

1 Victor de Gyarfas (SBN 171950)
 email: vdegyarfas@foley.com
 2 **FOLEY & LARDNER LLP**
 555 South Flower Street, Suite 3500
 3 Los Angeles, CA 90071-2411
 Telephone: 213-972-4500
 4 Facsimile: 213-486-0065

5 Attorneys for Defendants
 SECARD POOLS; JOE SECARD;
 6 EDMUND SECARD; PINCH A PENNY,
 POOL SUPPLY UNLIMITED; SUN
 7 WHOLESALE SUPPLY; WAYFAIR, LLC;
 WAL-MART STORES, INC.

8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA**
 10 **EASTERN DIVISION (RIVERSIDE)**

12 SOLAR SUN RINGS, INC., a California
 13 Corporation

Case No: 5:14-edcv-02417-PSG (KKx)

STIPULATED PROTECTIVE ORDER

14 Plaintiff,

15 v.

17 SECARD POOLS, et al.,

18 Defendants.

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 20 And Related Counterclaim
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1 In response to the Court's August 14, 2015 Order, the parties jointly submit this
2 proposed protective order. Among other things, this protective order:

3 - Makes clear that "Any use of Protected Material at trial shall be governed by the
4 orders of the trial judge." (Section 3)

5 - Provides a statement of good cause in Section 1.B.

6 - Revises previous ¶¶ 6.3 and 7.4(c) to make clear that any motion challenging a
7 party's designation of material as Confidential Information or Highly Confidential –
8 ATTORNEYS' EYES ONLY Information or seeking to modify or amend the proposed
9 Protective Order must be brought in strict compliance with Local Rules 37-1 and 37-2
10 (including the Joint Stipulation requirement).

11 - The parties have modeled this protective order after the sample stipulated
12 protective order on the Court's website.

13 In response to the Court's September 4, 2015 Order, the "Action" has been
14 identified properly in section 2.1.

15 1. A. PURPOSES AND LIMITATIONS

16 Discovery in this action is likely to involve production of confidential, proprietary,
17 or private information for which special protection from public disclosure and from use
18 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
19 parties hereby stipulate to and petition the Court to enter the following Stipulated
20 Protective Order. The parties acknowledge that this Order does not confer blanket
21 protections on all disclosures or responses to discovery and that the protection it affords
22 from public disclosure and use extends only to the limited information or items that are
23 entitled to confidential treatment under the applicable legal principles. The parties
24 further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
25 Order does not entitle them to FILE CONFIDENTIAL INFORMATION UNDER SEAL;
26 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards
27 that will be applied when a party seeks permission from the court to file material under
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1 seal.

2 B. GOOD CAUSE STATEMENT

3 This action will involve trade secrets, customer and pricing lists and other valuable
4 research, development, commercial, financial, technical and/or proprietary information
5 for which special protection from public disclosure and from use for any purpose other
6 than prosecution of this action is warranted. Such confidential and proprietary materials
7 and information consist of, among other things, confidential business or financial
8 information, information regarding confidential business practices, or other confidential
9 research, development, or commercial information (including information implicating
10 privacy rights of third parties), information otherwise generally unavailable to the public,
11 or which may be privileged or otherwise protected from disclosure under state or federal
12 statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow
13 of information, to facilitate the prompt resolution of disputes over confidentiality of
14 discovery materials, to adequately protect information the parties are entitled to keep
15 confidential, to ensure that the parties are permitted reasonable necessary uses of such
16 material in preparation for and in the conduct of trial, to address their handling at the end
17 of the litigation, and serve the ends of justice, a protective order for such information is
18 justified in this matter. It is the intent of the parties that information will not be
19 designated as confidential for tactical reasons and that nothing be so designated without a
20 good faith belief that it has been maintained in a confidential, non-public manner, and
21 there is good cause why it should not be part of the public record of this case.

22 2. DEFINITIONS

23 2.1 Action: The Action is this pending lawsuit, Case No. 5:14-edcv-02417-PSG
24 (KKx).

25 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
26 information or items under this Order.

27 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
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1 is generated, stored or maintained) or tangible things that qualify for protection under
2 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
3 Statement. “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY:” Information
4 or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to
5 another Party or Non-Party would create a substantial risk of serious harm that could not
6 be avoided by less restrictive means and that qualify for protection under Federal Rule of
7 Civil Procedure 26(c), and as specified above in the Good Cause Statement..

8 2.4 Counsel (without qualifier): Outside Counsel of Record and House Counsel
9 (as well as their support staff). Designated House Counsel: House Counsel who seek
10 access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in
11 this matter.

