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 8 Netecs Corporation, a California corporation; and  
 9 Counterclaim Defendants Jeffery Tooley and Chris  
 10 Tooley

11 **UNITED STATES DISTRICT COURT**  
 12 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**  
 13 **GEORGE E. BROWN, JR. COURTHOUSE (RIVERSIDE)**

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11 **NETECS CORPORATION**, a  
 12 California corporation,  
 13 Plaintiff  
 14 v.  
 15 **DAMON McCLURE**, a natural  
 16 person, and  
 17 **DOES 1 through 100**, inclusive;  
 18 Defendants

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19 **DAMON McCLURE**, a natural  
 20 person,  
 21 Counterclaimant,  
 22 v.  
 23 **NETECS CORPORATION**, a  
 24 California corporation,  
 25 **JEFFREY TOOLEY**, a natural  
 26 person, and  
 27 **CHRIS TOOLEY**, a natural person,  
 28 Counterclaim Defendants

Case No. 5:16-cv-02452 JGB (KKx)  
 Assigned to Hon. Jesus G. Bernal  
 Courtroom “1”

**STIPULATED PROTECTIVE ORDER**

Complaint filed: October 31, 2016  
 Counterclaim filed: December 6, 2016  
 Trial Date: Not set  
 Pre-Trial Conf.: Not set

1 Counterclaim Defendants Netecs Corporation, a California corporation,  
2 Jeffery Tooley, and Chris Tooley on the one hand, and on the other hand, Defendant  
3 and Counterclaimant Damon McClure hereby submit this Stipulated Protective  
4 Order per the Sample Stipulated Protective Order on the Court's website for the  
5 Hon. Kenly Kiya Kato, as adapted, as follows.

6 **1. A. PURPOSES AND LIMITATIONS**

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

20 **B. GOOD CAUSE STATEMENT**

21 This action is likely to involve trade secrets, customer and pricing lists and  
22 other valuable research, development, commercial, financial, technical and/or  
23 proprietary information for which special protection from public disclosure and  
24 from use for any purpose other than prosecution of this action is warranted. Such  
25 confidential and proprietary materials and information consist of, among other  
26 things, confidential business or financial information, information regarding  
27 confidential business practices, or other confidential research, development, or  
28 commercial information (including information implicating privacy rights of third

1 parties), information otherwise generally unavailable to the public, or which may be  
2 privileged or otherwise protected from disclosure under state or federal statutes,  
3 court rules, case decisions, or common law. Accordingly, to expedite the flow of  
4 information, to facilitate the prompt resolution of disputes over confidentiality of  
5 discovery materials, to adequately protect information the parties are entitled to keep  
6 confidential, to ensure that the parties are permitted reasonable necessary uses of  
7 such material in preparation for and in the conduct of trial, to address their handling  
8 at the end of the litigation, and serve the ends of justice, a protective order for such  
9 information is justified in this matter. It is the intent of the parties that information  
10 will not be designated as confidential for tactical reasons and that nothing be so  
11 designated without a good faith belief that it has been maintained in a confidential,  
12 non-public manner, and there is good cause why it should not be part of the public  
13 record of this case.

14 **2. DEFINITIONS**

15 2.1 Action: This pending federal law suit.

16 2.2 Challenging Party: a Party or Non-Party that challenges the  
17 designation of information or items under this Order.

18 2.3 “CONFIDENTIAL” Information or Items: information (regardless  
19 of how it is generated, stored or maintained) or tangible things that qualify for  
20 protection under Federal Rule of Civil Procedure 26(c), and as specified  
21 above in the Good Cause Statement.

22 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
23 their support staff).

24 2.5 Designating Party: a Party or Non-Party that designates information  
25 or items that it produces in disclosures or in responses to discovery as  
26 “CONFIDENTIAL.”

27 2.6 Disclosure or Discovery Material: all items or information, regardless of  
28 the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced or  
2 generated in disclosures or responses to discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
5 an expert witness or as a consultant in this Action.

