

1 Henry B. LaTorraca, State Bar No. 71607
 2 **LAW OFFICE OF HENRY B. LaTORRACA**
 3 400 Oceangate, Suite 700
 4 Long Beach, California 90802-4306
 5 Tel: (562) 216-2942 | Fax: (562) 216-2943
 6 henryb@latorraca.com

7 Attorneys for Plaintiff and Counterclaim Defendant
 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)**

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

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

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

**REVISED FIRST AMENDED
 STIPULATED PROTECTIVE
 ORDER**

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

LAW OFFICE OF HENRY B. LA TORRACA
 400 Oceangate, Suite 700
 Long Beach, CA 90802-4306
 (562) 216-2942

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 Revised First Amended
4 Stipulated Protective Order to include the designation of material marked as
5 “HIGHLY - ATTORNEYS’ EYES ONLY” as follows:

6 **GOOD CAUSE STATEMENT**

7 1. This action is likely to involve trade secrets, customer and pricing lists and
8 other valuable research, development, commercial, financial, technical and/or
9 proprietary information for which special protection from public disclosure and
10 from use for any purpose other than prosecution of this action is warranted.

11 **As to the parties to this action and non-parties, the following is defined as**
12 **Protected Information for the purpose of this Order:**

13 **Confidential trade secrets and confidential proprietary**
14 **information; confidential Documents and data regarding**
15 **customers and potential customers, including, but not limited to,**
16 **their identity, contact information, communications with them**
17 **regarding goods and services, pricing, sources, and availability of**
18 **and sources of such goods and services, and confidential “leads”**
19 **for the sale of goods or services to existing or potential customers;**
20 **confidential sales information; confidential quotes, invoices, and**
21 **contracts with existing and/or potential customers; confidential**
22 **generation, distribution, and use of confidential customer**
23 **information; confidential information regarding vendors and**
24 **vendors’ pricing; confidential organization, operations, and**
25 **business strategy of a business; confidential or proprietary business**
26 **or financial information, confidential or proprietary research,**
27 **development, commercial, technical, and/or resources of a**
28 **business; confidential business or financial information,**

1 **information regarding confidential business practices, or other**
2 **confidential research, development, or commercial information**
3 **(including information implicating privacy rights of third parties),**
4 **information otherwise generally unavailable to the public;**
5 **information that may not be disclosed to the other party per**
6 **contract; information protected by a right of privacy; information**
7 **protected from disclosure by reason of a privilege; and information**
8 **protected from disclosure under state or federal statutes, court**
9 **rules, case decisions, or common law.**

10 The Parties consider the aforementioned Protected Information to be
11 proprietary, confidential, commercially sensitive, and/or private.

12 Accordingly, to expedite the flow of Protected Information, to facilitate the
13 prompt resolution of disputes over confidentiality of discovery materials, to
14 adequately protect Protected Information the parties and non-parties are
15 entitled to keep confidential, to ensure that the parties are permitted
16 reasonable necessary uses of such material in preparation for and in the
17 conduct of trial, to address their handling at the end of the litigation, and serve
18 the ends of justice, a protective order for such information is justified in this
19 matter. To address these concerns and avoid lengthy and expensive litigation
20 over the issue, the Parties agree that a mutually agreeable protective order will
21 speed the discovery and litigation processes. Therefore, the Parties believe
22 good cause exists for designating such information “CONFIDENTIAL” or
23 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” as defined in
24 Paragraphs 6 and 7 below. It is the intent of the parties that information will
25 not be designated as CONFIDENTIAL or “HIGHLY CONFIDENTIAL -
26 ATTORNEYS’ EYES ONLY” for tactical reasons and that nothing be so
27 designated without a good faith belief that it is Protected Information which
28

1 has been maintained in a confidential, non-public manner, and there is good cause
2 why it should not be part of the public record of this case.

