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 9 NEPTUNE TRADING, INC. and
 10 WUU JAU CO., INC.

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

13 NEPTUNE TRADING, INC., and
 14 WUU JAU CO., INC.
 15
 16 Plaintiffs,
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 18 v.
 19 MASTER CUTLERY, INC.
 20
 21 Defendant.
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 23 MASTER CUTLERY, INC.
 24
 25 Counterclaimant,
 26
 27 v.
 28 NEPTUNE TRADING, INC. and
 WUU JAU CO., INC.
 Counter-Defendants.

CASE NO. 5:13-CV-02349-PSG-(Ex)

~~PROPOSED~~ PROTECTIVE ORDER

Judge: Hon. Philip S. Gutierrez
 Magistrate: Charles F. Eick

Trial Date: May 5, 2015

1. **PURPOSE AND LIMITS OF THIS ORDER**

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Discovery in this action is likely to involve confidential, proprietary, or private information requiring special protection from public disclosure and from use for any purpose other than this litigation. Thus, the Court enters this Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it gives from public disclosure and use extends only to the specific material entitled to confidential treatment under the applicable legal principles. This Order does not automatically authorize the filing under seal of material designated under this Order. Instead, the parties must comply with Local Rule 79-5.1. This Order does not govern the use at trial of material designated under this Order.

2. DESIGNATING PROTECTED MATERIAL

2.1 Over-Designation Prohibited. Any party or non-party who designates information or items for protection under this Order as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” (a “designator”) must only designate specific material that qualifies under the appropriate standards. To the extent practicable, only those parts of documents, items, or oral or written communications that require protection shall be designated. Designations with a higher confidentiality level when a lower level would suffice are prohibited. Mass, indiscriminate, or routinized designations are prohibited. Unjustified designations expose the designator to sanctions, including the Court’s striking all confidentiality designations made by that designator. Designation under this Order is allowed only if the designation is necessary to protect material that, if disclosed to persons not authorized to view it, would cause competitive or other recognized harm. Material may not be designated if it has been made public, or if designation is otherwise unnecessary to protect a secrecy interest. If a designator learns that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that designator must promptly notify all parties that it is withdrawing the mistaken designation.

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1 2.2 Manner and Timing of Designations. Designation under this Order
2 requires the designator to affix the applicable legend (“CONFIDENTIAL,”
3 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY
4 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected
5 material. For testimony given in deposition or other proceeding, the designator
6 shall specify all protected testimony and the level of protection being asserted. It
7 may make that designation during the deposition or proceeding, or may invoke, on
8 the record or by written notice to all parties on or before the next business day, a
9 right to have up to 21 days from the deposition or proceeding to make its
10 designation.

11 2.2.1 A party or non-party that makes original documents or materials
12 available for inspection need not designate them for protection until after the
13 inspecting party has identified which material it would like copied and produced.
14 During the inspection and before the designation, all material shall be treated as
15 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting
16 party has identified the documents it wants copied and produced, the producing
17 party must designate the documents, or portions thereof, that qualify for protection
18 under this Order.

19 2.2.2 Parties shall give advance notice if they expect a deposition or other
20 proceeding to include designated material so that the other parties can ensure that
21 only authorized individuals are present at those proceedings when such material is
22 disclosed or used. The use of a document as an exhibit at a deposition shall not in
23 any way affect its designation. Transcripts containing designated material shall
24 have a legend on the title page noting the presence of designated material, and the
25 title page shall be followed by a list of all pages (including line numbers as
26 appropriate) that have been designated, and the level of protection being asserted.
27 The designator shall inform the court reporter of these requirements. Any
28 transcript that is prepared before the expiration of the 21-day period for designation
shall be treated during that period as if it had been designated HIGHLY

1 CONFIDENTIAL – ATTORNEY EYES ONLY unless otherwise agreed. After
2 the expiration of the 21-day period, the transcript shall be treated only as actually
3 designated.