12 2.5 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”
14 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

15 2.6 Disclosure or Discovery Material: all items or information, regardless of the
16 medium or manner in which it is generated, stored, or maintained (including, among
17 other things, testimony, transcripts, and tangible things), that are produced or generated in
18 disclosures or responses to discovery in this matter.

19 2.7 Expert: a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
21 expert witness or as a consultant in this Action.

22 2.8 House Counsel: attorneys who are employees of a party to this Action.
23 House Counsel does not include Outside Counsel of Record or any other outside counsel.

24 2.9 Non-Party: any natural person, partnership, corporation, association, or
25 other legal entity not named as a Party to this action.

26 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
27 this Action but are retained to represent or advise a party to this Action and have
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1 appeared in this Action on behalf of that party or are affiliated with a law firm which has
2 appeared on behalf of that party, and includes support staff.

3 2.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
11 their employees and subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is designated
13 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY.”

15 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
16 from a Producing Party.

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only Protected
19 Material (as defined above), but also (1) any information copied or extracted from
20 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
21 Material; and (3) any testimony, conversations, or presentations by Parties or their
22 Counsel that might reveal Protected Material.

23 Any use of Protected Material at trial shall be governed by the orders of the trial
24 judge. This Order does not govern the use of Protected Material at trial.

25 4. DURATION

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

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
8 Party or Non-Party that designates information or items for protection under this Order
9 must take care to limit any such designation to specific material that qualifies under the
10 appropriate standards. The Designating Party must designate for protection only those
11 parts of material, documents, items, or oral or written communications that qualify so that
12 other portions of the material, documents, items, or communications for which protection
13 is not warranted are not swept unjustifiably within the ambit of this Order.

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

18 If it comes to a Designating Party's attention that information or items that it
19 designated for protection do not qualify for protection, that Designating Party must
20 promptly notify all other Parties that it is withdrawing the inapplicable designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this
22 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
23 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
24 must be clearly so designated before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic
27 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),
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1 that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as applicable (hereinafter
3 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
4 portion or portions of the material on a page qualifies for protection, the Producing Party
5 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
6 in the margins).

7 A Party or Non-Party that makes original documents available for inspection need
8 not designate them for protection until after the inspecting Party has indicated which
9 documents it would like copied and produced. During the inspection and before the
10 designation, all of the material made available for inspection shall be deemed ““HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has
12 identified the documents it wants copied and produced, the Producing Party must
13 determine which documents, or portions thereof, qualify for protection under this Order.
14 Then, before producing the specified documents, the Producing Party must affix the
15 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
16 portion or portions of the material on a page qualifies for protection, the Producing Party
17 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
18 in the margins).

19 (b) for testimony given in depositions that the Designating Party identify
20 the Disclosure or Discovery Material on the record, before the close of the deposition all
21 protected testimony.

22 (c) for information produced in some form other than documentary and
23 for any other tangible items, that the Producing Party affix in a prominent place on the
24 exterior of the container or containers in which the information is stored the legend
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”
26 as applicable. If only a portion or portions of the information warrants protection, the
27 Producing Party, to the extent practicable, shall identify the protected portion(s).

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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
2 to designate qualified information or items does not, standing alone, waive the
3 Designating Party's right to secure protection under this Order for such material. Upon
4 timely correction of a designation, the Receiving Party must make reasonable efforts to
5 assure that the material is treated in accordance with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
8 of confidentiality at any time that is consistent with the Court's Scheduling Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
10 process under Local Rule 37.1 et seq.

11 6.3 The burden of persuasion in any such challenge proceeding shall be on the
12 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
13 to harass or impose unnecessary expenses and burdens on other parties) may expose the
14 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
15 the confidentiality designation, all parties shall continue to afford the material in question
16 the level of protection to which it is entitled under the Producing Party's designation until
17 the Court rules on the challenge. Any motion challenging a party's designation of
18 material as Confidential Information or Highly Confidential – ATTORNEYS' EYES
19 ONLY Information or seeking to modify or amend the proposed Protective Order must
20 be brought in strict compliance with Local Rules 37-1 and 37-2 (including the Joint
21 Stipulation requirement).

