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

ADVANCED VISUAL IMAGE DESIGN,
LLC, dba AVID INK, a California Limited
Liability Company,

Plaintiff,

v.

EXIST, INC., *et al.*,

Defendants.

All related counter-claims.

Case No.: 2:14-cv-02525-JGB-KK
Honorable Kenly Kiya Kato Presiding

[DISCOVERY MATTER]

~~(PROPOSED)~~ **PROTECTIVE
ORDER FOR CONFIDENTIAL
TREATMENT OF DOCUMENTS
AND INFORMATION**

NOTE CHANGES MADE BY THE COURT

Having considered the parties' pleadings on file to date, and the parties' jointly submitted Stipulated Protective Order for Confidential Treatment of Documents and Information to govern the handling of information and materials produced in the course of discovery or filed with the Court in this action, the Court determines and orders as follows:

1 1. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
7 enter the following Stipulated Protective Order. The parties acknowledge that
8 this Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use
10 extends only to the limited information or items that are entitled to confidential
11 treatment under the applicable legal principles. The parties further acknowledge,
12 as set forth in Section 13.3, below, that this Stipulated Protective Order does not
13 entitle them to file confidential information under seal; Civil Local Rule 79-5
14 sets forth the procedures that must be followed and the standards that will be
15 applied when a party seeks permission from the court to file material under seal.

16 1.2 GOOD CAUSE STATEMENT

17 This Action involves claims for copyright infringement under the
18 Copyright Act of 1976, Title 17 U.S.C., § 101 *et seq.* The parties, who are
19 various manufacturers, licensors and vendors of textile designs, and apparel
20 distributors and retailers, are direct and/or indirect competitors of each other. In
21 order to establish their claims and defenses, the parties intend to seek discovery
22 requesting sales, vendor, customer, import and export practice, other financial
23 information, and potentially other commercially and competitively sensitive
24 information.

25 There will also potentially be multiple depositions of the parties'
26 employees or agents and third party vendors, customers, licensees or clients
27 and such persons will likely be asked to answer questions on these

1 potentially sensitive subject areas. Information regarding the parties' vendors,
2 customers, licensees and clients is confidential and/or proprietary information
3 which cannot be disclosed to other parties and/or the public at large. A
4 protective order ("Protective Order" or "Order") is therefore necessary to
5 avoid any prejudice or harm which would likely result if such information
6 was disclosed in the absence of the protections set forth herein. This Order
7 is also necessary for the orderly management of this litigation. Without this
8 Order, the exchange of party information, as well as information needed from
9 enter the following Stipulated Protective Order. The parties acknowledge that
10 this Order does not confer blanket protections on all disclosures or responses to
11 discovery and that the protection it affords from public disclosure and use
12 extends only to the limited information or items that are entitled to confidential
13 treatment under the applicable legal principles. The parties further acknowledge,
14 as set forth in Section 13.3, below, that this Stipulated Protective Order does not
15 entitle them to file confidential information under seal; Civil Local Rule 79-5
16 sets forth the procedures that must be followed and the standards that will be
17 applied when a party seeks permission from the court to file material under seal.

18 2. DEFINITIONS

19 2.1 Action: This pending federal lawsuit, *Advanced Visual Image Design,*
20 *Inc. dba Avid Ink v. Exist, Inc.*, Central District of California Case No. 14-
21 CV- 02525-JGB-KK (filed December 8, 2014).

22 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
23 information or items under this Order.

24 2.3 "CONFIDENTIAL" Information or Items: as used herein, means all
25 information that is not otherwise publicly available (regardless of how it is
26 generated, stored or maintained) or tangible things that qualify for protection

1 under Federal Rule of Civil Procedure 26(c), and as specified above in the
2 Good Cause Statement, and

3 (a) is protected under the Uniform Trade Secrets Act, California Civil
4 Code section 3426, et. seq., in that such information derives independent economic
5 value, actual or potential, from not being generally known to, and not being
6 readily ascertainable by proper means, by other persons who can obtain
7 economic value from its disclosure or use; and

8 (b) is the subject of efforts that are reasonable under the
9 circumstances to maintain its secrecy; and

10 (c) is otherwise regarded by a party as being confidential, private, or
11 proprietary in nature.

12 2.4 Counsel: Outside Counsel of Record (as well as their support staff).

13 2.5 Designating Party: a Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as
15 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES
16 ONLY".