4 2.3 Inadvertent Failures to Designate. An inadvertent failure to designate
5 does not, standing alone, waive protection under this Order. Upon timely assertion
6 or correction of a designation, all recipients must make reasonable efforts to ensure
7 that the material is treated according to this Order.

8 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 All challenges to confidentiality designations shall proceed under Local Rule
10 37-1 through Local Rule 37-4.

11 **4. ACCESS TO DESIGNATED MATERIAL**

12 4.1 Basic Principles. A receiving party may use designated material only
13 for this litigation. Designated material may be disclosed only to the categories of
14 persons and under the conditions described in this Order.

15 4.2 Disclosure of CONFIDENTIAL Material Without Further Approval.
16 Unless otherwise ordered by the Court or permitted in writing by the designator, a
17 receiving party may disclose any material designated CONFIDENTIAL only to:

18 4.2.1 The receiving party’s outside counsel of record in this action and
19 employees of outside counsel of record to whom disclosure is reasonably
20 necessary;

21 4.2.2 The officers, directors, and employees of the receiving party to whom
22 disclosure is reasonably necessary, and who have signed the Agreement to Be
23 Bound (**Exhibit A**);

24 4.2.3 Experts retained by the receiving party’s outside counsel of record to
25 whom disclosure is reasonably necessary, and who have signed the Agreement to
26 Be Bound (**Exhibit A**);

27 4.2.4 The Court and its personnel;

28 4.2.5 Outside court reporters and their staff, professional jury or trial
consultants, and professional vendors to whom disclosure is reasonably necessary,

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1 and who have signed the Agreement to Be Bound (**Exhibit A**);

2 4.2.6 During their depositions, witnesses in the action to whom disclosure is
3 reasonably necessary and who have signed the Agreement to Be Bound (**Exhibit**
4 **A**); and

5 4.2.7 The author or recipient of a document containing the material, or a
6 custodian or other person who otherwise possessed or knew the information.

7 4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES
8 ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without
9 Further Approval. Unless permitted in writing by the designator, a receiving party
10 may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY
11 EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE without further
12 approval only to:

13 4.3.1 The receiving party’s outside counsel of record in this action and
14 employees of outside counsel of record to whom it is reasonably necessary to
15 disclose the information;

16 4.3.2 The Court and its personnel;

17 4.3.3 Outside court reporters and their staff, professional jury or trial
18 consultants, and professional vendors to whom disclosure is reasonably necessary,
19 and who have signed the Agreement to Be Bound (**Exhibit A**); and

20 4.3.4 The author or recipient of a document containing the material, or a
21 custodian or other person who otherwise possessed or knew the information.

22 4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY
23 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
24 SOURCE CODE Material to In-House Counsel or Experts. Unless agreed to in
25 writing by the designator:

26 4.4.1 A party seeking to disclose to in-house counsel any material
27 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first
28 make a written request to the designator providing the full name of the in-house
counsel, the city and state of such counsel’s residence, and such counsel’s current

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1 and reasonably foreseeable future primary job duties and responsibilities in
2 sufficient detail to determine present or potential involvement in any competitive
3 decision-making. In-house counsels are not authorized to receive material
4 designated HIGHLY CONFIDENTIAL – SOURCE CODE.

5 4.4.2 A party seeking to disclose to an expert retained by outside counsel of
6 record any information or item that has been designated HIGHLY
7 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
8 SOURCE CODE must first make a written request to the designator that (1)
9 identifies the general categories of HIGHLY CONFIDENTIAL – ATTORNEY
10 EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE information that
11 the receiving party seeks permission to disclose to the expert, (2) sets forth the full
12 name of the expert and the city and state of his or her primary residence, (3)
13 attaches a copy of the expert’s current resume, (4) identifies the expert’s current
14 employer(s), (5) identifies each person or entity from whom the expert has received
15 compensation or funding for work in his or her areas of expertise (including in
16 connection with litigation) in the past five years, and (6) identifies (by name and
17 number of the case, filing date, and location of court) any litigation where the
18 expert has offered expert testimony, including by declaration, report, or testimony
19 at deposition or trial, in the past five years. If the expert believes any of this
20 information at (4) - (6) is subject to a confidentiality obligation to a third party,
21 then the expert should provide whatever information the expert believes can be
22 disclosed without violating any confidentiality agreements, and the party seeking to
23 disclose the information to the expert shall be available to meet and confer with the
24 designator regarding any such confidentiality obligations.