3 2. Plaintiff Netecs Corporation has filed this action alleging unlawful
4 practices by Defendant in intentionally damaging its electronic database and
5 misappropriating its trade secrets consisting of data regarding its customers,
6 potential customers, commission structure, vendors, especially involving the use of
7 customer information and “leads,” which are information developed by Plaintiff
8 indicating a prospective purchaser and or a particular product or service. To support
9 to Plaintiff’s claims, it intend to produce various documents and tangible things in
10 its possession, custody, and/or control, including documents relating to the
11 generation and distribution of leads generally, specific leads, sales information,
12 financial information, commission structures, and confidential contracts with its
13 customers. Some of the aforementioned information is proprietary, commercially
14 sensitive, and private, and would result in competitive harm to Plaintiff if disclosed
15 at any time. The foregoing is not a limitation of Protected Information defined
16 above.

17 3. Similarly, in response to Plaintiff’s discovery requests, Defendant will
18 produce certain documents and tangible things in his possession, custody, and/or
19 control including those relating to his generation and distribution of leads generally,
20 specific leads, sales information, financial information, commission structures, and
21 confidential contracts with his customers. Some of the aforementioned information
22 is proprietary, commercially sensitive, and private, and would result in competitive
23 harm to Defendant if disclosed at any time. The foregoing is not a limitation of
24 Protected Information defined above.

25 **PURPOSES AND LIMITATIONS**

26 4. Disclosures, court filings, and discovery activity in this action are likely to
27 involve production of confidential, privileged, proprietary, trade secret, or private
28 information for which special protection from public disclosure and from use for

1 any purpose other than prosecuting this litigation would be warranted. This
2 Order does not confer blanket protection on all disclosures or responses to
3 discovery and the protection it affords extends only to the limited information
4 or items that are entitled under the applicable legal principles to treatment as
5 Protected Information.

6 (a) Exercise of restraint and care in designating Protected Information.

7 Each party or non-party that designates Protected Information under this
8 Order must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards.

10 (b) Mass, indiscriminate, or routine designations are prohibited.

11 Designations should be justified and not made for an improper purpose (e.g.,
12 to unnecessarily encumber or retard the case development process, or to
13 impose unnecessary expenses and burdens on other parties). If it comes to a
14 party's or a non-party's attention that information or items that it designated
15 for protection do not qualify for protection at all, or do not qualify for the
16 level of protection initially asserted, that party or non-party must promptly
17 notify all other parties that it is withdrawing the mistaken designation.

18 (c) Filing Under Seal. The parties further acknowledge, as set forth
19 below, that this Revised First Amended Stipulated Protective Order does not
20 entitle them to file Protected Information under seal; Civil Local Rule 79-5
21 sets forth the procedures that must be followed and the standards that will be
22 applied when a party seeks permission from the court to file material under
23 seal.

24 The Parties and non-parties will endeavor to file, when possible,
25 redacted versions of documents containing "CONFIDENTIAL" or "HIGHLY
26 CONFIDENTIAL - ATTORNEYS' EYES ONLY" designations, rather than
27 seeking to file the entire document under seal.

28

1 **DESIGNATION OF PROTECTED INFORMATION**

2 5. Parties and non- parties may designate any Document, including discovery
3 responses, deposition testimony, documents obtained by inspection of files or
4 facilities or by production of documents, or any portion of any Document, as well as
5 any Transcript and exhibits thereto, produced or filed in this proceeding, as
6 “CONFIDENTIAL” as long as the Document contains “CONFIDENTIAL”
7 Protected Information specified in Paragraph 6 below, or “HIGHLY
8 CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” Protected Information specified
9 in Paragraph 7 below.

10 (a) “Document” shall include any papers, transcripts, tapes, documents, disks,
11 diskettes, CDs and DVDs, video or audio files, physical or electronic or digital
12 copies or recordings, and other tangible things produced by any person in
13 connection with this litigation, and shall include, without limitation, all original
14 written, recorded (sound or video) or graphic matters and all identical or non-
15 identical copies thereof.