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

22 2.7 Expert: a person with specialized knowledge or experience in a
23 matter pertinent to the litigation who has been retained by a Party or its counsel
24 to serve as an expert witness or as a consultant in this Action.

25 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
26 ONLY" Information or Items: CONFIDENTIAL Information or Items as

1 defined in paragraph 2.3 above, that contains highly sensitive business or
2 personal information, the disclosure of which is highly likely to cause
3 significant harm to an individual or to the business or competitive position
4 of the designating party. Any party to this litigation or third party covered
5 by this Order that produces or discloses any Attorneys' Eyes Only
6 Information shall mark the same with the following, or a substantially
7 similar, legend: "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
8 ONLY".

9
10 2.9 In-House Counsel: attorneys who are employees of a party to
11 this Action. In-House Counsel does not include Outside Counsel of Record or
12 any other outside counsel.

13 2.10 Non-Party: any natural person, partnership, corporation,
14 association, or other legal entity not named as a Party to this action.

15 2.11 Outside Counsel of Record: attorneys who are not employees of a
16 party to this Action but are retained to represent or advise a party to this Action
17 and have appeared in this Action on behalf of that party or are affiliated with a law
18 firm which has appeared on behalf of that party, and includes support staff.

19 2.12 Party: any party to this Action, including all of its officers, directors,
20 employees, consultants, retained experts, and Outside Counsel of Record (and their
21 support staffs).

22 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this Action.

24 2.14 Professional Vendors: persons or entities that provide litigation
25 support services (e.g., photocopying, videotaping, translating, preparing
26

1 exhibits or demonstrations, and organizing, storing, or retrieving data in any
2 form or medium) and their employees and subcontractors.

3 2.15 Protected Material: any Disclosure or Discovery Material that is
4 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
5 ATTORNEYS' EYES ONLY."

6 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
7 from a Producing Party.

8 3. SCOPE

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

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

16 4. DURATION

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

25
26 5. DESIGNATING PROTECTED MATERIAL

1 proceedings), that the Producing Party affix at a minimum, the legend
2 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend") or "HIGHLY
3 CONFIDENTIAL-ATTORNEYS' EYES ONLY" (hereinafter "HIGHLY
4 CONFIDENTIAL – ATTORNEYS' EYES ONLY legend"), to each page
5 that contains protected material. If only a portion or portions of the material on a
6 page qualifies for protection, the Producing Party also must clearly identify the
7 protected portion(s) (e.g., by making appropriate markings in the margins).

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

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

25 (c) for information produced in some form other than documentary and for
26 any other tangible items, that the Producing Party affix in a prominent place on the

1 exterior of the container or containers in which the information is stored the legend
2 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES
3 ONLY". If only a portion or portions of the information warrants protection, the
4 Producing Party, to the extent practicable, shall identify the protected portion(s).

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

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court's
14 Scheduling Order.

15 6.2 Meet and Confer. Any challenge hereunder must be made in
16 strict compliance with Local Rules 37-1 and 37-2 (including the
17 Joint Stipulation requirement). ~~A Challenging Party may also~~
18 ~~apply for relief on an expedited or ex parte basis if warranted under the~~
19 circumstances. In making or opposing any motion relating to the designation of
20 CONFIDENTIAL Information or HIGHLY CONFIDENTIAL –
21 ATTORNEYS' EYES ONLY Information, the party seeking to maintain a
22 document under the Protective Order as CONFIDENTIAL or HIGHLY
23 CONFIDENTIAL – ATTORNEYS' EYES ONLY shall bear the burden of
24 showing specific prejudice or harm if the information sought to be protected is
25 disclosed to the public. *See e.g., Phillips ex rel. Byrd v. General Motors Corp.*,
26 307 F.3d 1206, 1210-1211 (9th Cir. 2002). Frivolous challenges, and those
27 made for an improper purpose (e.g., to harass

1 or impose unnecessary expenses and burdens on other parties) may expose the
2 Challenging Party to sanctions.

3 Unless the Designating Party has waived or withdrawn the confidentiality
4 designation, all parties shall continue to afford the material in question the level of
5 protection to which it is entitled under the Producing Party's designation until the
6 Court rules on the challenge.