24 4.4.3 A party that makes a request and provides the information specified in
25 paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified in-
26 house counsel or expert unless, within seven days of delivering the request, the
27 party receives a written objection from the designator providing detailed grounds
28 for the objection.

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1 4.4.4 All challenges to objections from the designator shall proceed under
2 Local Rule 37-1 through Local Rule 37-4.

3 **5. SOURCE CODE**

4 5.1 Designation of Source Code. If production of source code is
5 necessary, a party may designate it as HIGHLY CONFIDENTIAL – SOURCE
6 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

7 5.2 Location and Supervision of Inspection. Any HIGHLY
8 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made
9 available for inspection, in a format allowing it to be reasonably reviewed and
10 searched, during normal business hours or at other mutually agreeable times, at an
11 office of the designating party’s counsel or another mutually agreeable location.
12 The source code shall be made available for inspection on a secured computer in a
13 secured room, and the inspecting party shall not copy, remove, or otherwise
14 transfer any portion of the source code onto any recordable media or recordable
15 device. The designator may visually monitor the activities of the inspecting party’s
16 representatives during any source code review, but only to ensure that there is no
17 unauthorized recording, copying, or transmission of the source code.

18 5.3 Paper Copies of Source Code Excerpts. The inspecting party may
19 request paper copies of limited portions of source code that are reasonably
20 necessary for the preparation of court filings, pleadings, expert reports, other
21 papers, or for deposition or trial. The designator shall provide all such source code
22 in paper form, including Bates numbers and the label “HIGHLY CONFIDENTIAL
– SOURCE CODE.”

23 5.4 Access Record. The inspecting party shall maintain a record of any
24 individual who has inspected any portion of the source code in electronic or paper
25 form, and shall maintain all paper copies of any printed portions of the source code
26 in a secured, locked area. The inspecting party shall not convert any of the
27 information contained in the paper copies into any electronic format other than for
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1 the preparation of a pleading, exhibit, expert report, discovery document,
2 deposition transcript, or other Court document. Any paper copies used during a
3 deposition shall be retrieved at the end of each day and must not be left with a court
4 reporter or any other unauthorized individual.

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

7 6.1 Subpoenas and Court Orders. This Order in no way excuses non-
8 compliance with a lawful subpoena or court order. The purpose of the duties
9 described in this section is to alert the interested parties to the existence of this
10 Order and to give the designator an opportunity to protect its confidentiality
11 interests in the court where the subpoena or order issued.

12 6.2 Notification Requirement. If a party is served with a subpoena or a
13 court order issued in other litigation that compels disclosure of any information or
14 items received by that party in this action and designated in this action as
15 CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY, or
16 HIGHLY CONFIDENTIAL – SOURCE CODE, that party must do the following.

17 6.2.1 Promptly notify the designator in writing. Such notification shall
18 include a copy of the subpoena or court order.

19 6.2.2 Promptly notify in writing the party who caused the subpoena or order
20 to issue in the other litigation that some or all of the material covered by the
21 subpoena or order is subject to this Order. Such notification shall include a copy of
22 this Order.

23 6.2.3 Cooperate with all reasonable procedures sought by the designator
24 whose material may be affected.

25 6.3 Wait For Resolution of Protective Order. If the designator promptly
26 seeks a protective order, the party served with the subpoena or court order shall not
27 produce any information designated in this action as CONFIDENTIAL, HIGHLY
28 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
SOURCE CODE before a determination by the court where the subpoena or order

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1 issued, unless the party has obtained the designator’s permission. The designator
2 shall bear the burden and expense of seeking protection of its confidential material
3 in that court.