16 (b) “Transcript” shall mean any stenographic or verbatim recording of an
17 interview, sworn statement, deposition, or hearing.

18 6. For purposes of this Revised First Amended Stipulated Protective Order, a
19 party or non-party may designate Protected Information as “CONFIDENTIAL” if
20 the designating party or non-party reasonably believes the Protected Information
21 contains or discloses any information within the meaning of the definition of
22 “Protected Information” in paragraph 1, consistent with Federal Rule of Civil
23 Procedure 26(c)(1)(G).

24 7. For purposes of this Revised First Amended Stipulated Protective Order, a
25 party or non-party may only designate Protected Information as “HIGHLY
26 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” if the designating party or non-
27 party reasonably believes the Protected Information contains or discloses any
28 information within the meaning of the definition of “Protected Information” defined

1 in paragraph 1 above and the designating party or non-party believes, in good
2 faith, the disclosure of the information is likely to cause harm to the
3 competitive position of the designating party or non-party holding proprietary
4 rights thereto.

5 8. For purposes of this Revised First Amended Stipulated Protective
6 Order, Protected Information, defined in Paragraph 1, is either designated as
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
8 ONLY.”

9 9. Protected Information shall be used only for the purpose of litigation
10 of this action and shall not be used for any other purpose whatsoever.

11 **PERSONS TO WHOM PROTECTED INFORMATION MAY BE**
12 **DISCLOSED**

13 10. The terms of this protective order do not apply to the Court and
14 court personnel, who are subject only to the Court’s internal procedures
15 regarding the handling of material filed or lodged, including material filed or
16 lodged under seal. No provision or language in this agreement should be
17 interpreted as imposing any terms on the Court or court personnel.

18 11. Protected Information designated as “CONFIDENTIAL” may be
19 disclosed, summarized, described, characterized, or otherwise communicated
20 or made available in whole or in part only to Qualified Persons. For purposes
21 of this Revised First Amended Stipulated Protective Order, “Qualified
22 Persons” shall mean the following:

23 (a) Counsel for any party hereto, including in-house counsel, and all
24 partners, associates or of-counsel attorneys of counsel’s law firm and all
25 paralegal assistants, stenographic and clerical employees thereof when
26 operating under the direct supervision of such partners, associates or of-
27 counsel attorneys.

1 (b) Court and Mediator personnel, including stenographic reporters engaged
2 in such proceedings as are necessarily incident to the preparation for trial and/or trial
3 of this action.

4 (c) Any party to this action, including but not limited to any partner,
5 employee or representative thereof.

6 (d) Persons noticed for depositions or designated as trial witnesses, or those
7 whom counsel of record in good faith expect to testify at trial or deposition, only to
8 the extent reasonably necessary in preparing to testify and who have, prior to the
9 disclosure, signed the statement attached hereto as Exhibit "A" attesting to the fact
10 that they have reviewed and agreed to be bound by the provisions of this Revised
11 First Amended Stipulated Protective Order. Such persons shall not be permitted to
12 make copies of or otherwise have copies or duplicates of any documents or
13 information designated as "CONFIDENTIAL."

14 (e) Persons whose depositions are being taken in this action, who have, prior
15 to the commencement of their deposition, signed the statement attached hereto as
16 Exhibit "A" (which is to be made part of the official transcript of that deposition)
17 attesting to the fact that they have reviewed and agreed to be bound by the
18 provisions of this Revised First Amended Stipulated Protective Order. In the event
19 a deponent does not sign Exhibit "A" prior to the commencement of his or her
20 deposition, no information designated as "CONFIDENTIAL" shall be shown to the
21 deponent and his or her deposition shall not be considered complete until the
22 deposing party has an opportunity to raise the issue with the Court.