7 7. ACCESS TO AND USE OF PROTECTED MATERIAL

8 7.1 Basic Principles. A Receiving Party may use Protected Material that
9 disclosed or produced by another Party or by a Non-Party in connection with this
10 Action only for prosecuting, defending, or attempting to settle this Action. Such
11 Protected Material may be disclosed only to the categories of persons and under
12 the conditions described in this Order. When the Action has been terminated, a
13 Receiving Party must comply with the provisions of section 13 below (FINAL
14 DISPOSITION).

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

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
19 otherwise ordered by the court or permitted in writing by the Designating Party,
20 a Receiving Party may disclose any information or item designated
21 "CONFIDENTIAL" only to:

22 (a) the Receiving Party's Outside Counsel of Record in this Action, as
23 well as employees of said Outside Counsel of Record to whom it is reasonably
24 necessary to disclose the information for this Action;

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

1 (c) Experts (as defined in this Order) of the Receiving Party to
2 whom disclosure is reasonably necessary for this Action and who have
3 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and Professional
7 Vendors to whom disclosure is reasonably necessary for this Action and who have
8 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

11 (h) during their depositions, witnesses, and attorneys for witnesses, in
12 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
13 party requests that the witness sign the form attached as Exhibit A hereto; and
14 (2) they will not be permitted to keep any CONFIDENTIAL information unless
15 they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
16 unless otherwise agreed by the Designating Party or ordered by the court.
17 Pages of transcribed deposition testimony or exhibits to depositions that reveal
18 Protected Material may be separately bound by the court reporter and may not be
19 disclosed to anyone except
20 as permitted under this Stipulated Protective Order; and

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

23 7.3 Disclosure of "HIGHLY CONFIDENTIAL- ATTORNEYS'
24 EYES ONLY" Information or Items. Where a Designating Party has
25 designated information as "Highly Confidential – Attorneys' Eyes Only," other
26

1 persons subject to this Order may disclose such information only to the
2 following persons:

3 (a) the Receiving Party's Outside Counsel of Record in this Action, as
4 well as employees of said Outside Counsel of Record to whom it is reasonably
5 necessary to disclose the information for this Action;

6 (b) Experts (as defined in this Order) of the Receiving Party to
7 whom disclosure is reasonably necessary for this Action and who have
8 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

9 (c) the Court and its personnel;

10 (d) court reporters and their staff;

11 (e) professional jury or trial consultants, mock jurors, and
12 Professional Vendors to whom disclosure is reasonably necessary for this Action
13 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
14 A);

15 (f) the author or recipient of a document containing the information
16 or a custodian or other person who otherwise possessed or knew the information;

17 (g) during their depositions, witnesses, and attorneys for witnesses, in
18 the Action to whom disclosure is reasonably necessary provided: (1) the deposing

19 party requests that the witness sign the form attached as Exhibit A hereto; and

20 (2) they will not be permitted to keep any HIGHLY CONFIDENTIAL-
21 ATTORNEYS' EYES ONLY information unless they sign the "Acknowledgment

22 and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the

23 Designating Party or ordered by the court. Pages of transcribed deposition

24 testimony or exhibits to depositions that reveal Protected Material may be

25 separately bound by the court reporter and may not be disclosed to anyone except

26 as permitted under this Stipulated Protective

1 Order; and

2 (h) any mediator or settlement officer, and their supporting personnel,
3 mutually agreed upon by any of the parties engaged in settlement discussions.

4 7.4 The Parties agree that each of the Parties may be provided by
5 their respective Outside Counsel of Record a summary document, or oral
6 summary, setting forth the alleged infringers' full identities (limited to company
7 name and address only), total revenues for each alleged infringing
8 product/service, total gross profits numbers, total number of units (or the
9 equivalents for a service) produced, provided, and/or sold of the allegedly
10 infringing product(s) and/or service at issue disseminated by the alleged
11 infringers of the design(s) at issue in this litigation notwithstanding any party's
12 designation of documents showing such information as HIGHLY
13 CONFIDENTIAL – ATTORNEYS' EYES ONLY.

14 7.5 The Party making the disclosure of information marked "HIGHLY
15 CONFIDENTIAL-ATTORNEYS' EYES ONLY" shall keep a record of the
16 HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY Information disclosed
17 to such person.