4 7. **UNAUTHORIZED DISCLOSURE OF DESIGNATED**
5 **MATERIAL**

6 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
7 designated material to any person or in any circumstance not authorized under this
8 Order, it must immediately (1) notify in writing the designator of the unauthorized
9 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
10 designated material, (3) inform the person or persons to whom unauthorized
11 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
12 to have such person or persons execute the Agreement to Be Bound (**Exhibit A**).

13 8. **INADVERTENT PRODUCTION OF PRIVILEGED OR**
14 **OTHERWISE PROTECTED MATERIAL**

15 When a producing party gives notice that certain inadvertently produced
16 material is subject to a claim of privilege or other protection, the obligations of the
17 receiving parties are those set forth in Fed. R. Civ. P. Rule No. 26(b)(5)(B). This
18 provision is not intended to modify whatever procedures may be established in an
19 e-discovery order that provides for production without prior privilege review
20 pursuant to Fed. R. Evid. Rules Nos. 502(d) and (e).

21 9. **FILING UNDER SEAL**

22 Without written permission from the designator or a Court order, a party may
23 not file in the public record in this action any designated material. A party seeking
24 to file under seal any designated material must comply with Local Rule 79-1.
25 Filings may be made under seal only pursuant to a court order authorizing the
26 sealing of the specific material at issue. The fact that a document has been
27 designated under this Order is insufficient to justify filing under seal. Instead,
28 parties must explain the basis for confidentiality of each document sought to be
filed under seal. Because a party other than the designator will often be seeking to

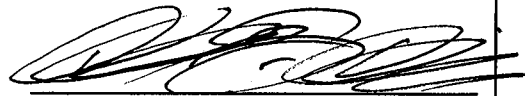
1 file designated material, cooperation between the parties in preparing, and in
2 reducing the number and extent of, requests for under seal filing is essential. If a
3 receiving party's request to file designated material under seal pursuant to Local
4 Rule 79-5.1 is denied by the Court, then the receiving party may file the material in
5 the public record unless (1) the designator seeks reconsideration within four days of
6 the denial, or (2) as otherwise instructed by the Court.

7 **10. FINAL DISPOSITION**

8 Within 60 days after the final disposition of this action, each party shall
9 return all designated material to the designator or destroy such material, including
10 all copies, abstracts, compilations, summaries, and any other format reproducing or
11 capturing any designated material. The receiving party must submit a written
12 certification to the designator by the 60-day deadline that (1) identifies (by
13 category, where appropriate) all the designated material that was returned or
14 destroyed, and (2) affirms that the receiving party has not retained any copies,
15 abstracts, compilations, summaries, or any other format reproducing or capturing
16 any of the designated material. This provision shall not prevent counsel from
17 retaining an archival copy of all pleadings, motion papers, trial, deposition, and
18 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
19 expert reports, attorney work product, and consultant and expert work product,
20 even if such materials contain designated material. Any such archival copies
21 remain subject to this Order.

22 IT IS SO ORDERED.

23
24 Dated: 9/16/14



Honorable Charles F. Eick
United States Magistrate Judge

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EXHIBIT A
AGREEMENT TO BE BOUND

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 Protective Order that was issued by the
United States District Court for the Central District of California on _____
[date] in the case of *Neptune Trading Inc. et al v. Master Cutlery, Inc.* Case No.
5:13-cv-02349-PGS-(Ex). I agree to comply with and to be bound by all the terms
of this Protective Order, and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment for contempt. I solemnly
promise that I will not disclose in any manner any information or item that is
subject to this Protective Order to any person or entity except in strict compliance
with 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 this Order, even if
such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____
_____ [print or type full address and telephone number] as my
California agent for service of process in connection with this action or of any
proceedings related to enforcement of this Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[print name]

Signature: _____
[signature]

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