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a Non-Party in connection with this Action
25 only for prosecuting, defending, or attempting to settle this Action. Such Protected
26 Material may be disclosed only to the categories of persons and under the conditions
27 described in this Order. When the Action has been terminated, a Receiving Party must
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1 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
6 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
7 may disclose any information or item designated “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
9 well as employees of said Outside Counsel of Record to whom it is reasonably necessary
10 to disclose the information for this Action;

11 (b) the officers, directors, and employees (including House Counsel) of
12 the Receiving Party to whom disclosure is reasonably necessary for this Action;

13 (c) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this Action and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff;

18 (f) professional jury or trial consultants, mock jurors, and Professional
19 Vendors to whom disclosure is reasonably necessary for this Action;

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

22 (h) during their depositions, witnesses, and attorneys for witnesses, in the
23 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
24 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not
25 be permitted to keep any confidential information unless they sign the “Acknowledgment
26 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
27 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
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1 depositions that reveal Protected Material may be separately bound by the court reporter
2 and may not be disclosed to anyone except as permitted under this Stipulated Protective
3 Order; and

4 (i) any mediator or settlement officer, and their supporting personnel,
5 mutually agreed upon by any of the parties engaged in settlement discussions.

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7 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
8 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
9 writing by the Designating Party, a Receiving Party may disclose any information or item
10 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this action;

12 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
13 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
14 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2),
15 below, have been followed];

16 (c) the court and its personnel;

17 (d) Professional Vendors and their staff, professional jury or trial consultants, and
18 Professional Vendors to whom disclosure is reasonably necessary for this litigation; and

19 (e) the author or recipient of a document containing the information or a custodian
20 or other person who otherwise possessed or knew the information.

21 Notwithstanding any provision in this Protective Order, Designated Material
22 designated as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
23 EYES ONLY” by a Defendant or Non-Party may not be disclosed to House Counsel or
24 business representatives of any other Defendant or Non-Party (including in-house counsel
25 for any affiliates of that Defendant) without written consent of the Producing Party.

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1 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated
3 House Counsel or Experts.

4 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
5 Designating Party, a Party that seeks to disclose to Designated House Counsel any
6 information or item that has been designated “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written
8 request to the Designating Party that (1) sets forth the full name of the Designated House
9 Counsel and the city and state of his or her residence, and (2) describes the Designated
10 House Counsel’s current and reasonably foreseeable future primary job duties and
11 responsibilities in sufficient detail to determine if House Counsel is involved, or may
12 become involved, in any competitive decision-making.

13 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
14 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order)
15 any information or item that has been designated “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written
17 request to the Designating Party that (1) identifies the general categories of “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party
19 seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and
20 the city and state of his or her primary residence, (3) attaches a copy of the Expert’s
21 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person
22 or entity from whom the Expert has received compensation or funding for work in his or
23 her areas of expertise or to whom the expert has provided professional services, including
24 in connection with a litigation, at any time during the preceding five years,¹ and (6)

25 _____
26 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to
27 a third-party, then the Expert should provide whatever information the Expert believes
28 can be disclosed without violating any confidentiality agreements, and the Party seeking
to disclose to the Expert shall be available to meet and confer with the Designating Party
regarding any such engagement.

1 identifies (by name and number of the case, filing date, and location of court) any
2 litigation in connection with which the Expert has offered expert testimony, including
3 through a declaration, report, or testimony at a deposition or trial, during the preceding
4 five years.²

5 (b) A Party that makes a request and provides the information specified in the
6 preceding respective paragraphs may disclose the subject Protected Material to the
7 identified Designated House Counsel or Expert unless, within 14 days of delivering the
8 request, the Party receives a written objection from the Designating Party. Any such
9 objection must set forth in detail the grounds on which it is based.

10 (c) A Party that receives a timely written objection must meet and confer with the
11 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
12 agreement within seven days of the written objection. If no agreement is reached, the
13 Party seeking to make the disclosure to Designated House Counsel or the Expert may file
14 a motion as provided in Civil Local Rule 37-4 through 37-4, seeking permission from the
15 court to do so. Any such motion must describe the circumstances with specificity, set
16 forth in detail the reasons why the disclosure to Designated House Counsel or the Expert
17 is reasonably necessary, assess the risk of harm that the disclosure would entail, and
18 suggest any additional means that could be used to reduce that risk. In addition, any such
19 motion must be accompanied by a competent declaration describing the parties' efforts to
20 resolve the matter by agreement (i.e., the extent and the content of the meet and confer
21 discussions) and setting forth the reasons advanced by the Designating Party for its
22 refusal to approve the disclosure.

23 In any such proceeding, the Party opposing disclosure to Designated House
24 Counsel or the Expert shall bear the burden of proving that the risk of harm that the
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26 ² It may be appropriate in certain circumstances to restrict the Expert from undertaking
27 certain limited work prior to the termination of the litigation that could foreseeably result
28 in an improper use of the Designating Party's "HIGHLY CONFIDENTIAL –
ATTORNEYS' EYES ONLY" information.