23 (f) Independent experts or consultants (not regularly employed by or
24 otherwise associated with a party) who are retained to assist in the handling of this
25 action to furnish technical or expert advice or to give expert testimony at trial, only
26 to the extent that the information is pertinent to the expert's or consultant's opinions,
27 provided that disclosure of Protected Information to such experts or consultants
28 shall be made only on the following conditions:

1 i. Prior to any Protected Information being disclosed to any expert or
2 consultant, counsel of record shall be required to obtain from said expert or
3 consultant a signed statement, in the form of Exhibit “A” attached hereto
4 (which shall be maintained by counsel of record for that party), attesting to
5 the fact that the expert or consultant has reviewed and agreed to be bound by
6 the provisions of this Revised First Amended Stipulated Protective Order.

7 ii. In the event a consulting expert becomes a testifying expert, a copy
8 of the expert’s executed statement in the form of Exhibit “A” must be
9 provided to opposing counsel in advance of the expert testifying at deposition
10 or trial.

11 (g) Outside copy and litigation support vendors who have, prior to the
12 disclosure of such information, signed the statement attached hereto as
13 Exhibit “A.”

14 12. The parties agree to meet and confer in good faith on how to
15 proceed if a party wishes to use a Document or other evidence designated as
16 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY, or the Protected
17 Information in such Document or other evidence so designated for purposes
18 of a deposition or witness preparation. Barring agreement, the Document or
19 other evidence designated as HIGHLY CONFIDENTIAL – ATTORNEYS’
20 EYES ONLY, and the Protected Information in such Document or other
21 evidence so designated, may not be used without a court order.

22 Protected Information designated as “HIGHLY CONFIDENTIAL -
23 ATTORNEYS’ EYES ONLY” may be disclosed, summarized, described,
24 characterized, or otherwise communicated or made available in whole or in
25 part only to the following persons:

26 (a) Counsel for any party hereto, including in-house counsel, and all
27 partners, associates or of-counsel attorneys of counsel’s law firm and all
28 paralegal assistants, stenographic and clerical employees thereof when

1 operating under the direct supervision of such partners, associates or of-counsel
2 attorneys.

3 (b) Court and Mediator personnel, including stenographic reporters engaged
4 in such proceedings as are necessarily incident to the preparation for trial and/or trial
5 of this action.

6 (c) Independent experts or consultants (not regularly employed by or
7 otherwise associated with a party) who are retained to assist in the handling of this
8 action to furnish technical or expert advice or to give expert testimony at trial, only
9 to the extent that the information is pertinent to the expert's or consultant's opinions,
10 provided that disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
11 ONLY" Information to such experts or consultants shall be made only on the
12 following conditions:

13 i. Prior to any "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"
14 Information being disclosed to any expert or consultant, counsel of record shall be
15 required to obtain from said expert or consultant a signed statement, in the form of
16 Exhibit "A" attached hereto (which shall be maintained by counsel of record for that
17 party), attesting to the fact that the expert or consultant has reviewed and agreed to
18 be bound by the provisions of this Revised First Amended Stipulated Protective
19 Order.

20 ii. In the event a consulting expert becomes a testifying expert, a copy of the
21 expert's executed statement in the form of Exhibit "A" must be provided to
22 opposing counsel in advance of the expert testifying at deposition or trial.

23 (d) The author of the document and any authorized recipient of such
24 document in the ordinary course of business.

25 (e) Outside copy and litigation support vendors who have, prior to the
26 disclosure of such information, signed the statement attached hereto as Exhibit "A."
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1 (f) Any other person agreed to in writing by the designating Party or
2 allowed through Court Order, who has, prior to the disclosure of such
3 information, signed the statement attached hereto as Exhibit “A.”

4 13. A copy of any signed Exhibit “A” shall be provided by the
5 receiving party’s counsel to the designating party’s counsel, with the
6 exception of those noted in paragraphs 11(f)(i) and 12(c)(i) of this Order.