18 7.6 If an Expert, as defined herein, is a direct competitor of a
19 Designating Party, or is affiliated with any enterprise that is in a position to
20 commercially exploit information designated as CONFIDENTIAL or HIGHLY
21 CONFIDENTIAL – ATTORNEYS EYES' ONLY, (hereinafter "Expert
22 Competitor") then the Party seeking to disclose information marked
23 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS EYES'
24 ONLY to the Expert Competitor must deliver written notice to the Designating
25 Party of its desire to do so at least five (5) business days before making
26 disclosure to the Expert Competitor. During this period, the recipient of such

1 notice may object to the disclosure of all or any portion of the information
2 marked CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS
3 EYES' ONLY to the Expert Competitor. In the event of such objection, the
4 Designating Party and the Party seeking to disclose information to an Expert
5 Competitor shall attempt in good faith to negotiate a stipulation to delineate
6 what information marked CONFIDENTIAL or HIGHLY CONFIDENTIAL –
7 ATTORNEYS EYES' ONLY may be disclosed to the particular Expert
8 Competitor and the circumstances under which such disclosure may be
9 made. If they cannot agree, the Party seeking to disclose information marked
10 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS EYES'
11 ONLY to the Expert Competitor shall not do so without first obtaining Court
12 approval pursuant to the applicable Local Rules. In determining whether to
13 categorize a person as an Expert Competitor for purposes of this paragraph,
14 Counsel shall exercise reasonable judgment as to whether any enterprise with
15 which such person is known to be affiliated is in a position to
16 commercially exploit information marked CONFIDENTIAL or HIGHLY
CONFIDENTIAL – ATTORNEYS EYES' ONLY.

17 7.7 In-House counsel shall be precluded from access to any documents
18 marked "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY," without
19 first obtaining court authorization or written authorization by the Designating
20 Party.

21 8. Nothing contained herein shall preclude a party from (a) using or
22 disseminating its own CONFIDENTIAL Information or HIGHLY
23 CONFIDENTIAL-ATTORNEYS' EYES ONLY Information in any way; (b)
24 disclosing information taken from a document marked "CONFIDENTIAL" or
25 " HIGHLY CONFIDENTIAL" to any person who on the face of that
26 document is shown as having previously received the document; (c)

1 disclosing CONFIDENTIAL Information or HIGHLY CONFIDENTIAL-
2 ATTORNEYS' EYES ONLY Information of the party that designated the
3 information as such to an officer, director, or manager of that Designating
4 party, or to other witnesses designated by that Designating party pursuant to
5 Rule 30(b)(6), F.R.Civ.P.; (d) disclosing information which, at the time of
6 disclosure, was already in the recipient's possession or available to it from any
7 other source having no obligation to the party or nonparty witness which is the
8 source of said information or which is, or at any time hereafter becomes,
9 available to the public or which, after access is gained through disclosure in
10 this action, is at any time obtained by the recipient from any other person,
11 firm or company having no obligation to or relationship with the source of
12 said information; or (e) intentionally waiving in writing any provision in this
13 Order with respect to any CONFIDENTIAL Information or HIGHLY
14 CONFIDENTIAL-ATTORNEYS' EYES ONLY Information designated by it
15 without further order of the Court.

16 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED
17 PRODUCED IN OTHER LITIGATION

18 If a Party is served with a subpoena or a court order issued in other litigation
19 that compels disclosure of any information or items designated in this Action as
20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" that Party must:

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

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

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

3 If the Designating Party timely seeks a protective order, the Party served
4 with the subpoena or court order shall not produce any information designated in
5 this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" before a
6 determination by the court from which the subpoena or order issued, unless the
7 Party has obtained the Designating Party's permission. The Designating Party shall
8 bear the burden and expense of seeking protection in that court of its confidential
9 material and nothing in these provisions should be construed as authorizing or
10 encouraging a Receiving Party in this Action to disobey a lawful directive from
11 another court.