6 2.8 House Counsel: attorneys who are employees of a party to this Action.  
7 House Counsel does not include Outside Counsel of Record or any other outside  
8 counsel.

9 2.9 Non-Party: any natural person, partnership, corporation, association, or  
10 other legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a party  
12 to this Action but are retained to represent or advise a party to this Action and have  
13 appeared in this Action on behalf of that party or are affiliated with a law firm which  
14 has appeared on behalf of that party, and includes support staff.

15 2.11 Party: any party to this Action, including all of its officers, directors,  
16 employees, consultants, retained experts, and Outside Counsel of Record (and their  
17 support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation support  
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
23 and their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is  
25 designated as “CONFIDENTIAL.”

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
27 from a Producing Party.

28 **3. SCOPE**

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

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

8 trial. **4. DURATION**

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

17 **5. DESIGNATING PROTECTED MATERIAL**

18 5.1 Exercise of Restraint and Care in Designating Material for  
19 Protection. Each Party or Non-Party that designates information or items for  
20 protection under this Order must take care to limit any such designation to  
21 specific material that qualifies under the appropriate standards. The  
22 Designating Party must designate for protection only those parts of material,  
23 documents, items, or oral or written communications that qualify so that other  
24 portions of the material, documents, items, or communications for which  
25 protection is not warranted are not swept unjustifiably within the ambit of this  
26 Order. Mass, indiscriminate, or routinized designations are prohibited. Designations  
27 that are shown to be clearly unjustified or that have been made for an improper  
28 purpose (e.g., to unnecessarily encumber the case development process or to impose

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

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

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
7 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
9 under this Order must be clearly so designated before the material is disclosed or  
10 produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic documents,  
13 but excluding transcripts of depositions or other pretrial or trial proceedings), that  
14 the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter  
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  
17 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
18 markings in the margins).

19 A Party or Non-Party that makes original documents available for inspection  
20 need not designate them for protection until after the inspecting Party has indicated  
21 which documents it would like copied and produced. During the inspection and  
22 before the designation, all of the material made available for inspection shall be  
23 deemed "CONFIDENTIAL." After the inspecting Party has identified the  
24 documents it wants copied and produced, the Producing Party must determine which  
25 documents, or portions thereof, qualify for protection under this Order. Then,  
26 before producing the specified documents, the Producing Party must affix the  
27 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a  
28 portion or portions of the material on a page qualifies for protection, the Producing

1 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
2 markings in the margins).

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

6 (c) for information produced in some form other than documentary and  
7 for any other tangible items, that the Producing Party affix in a prominent  
8 place on the exterior of the container or containers in which the information is  
9 stored the legend “CONFIDENTIAL.” If only a portion or portions of the  
10 information warrants protection, the Producing Party, to the extent  
11 practicable, shall identify the protected portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an  
13 inadvertent failure to designate qualified information or items does not,  
14 standing alone, waive the Designating Party’s right to secure protection under  
15 this Order for such material. Upon timely correction of a designation, the  
16 Receiving Party must make reasonable efforts to assure that the material is  
17 treated in accordance with the provisions of this Order.

18 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
20 designation of confidentiality at any time that is consistent with the Court’s  
21 Scheduling Order.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
23 resolution process under Local Rule 37.1 et seq.

24 6.3 The burden of persuasion in any such challenge proceeding shall be on the  
25 Designating Party. Frivolous challenges, and those made for an improper purpose  
26 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
27 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
28 or withdrawn the confidentiality designation, all parties shall continue to afford the

1 material in question the level of protection to which it is entitled under the  
2 Producing Party’s designation until the Court rules on the challenge.

3 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
5 disclosed or produced by another Party or by a Non-Party in connection with this  
6 Action only for prosecuting, defending, or attempting to settle this Action. Such  
7 Protected Material may be disclosed only to the categories of persons and under the  
8 conditions described in this Order. When the Action has been terminated, a  
9 Receiving Party must comply with the provisions of section 13 below (FINAL  
10 DISPOSITION).