1 disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's
2 need to disclose the Protected Material to its Designated House Counsel or Expert.

3 Any motion challenging a party's designation of material as Confidential
4 Information or Highly Confidential – ATTORNEYS' EYES ONLY Information or
5 seeking to modify or amend the proposed Protective Order must be brought in strict
6 compliance with Local Rules 37-1 and 37-2 (including the Joint Stipulation requirement).

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
8 OTHER LITIGATION

9 If a Party is served with a subpoena or a court order issued in other litigation that
10 compels disclosure of any information or items designated in this Action as
11 "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,"
12 as applicable, that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification
14 shall include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order
16 to issue in the other litigation that some or all of the material covered by the subpoena or
17 order is subject to this Protective Order. Such notification shall include a copy of this
18 Stipulated Protective Order; and

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

21 If the Designating Party timely seeks a protective order, the Party served with the
22 subpoena or court order shall not produce any information designated in this action as
23 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,"
24 as applicable, before a determination by the court from which the subpoena or order
25 issued, unless the Party has obtained the Designating Party's permission. The
26 Designating Party shall bear the burden and expense of seeking protection in that court of
27 its confidential material and nothing in these provisions should be construed as
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1 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
2 from another court.

3 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
4 IN THIS LITIGATION

5 (a) The terms of this Order are applicable to information produced by a
6 Non-Party in this Action and designated as "CONFIDENTIAL" or "HIGHLY
7 CONFIDENTIAL – ATTORNEYS' EYES ONLY," as applicable, or such information
8 produced by Non-Parties in connection with this litigation is protected by the remedies
9 and relief provided by this Order. Nothing in these provisions should be construed as
10 prohibiting a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to
12 produce a Non-Party's confidential information in its possession, and the Party is subject
13 to an agreement with the Non-Party not to produce the Non-Party's confidential
14 information, then the Party shall:

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

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

21 (3) make the information requested available for inspection by the
22 Non-Party, if requested.

23 (c) If the Non-Party fails to seek a protective order from this court within
24 14 days of receiving the notice and accompanying information, the Receiving Party may
25 produce the Non-Party's confidential information responsive to the discovery request. If
26 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
27 information in its possession or control that is subject to the confidentiality agreement
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1 with the Non-Party before a determination by the court. Absent a court order to the
2 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
3 court of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain inadvertently
16 produced material is subject to a claim of privilege or other protection, the obligations of
17 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
18 This provision is not intended to modify whatever procedure may be established in an e-
19 discovery order that provides for production without prior privilege review. Pursuant to
20 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
21 effect of disclosure of a communication or information covered by the attorney-client
22 privilege or work product protection, the parties may incorporate their agreement in the
23 stipulated protective order submitted to the court.

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
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1 Protective Order no Party waives any right it otherwise would have to object to disclosing
2 or producing any information or item on any ground not addressed in this Stipulated
3 Protective Order. Similarly, no Party waives any right to object on any ground to use in
4 evidence of any of the material covered by this Protective Order.

5 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
6 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
7 under seal pursuant to a court order authorizing the sealing of the specific Protected
8 Material at issue. If a Party's request to file Protected Material under seal is denied by the
9 court, then the Receiving Party may file the information in the public record unless
10 otherwise instructed by the court.

11 13. FINAL DISPOSITION

12 After the final disposition of this Action, as defined in paragraph 4, within 60 days
13 of a written request by the Designating Party, each Receiving Party must return all
14 Protected Material to the Producing Party or destroy such material. As used in this
15 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
16 summaries, and any other format reproducing or capturing any of the Protected Material.
17 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
18 a written certification to the Producing Party (and, if not the same person or entity, to the
19 Designating Party) by the 60 day deadline that (1) identifies (by category, where
20 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
21 the Receiving Party has not retained any copies, abstracts, compilations, summaries or
22 any other format reproducing or capturing any of the Protected Material.
23 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
24 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
25 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
26 consultant and expert work product, even if such materials contain Protected Material.
27 Any such archival copies that contain or constitute Protected Material remain subject to
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1 this Protective Order as set forth in Section 4 (DURATION).

2 14. Any violation of this Order may be punished by any and all appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 Dated: September 9, 2015

6 By: /s/ Victor de Gyarfás

7 **VICTOR DE GYARFAS**
8 **FOLEY & LARDNER LLP**
9 Attorneys for Defendants SECARD
10 POOLS; JOE SECARD; EDMOND
11 SECARD; PINCH A PENNY, POOL
12 SUPPLY UNLIMITED; SUN
13 WHOLESALE SUPPLY; WAYFAIR,
14 LLC; WAL-MART STORES, INC.

