  
18

19  
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21 ctingley@tingelylawgroup.com  
22 KEVIN ISAACSON  
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24 10 Almaden Boulevard, Suite, 430  
25 San Jose, CA 408-283-7000

26 5. CONFIDENTIAL Discovery Material and any analysis or  
27 report containing CONFIDENTIAL Discovery Material may be disclosed to  
28 independent experts and independent consultants (including jury  
consultants) and their staffs (including members of mock juries) who are

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1 employed to furnish expert or technical services or to give expert testimony  
2 with regard to this action and not otherwise affiliated in any way with a  
3 party. As a condition precedent to disclosure of CONFIDENTIAL  
4 Discovery Material to any such person, he or she must: acknowledge receipt  
5 and understanding of this Discovery Protective Order; agree to be bound  
6 thereby; agree to use the CONFIDENTIAL Discovery Material solely for  
7 this litigation, and not to disclose any CONFIDENTIAL Discovery Material  
8 to any other person, firm, or concern in violation of this Discovery  
9 Protective Order; and agree never to use any CONFIDENTIAL Discovery  
10 Material, directly or indirectly, in competition with the party that disclosed  
11 it, nor to allow any other person to do so. Each such person shall execute a  
12 declaration acknowledging the foregoing, in the form annexed hereto as  
13 Exhibit 1, before receiving any CONFIDENTIAL Discovery Material,  
14 which shall be retained by counsel for the party retaining such expert and  
15 will be available for inspection by opposing counsel if and when any expert  
16 is identified as a testifying expert.

22  
23 6. HIGHLY CONFIDENTIAL Discovery material may be viewed  
24 or disclosed only to counsel of record for the parties and authorized court  
25 personnel. No client, expert or other person shall be entitled to access any  
26 HIGHLY CONFIDENTIAL information. No information marked HIGHLY  
27 CONFIDENTIAL shall be used in any pleading or other Court document  
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1 without an order in advance of the filing permitting that information to be  
2 filed under seal.

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4 7. In accordance with Local Rule 79-5.1, any pleading, brief,  
5 declaration, affidavit, or other public filing marked “CONFIDENTIAL” or  
6 containing CONFIDENTIAL Discovery Material shall be accompanied by  
7 an application to lodge or file the papers under seal; provided, however, that  
8 the burden of establishing the criteria for sealing shall at all times be on the  
9 party which designated the Discovery Material “CONFIDENTIAL”.

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11  
12 8. A witness at a deposition, who is not authorized to receive  
13 CONFIDENTIAL information pursuant to paragraphs 3-5, may be shown  
14 any document that contains or reveals CONFIDENTIAL Discovery Material  
15 only if the designated CONFIDENTIAL information appears to have been  
16 authored by, received by, or known to the witness, or provided that the  
17 Producing Party consents to such disclosure. In addition, a witness may be  
18 shown any document that contains or reveals CONFIDENTIAL Discovery  
19 Material if the witness is an officer, director, agent, or employee of the  
20 Producing Party.

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24 9. A document that contains or reveals CONFIDENTIAL  
25 Discovery Material may be shown to any person indicated in such document  
26 to be its originator or author of the recipient of a copy.  
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1           10. All documents and information produced in response to  
2 discovery demands in this action, including CONFIDENTIAL or HIGHLY  
3 CONFIDENTIAL Discovery Material obtained from a Producing Party may  
4 be used and disclosed only for purposes of defending or prosecuting this  
5 action for which it is produced. No party or person shall make any other use  
6 of any such CONFIDENTIAL or HIGHLY CONFIDENTIAL Discovery  
7 Material without prior written permission from the Producing Party.  
8

9  
10           11. Nothing in this Discovery Protective Order shall be construed  
11 as an agreement or admission with respect to the competency, relevance, or  
12 materiality of any such information, document, or the like.  
13

14           12. In the event that any party disagrees with the designation by the  
15 Producing Party of any Discovery Material as CONFIDENTIAL or  
16 HIGHLY CONFIDENTIAL, the parties shall promptly make a good-faith  
17 effort to resolve the dispute. If the dispute cannot be resolved, the objecting  
18 party may seek appropriate relief from the Court in accordance with Local  
19 Rule 37, and the Producing Party shall have the burden of proving that its  
20 designation was appropriate.  
21

22           13. The inadvertent or unintentional failure by the Producing Party  
23 to designate specific Discovery Material as CONFIDENTIAL or HIGHLY  
24 CONFIDENTIAL shall not be deemed a waiver in whole or in part of a  
25 party's claim of confidentiality as to such Discovery Material. Upon notice  
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1 to the receiving party of such failure to designate, the receiving party shall  
2 cooperate to restore the confidentiality of the inadvertently disclosed  
3  
4 Discovery Material, without prejudice to the receiving party's right to  
5 challenge the designation pursuant to paragraph 12.