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

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
15 otherwise ordered by the court or permitted in writing by the Designating Party, a  
16 Receiving Party may disclose any information or item designated  
17 “CONFIDENTIAL” only to:

18 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as  
19 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
20 disclose the information for this Action; (b) the officers, directors, and employees  
21 (including House Counsel) of the Receiving Party to whom disclosure is reasonably  
22 necessary for this Action;

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

26 (d) the court and its personnel;

27 (e) court reporters and their staff;



1 (f) professional jury or trial consultants, mock jurors, and Professional  
2 Vendors to whom disclosure is reasonably necessary for this Action and who  
3 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

6 (h) during their depositions, witnesses, and attorneys for witnesses, in  
7 the Action to whom disclosure is reasonably necessary provided: (1) the  
8 deposing party requests that the witness sign the form attached as Exhibit 1  
9 hereto; and (2) they will not be permitted to keep any confidential information  
10 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit  
11 A), unless otherwise agreed by the Designating Party or ordered by the court.

12 Pages of transcribed deposition testimony or exhibits to depositions that  
13 reveal Protected Material may be separately bound by the court reporter and  
14 may not be disclosed to anyone except as permitted under this Stipulated  
15 Protective Order, and/or settlement officer, and their supporting personnel,  
16 mutually agreed upon by any of the parties engaged in settlement discussions.

17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
18 **PRODUCED IN OTHER LITIGATION**

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

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

24 (b) promptly notify in writing the party who caused the subpoena or  
25 order to issue in the other litigation that some or all of the material covered by  
26 the subpoena or order is subject to this Protective Order. Such notification  
27 shall include a copy of this Stipulated Protective Order; and  
28

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

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

11 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
12 **PRODUCED IN THIS LITIGATION**

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

18 (b) In the event that a Party is required, by a valid discovery request, to  
19 produce a Non-Party’s confidential information in its possession, and the Party is  
20 subject to an agreement with the Non-Party not to produce the Non-Party’s  
21 confidential information, then the Party shall:

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

25 (2) promptly provide the Non-Party with a copy of the Stipulated Protective  
26 Order in this Action, the relevant discovery request(s), and a reasonably specific  
27 description of the information requested; and  
28

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

3 (c) If the Non-Party fails to seek a protective order from this court  
4 within 14 days of receiving the notice and accompanying information, the  
5 Receiving Party may produce the Non-Party's confidential information  
6 responsive to the discovery request. If the Non-Party timely seeks a  
7 protective order, the Receiving Party shall not produce any information in its  
8 possession or control that is subject to the confidentiality agreement with the  
9 Non-Party before a determination by the court. Absent a court order to the  
10 contrary, the Non-Party shall bear the burden and expense of seeking  
11 protection in this Court.

12 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

13 If a Receiving Party learns that, by inadvertence or otherwise, it has  
14 disclosed Protected Material to any person or in any circumstance not  
15 authorized under this Stipulated Protective Order, the Receiving Party must  
16 immediately (a) notify in writing the Designating Party of the unauthorized  
17 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
18 Protected Material, (c) inform the person or persons to whom unauthorized  
19 disclosures were made of all the terms of this Order, and (d) request such  
20 person or persons to execute the "Acknowledgment and Agreement to Be  
21 Bound" that is attached hereto as Exhibit A.

22 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIA**

23 When a Producing Party gives notice to Receiving Parties that certain  
24 inadvertently produced material is subject to a claim of privilege or other protection,  
25 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
26 Procedure 26(b)(5)(B). This provision is not intended to modify whatever  
27 procedure may be established in an e-discovery order that provides for production  
28 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e),

1 insofar as the parties reach an agreement on the effect of disclosure of a  
2 communication or information covered by the attorney-client privilege or work  
3 product protection, the parties may incorporate their agreement in the stipulated  
4 protective order submitted to the court.