15 /s/ Sepehr Daghighian

16 **SEPEHR DAGHIGHIAN, ESQ.**
17 **LAW OFFICES OF SEPEHR**
18 **DAGHIGHIAN, P.C.**

19 Attorney for Plaintiff/Counterclaim
20 Defendants SOLAR SUN RINGS, INC.,
21 LORA ROSENE, RICHARD ROSENE,
22 DAVID BARTOLI

23 /s/ Ronnie Casey Hull

24 **RONNIE CASEY HULL, ESQ.**
25 Attorney for Defendants LOWE'S HOME
26 CENTERS, LLC, OVERSTOCK.COM,
27 INC., HOME DEPOT, U.S.A., INC, AND
28 SEARS HOLDINGS MANAGEMENT
CORPORATION

1 **ATTESTATION CLAUSE**

2 Pursuant to L.R. 5-4.3.4(a)(2)(i), I hereby attest that all other signatories listed, and
3 on whose behalf the filing is submitted, concur in the filing's content and have authorized
4 the filing.

5 Dated: September 9, 2015

By: /s/ Victor de Gyarf

6 VICTOR DE GYARFAS
7 FOLEY & LARDNER LLP
8 Attorneys for Defendants SECARD
9 POOLS; JOE SECARD; EDMOND
10 SECARD; PINCH A PENNY, POOL
11 SUPPLY UNLIMITED; SUN
12 WHOLESALE SUPPLY; WAYFAIR,
13 LLC; WAL-MART STORES, INC.

14 PURSUANT TO STIPULATION, IT IS SO ORDERED.

15 

16 DATED: Septemer 10, 2015

17 _____
18 Hon. Kenly Kiya Kato
19 United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____

5 [print or type full name], of _____

6 [print or type full address], declare under penalty of perjury that I have read in its entirety
7 and understand the Stipulated Protective Order that was issued by the United States
8 District Court for the Central District of California on [date] in the case of Solar Sun
9 Rings, Inc. v. Secard Pools, Case No. 14-cv-02417 PSG-KK. I agree to comply with and
10 to be bound by all the terms of this Stipulated Protective Order and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and punishment in
12 the nature of contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to any person or
14 entity except in strict compliance with the provisions of this Order.

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

19 [print or type full name] of _____

20 [print or type full address and telephone number] as my California agent for service of
21 process in connection with this action or any proceedings related to enforcement of this
22 Stipulated Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 signature: _____

27
28

1 **PROOF OF SERVICE**

2 I am employed in the **County of Los Angeles, State of California**. I am over the age of 18 and
3 not a party to this action; my current business address is 555 South Flower Street, Suite 3500,
4 **Los Angeles, CA 90071-2411**.

5 On March 21, 2014, I served the foregoing document(s) described as: **MASTER CAPTION --**
6 **PLEASE DUPE!!!** on the interested parties in this action as follows:

7 Sepehr Daghighian sepehr@daghighian.com
8 Nathan Talei nathan@daghighian.com
9 LAW OFFICES OF SEPEHR DAGHIGHIAN, P.C.
10 433 North Camden Drive, Fourth Floor
11 Beverly Hills, CA 90210
12 Telephone: (310) 887-1333
13 Facsimile: (310) 887-1334

14 **BY MAIL**

15 I am readily familiar with the firm’s practice of collection and processing
16 correspondence for mailing with the United States Postal Service; the firm
17 deposits the collected correspondence with the United States Postal Service that
18 same day, in the ordinary course of business, with postage thereon fully prepaid,
19 at Los Angeles, **California**. I placed the envelope(s) for collection and mailing
20 on the above date following ordinary business practices.

21 **BY E-MAIL**

22 I served the foregoing document via e-mail to the addressees above at the e-mail
23 addresses listed therein.

24 **BY HAND DELIVERY**. I delivered the envelope(s) **by hand** to addressee(s).

25 **BY EXPRESS SERVICE CARRIER (Via Overnight Courier Service)**

26 I am readily familiar with the firm’s practice for collection and processing of
27 correspondence for delivery by Click and Type Name of Courier : collected
28 packages are picked up by an express carrier representative on the same day,
with the Airbill listing the account number for billing to sender, at Los Angeles,
California, in the ordinary course of business. I placed the envelope(s) in an
envelope or package designated by the express service carrier for collection and
processing for express service delivery on the above date following ordinary
business practices.

29 X Executed on September 9, 2015, at Los Angeles, **California**.

30 X I declare that I am employed in the office of a member of the bar of this court at
31 whose direction the service was made.

32 _____
33 Click and Type Name