6  
7 14. The inadvertent production of Discovery Material subject to the  
8 attorney-client privilege, the attorney work-product doctrine, the common-  
9 interest doctrine, or any other privilege or immunity will not constitute  
10 waiver of, estoppel as to, or otherwise prejudice any claim of such immunity  
11 or privilege. In addition, the fact that Discovery Material was inadvertently  
12 produced shall not be used in any manner as evidence in support of any such  
13 alleged waiver or estoppel in this or any other case. If a party has  
14  
15 inadvertently produced Discovery Material subject to a claim of immunity or  
16 privilege, upon request of the Producing Party, any documents and all copies  
17 thereof shall be returned promptly, and in no event later than five (5)  
18  
19 calendar days, after such request is made, as required by Fed. Rule Civ. Pro.  
20 26(b)(5)(B). Moreover, to the extent practical and reasonable, any notes or  
21  
22 summaries, other than those expressly permitted under this section referring  
23  
24 to or relating to any such inadvertently produced Discovery Material subject  
25 to a claim of immunity or privilege shall be destroyed. After the return of the  
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27 Discovery Material, the receiving party may challenge the Producing Party's  
28 claim(s) of immunity or privilege by making a motion to the Court.

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1           15. Nothing in this Discovery Protective Order shall prevent  
2 disclosure beyond the terms of this Order if the Producing Party consents in  
3 writing to such disclosure, or if the Court, after notice to all affected parties,  
4 orders such disclosure.  
5

6           16. (a) Within sixty (60) days after the conclusion of this action,  
7 including any appeals, all Discovery Material designated CONFIDENTIAL  
8 and HIGHLY CONFIDENTIAL, including extracts and summaries thereof,  
9 and all reproductions thereof, shall be returned to the Producing Party or  
10 shall be destroyed, at the option of counsel in possession of such copies. If  
11 the materials are destroyed, counsel responsible for the destruction shall  
12 within seven (7) calendar days of such destruction certify to counsel for the  
13 Producing Party that destruction has taken place. Notwithstanding the  
14 forgoing, counsel for the parties may retain the pleadings, court papers,  
15 transcripts of depositions and hearings and any exhibits thereto, expert  
16 reports, discovery requests and responses, and correspondence despite the  
17 presence of CONFIDENTIAL information in those materials. Insofar as the  
18 provisions of this and any other Order entered in this action restrict the  
19 communication and use of information, such Order(s) shall continue to be  
20 binding after the conclusion of this litigation except (i) that there shall be no  
21 restriction on documents that are used as exhibits in trial (unless such  
22 exhibits were filed under seal); and (ii) that any party may seek the written  
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1 permission of the Producing Party with respect to dissolution or  
2 modification of any such Order(s).  
3

4 (b) This Court shall retain jurisdiction over the parties and  
5 this Discovery Protective Order for the purposes of compliance with and  
6 enforcement of its terms, and the final termination of this action shall not  
7 terminate this Discovery Protective Order or its terms.  
8

9 17. This Discovery Protective Order has been agreed to by the  
10 parties to facilitate discovery and the production of relevant evidence in this  
11 action. Neither the agreement of the parties, nor the designation of any  
12 Discovery Material as CONFIDENTIAL or HIGHLY CONFIDENTIAL,  
13 nor the failure to make such designation shall constitute evidence with  
14 respect to any issue in this action.  
15  
16

17 18. The terms of this Discovery Protective Order shall be  
18 applicable to any third party who produces Discovery Material which is  
19 designated by such third party as CONFIDENTIAL. A copy of this Order  
20 shall be served along with any subpoena served in connection with this  
21 action.  
22  
23

24 19. Nothing in this Discovery Protective Order shall prejudice the  
25 right of any party, or any third party, to seek relief from the Court, upon  
26 good cause shown, from any of the restrictions provided above or to impose  
27 additional restrictions on the disclosure of any Discovery Material.  
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1           20. Nothing in this Discovery Protective Order shall bar or  
2 otherwise restrict counsel from rendering advice to his or her client with  
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4 respect to this action and, in the course thereof, relying in a general way  
5 upon his or her examination of CONFIDENTIAL or HIGHLY  
6 CONFIDENTIAL Discovery Material produced or exchanged in this action;  
7  
8 provided, however, that in rendering such advice and in otherwise  
9 communicating with a person not entitled to view any CONFIDENTIAL or  
10 HIGHLY CONFIDENTIAL Discovery Material, the attorney shall not  
11 disclose the contents of CONFIDENTIAL or HIGHLY CONFIDENTIAL  
12 Discovery Material produced by any other party or non-party.  
13

14           21. The treatment of CONFIDENTIAL or HIGHLY  
15 CONFIDENTIAL INFORMATION at trial shall be governed by a separate  
16 order.  
17

18           **IT IS SO ORDERED**  
19

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21  
22 DATED: April 23, 2014

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24 \_\_\_\_\_  
25 Hon. Sheri Pym  
26 United States Magistrate Judge  
27  
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