5 **12. MISCELLANEOUS**

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
7 person to seek its modification by the Court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
9 Protective Order no Party waives any right it otherwise would have to object to  
10 disclosing or producing any information or item on any ground not addressed in this  
11 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
12 ground to use in evidence of any of the material covered by this Protective Order.

13 12.3 Filing Protected Material. A Party that seeks to file under seal any  
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
15 only be filed under seal pursuant to a court order authorizing the sealing of the  
16 specific Protected Material at issue. If a Party's request to file Protected Material  
17 under seal is denied by the court, then the Receiving Party may file the information  
18 in the public record unless otherwise instructed by the court.

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21 **13. FINAL DISPOSITION**

22 After the final disposition of this Action, as defined in paragraph 4, within 60  
23 days of a written request by the Designating Party, each Receiving Party must return  
24 all Protected Material to the Producing Party or destroy such material. As used in  
25 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
26 summaries, and any other format reproducing or capturing any of the Protected  
27 Material. Whether the Protected Material is returned or destroyed, the Receiving  
28 Party must submit a written certification to the Producing Party (and, if not the same

1 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
2 (by category, where appropriate) all the Protected Material that was returned or  
3 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
4 abstracts, compilations, summaries or any other format reproducing or capturing any  
5 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
6 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
7 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
8 reports, attorney work product, and consultant and expert work product, even if such  
9 materials contain Protected Material. Any such archival copies that contain or  
10 constitute Protected Material remain subject to this Protective Order as set forth in  
11 Section 4 (DURATION).

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

22 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

23 LAW OFFICE OF HENRY B. LA TORRACA

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25 DATED: January 5, 2017

By: /s/ - Henry B. LaTorraca

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HENRY B. LA TORRACA

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Attorneys for Plaintiff and Counterclaim  
Defendant Netecs Corporation, a  
California corporation; and Counterclaim  
Defendants Jeffery Tooley and Chris  
Tooley

RAINES FELDMAN, LLP

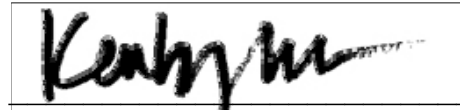
DATED: January 5, 2017

By: /s/ - Scott M. Lesowitz

Scott M. Lesowitz  
*Attorneys for Defendant and  
Counterclaimant Damon McClure*

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

DATED: January 5, 2017



Hon. Kenly Kiyu Kato  
United States Magistrate Judge

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

1 I, \_\_\_\_\_  
2 [print or type full name], of \_\_\_\_\_  
3 [print or type full address], declare under penalty of perjury under the laws of the  
4 United States of America and of the State in which this document is executed that I  
5 have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Central District of California on  
7 \_\_\_\_\_ [date] in the case of Netecs Corporation v.  
8 Damon McClure, et al. pending in the United States District Court for the Central  
9 District of California, Eastern Division, case No. 5:16-cv-02452 JGB (KKx)

10 I agree to comply with and to be bound by all the terms of this Stipulated  
11 Protective Order and I understand and acknowledge that failure to so comply could  
12 expose me to sanctions and punishment in the nature of contempt. I solemnly  
13 promise that I will not disclose in any manner any information or item that is subject  
14 to this Stipulated Protective Order to any person or entity except in strict compliance  
15 with the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court  
17 for the Central District of California for the purpose of enforcing the terms of this  
18 Stipulated Protective Order, even if such enforcement proceedings occur after  
19 termination of this action. I hereby appoint \_\_\_\_\_  
20 [print or type full name] of \_\_\_\_\_  
21 [print or type full address and telephone number] as my California agent for service

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of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury under the laws of the United States of America and the State in which this document is executed that the foregoing is true and correct.

Executed on \_\_\_\_\_, at \_\_\_\_\_ (City and State where sworn and signed)

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

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