12 10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
13 PRODUCED IN THIS LITIGATION

14 (a) The terms of this Order are applicable to information produced by a Non-
15 Party in this Action and designated as "CONFIDENTIAL" or "HIGHLY
16 CONFIDENTIAL." Such information produced by Non-Parties in connection
17 with this litigation is protected by the remedies and relief provided by this Order.
18 Nothing in these provisions should be construed as prohibiting a Non-Party from
19 seeking additional protections.
20

21 (b) In the event that a Party is required, by a valid discovery request,
22 to produce a Non-Party's CONFIDENTIAL Information or
23 HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY Information in its
24 possession, and the Party is subject to an agreement with the Non-Party not to
25 produce the Non- Party's CONFIDENTIAL Information or HIGHLY
26 CONFIDENTIAL- ATTORNEYS' EYES ONLY Information, then the Party shall:

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

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

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

9 (c) If the Non-Party fails to seek a protective order from
10 this court within 14 days of receiving the notice and
11 accompanying information, the Receiving Party may produce
12 the Non-Party's CONFIDENTIAL Information or HIGHLY
13 CONFIDENTIAL-ATTORNEYS' EYES ONLY Information
14 responsive to the discovery request. If the Non-Party timely seeks
15 a protective order, the Receiving Party shall not produce any
16 information in its possession or control that is subject to the
17 confidentiality agreement with the Non-Party before a
18 determination by the court. Absent a court order to the contrary, the
19 Non-Party shall bear the burden and expense of seeking protection in
20 this court of its Protected Material.

21
22 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has
24 disclosed Protected Material to any person or in any circumstance not
25 authorized under this Stipulated Protective Order, the Receiving Party must
26 immediately (a) notify in writing the Designating Party of the unauthorized

1 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
2 Protected Material, (c) inform the person or persons to whom unauthorized
3 disclosures were made of all the terms of this Order, and (d) request such person
4 or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
5 attached hereto as Exhibit A.

6 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

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

18 13. MISCELLANEOUS

19 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
20 person to seek its modification by the Court in the future. Any application seeking
21 modification must be made in strict compliance with Local Rules 37-1 and 37-2
22 (including the Joint Stipulation requirement).

23 13.2 Right to Assert Other Objections. By stipulating to the entry of this
24 Protective Order no Party waives any right it otherwise would have to object to
25 disclosing or producing any information or item on any ground not addressed in this
26

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any
2 ground to use in evidence of any of the material covered by this Protective Order.

3 13.3 Filing Protected Material. Protected Material may only be filed under
4 seal pursuant to a Court Order authorizing the sealing of the specific Protected
5 Material at issue. Any Party seeking to file any Protected Material under seal must
6 comply with Civil Local Rule 79-5. If a Party's request to file Protected Material
7 under seal is denied by the Court, then the Receiving Party may file the information
8 in the public record unless otherwise instructed by the Court. If the Court grants a
9 Party's motion to file Protected Under seal, the Protected Material shall be
10 maintained under seal with the United States District Court for the Central District
11 of California, pursuant to this Order, or as otherwise ordered by this Court. All such
12 Protected Material will be filed in a sealed envelope that contains an indication of
13 the general nature of the contents of the envelope, and has endorsed thereon the title
14 and docket number of this action and a boldface label conspicuously placed on the
15 front of the said envelope stating:

16 THIS ENVELOPE CONTAINS DOCUMENTS, THINGS, OR TESTIMONY
17 WHICH ARE 'CONFIDENTIAL' (OR "HIGHLY CONFIDENTIAL
18 ATTORNEYS' EYES ONLY AND SUBJECT TO THE TERMS OF A
19 PROTECTIVE ORDER OF THE UNITED STATES DISTRICT COURT,
20 CENTRAL DISTRICT OF CALIFORNIA. IT IS NOT TO BE OPENED OR THE
21 CONTENTS DISPLAYED OR REVEALED EXCEPT TO THIS COURT AND
22 ITS STAFF.

23
24 To the extent practicable, designated items or the substance of designated
25 items shall be filed separately or in severable portions of filed papers, so that non-
26 designated items may be freely disseminated.

1 13.4 In the event that information designated as Protected Material is
2 contemplated to be used at trial, the Receiving Party seeking to use such information
3 shall give notice to the Court and the Designating Party of its intention to use the
4 Protected Material at trial sufficiently in advance of its contemplated use so that the
5 Court can have the matter heard. The Designating Party continues to bear the burden
6 of showing to the Court that there is good cause to keep the materials sought to be
7 used at trial as subject to and treated under the terms of this Protective Order so that
8 the Court may keep the Protected Material exempt from public disclosure even
9 though the Protected Material is used at trial.

10 14. FINAL DISPOSITION

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

1 that contain or constitute Protected Material remain subject to this Protective Order
2 as set forth in Section 4 (DURATION).


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

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8 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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10 Dated: August 12 , 2015



Hon. Kenly Kiya Kato
United States Magistrate Judge

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