7 **METHOD OF DESIGNATING PROTECTED INFORMATION**

8 14. The party or third party seeking protection may designate Protected
9 Information as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
10 ATTORNEYS’ EYES ONLY” by placing or affixing to each designated page
11 of the Document or Transcript, prior to production, the notation
12 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL - ATTORNEYS’
13 EYES ONLY,” respectively. Such designation shall constitute a
14 representation by counsel for the party or non- party making the designation
15 that the Document or the Transcript, or any portion thereof so designated,
16 constitutes “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL -
17 ATTORNEYS’ EYES ONLY” information as defined in paragraphs 6 and 7,
18 respectively, of this Revised First Amended Stipulated Protective Order.

19 (a) An inadvertent failure to designate an item as “CONFIDENTIAL”
20 or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” shall not be
21 deemed a waiver of the rights afforded by this Revised First Amended
22 Stipulated Protective Order. A party or third party that inadvertently fails to
23 mark an item as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
24 ATTORNEYS’ EYES ONLY” at the time of production may thereafter
25 inform the other Parties of the error and designate the item
26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
27 ONLY” at that time. Such designation and notice thereof shall be made in
28 writing, accompanied by substitute copies of any documents appropriately

1 marked as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’
2 EYES ONLY.”

3 (b) Upon receipt of the substitute copies, the receiving party shall treat the
4 item according to its designation until further written agreement of the parties or
5 order of the Court. Within five (5) days of receipt of the substitute copies, the
6 receiving party shall return or destroy the previous unmarked items and all copies
7 thereof, and/or shall destroy any items or copies thereof containing notes of counsel
8 for the receiving party. In addition, the receiving party shall make reasonable efforts
9 to recover all non-designated versions of any Document and to notify all receivers
10 of the non-designated versions of the Document. Provided the receiving party and
11 its counsel act in good faith to secure compliance with the terms of this Protective
12 Order, the receiving party and its counsel shall incur no liability for disclosures
13 made prior to notice of such designation. The designating party may request in
14 writing, and the receiving party shall within ten (10) days of such a request provide
15 in writing, an identification of all persons not qualified under this Protective Order
16 who have received “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
17 ATTORNEYS’ EYES ONLY” Protected Information prior to the time it was so
18 designated.

19 (c) All items produced prior to the filing and entry of this Revised First
20 Amended Stipulated Protective Order may be designated as “CONFIDENTIAL” or
21 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” within fifteen (15)
22 days of the filing and entry.

23 15. If a party wishes to designate testimony or an exhibit as
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
25 ONLY” during the course of a deposition in this action, it shall do so by stating such
26 designation on the record. Counsel for the party designating the testimony or
27 exhibit as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’
28 EYES ONLY” shall make reasonable arrangements to have only the persons

1 designated in paragraphs 11 and 12 above, respectively, present during the
2 testimony containing Protected Information and/or presentation, quotation or
3 reference to the exhibit containing Protected Information. In addition, after a
4 deposition, counsel for any party or non-party may designate a deposition as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
6 ONLY” by serving upon counsel for each party a written list of the specific
7 portions as to which such status is claimed. Such written list must be served
8 within ten (10) business days after transmittal to counsel of the transcript of
9 such testimony.

10 16. When Protected Information designated as “CONFIDENTIAL” is
11 incorporated into a Transcript of a deposition, arrangements shall be made by
12 the designating Party’s counsel with the attending reporter to label
13 “CONFIDENTIAL” those portions of the Transcript containing such
14 information and only those portions containing such information. Such
15 designated portions of the Transcripts (and all copies thereof) shall be
16 separately bound by the court reporter and shall thereafter be subject to the
17 same provisions herein as applied to any other “CONFIDENTIAL” Protected
18 Information.

19 17. When “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
20 ONLY” Protected Information is incorporated into a Transcript of a
21 deposition, arrangements shall be made by the designating Party’s counsel
22 with the attending reporter to label “HIGHLY CONFIDENTIAL -
23 ATTORNEYS’ EYES ONLY” those portions of the Transcript containing
24 such information and only those portions containing such information. Such
25 designated portions of the Transcript (and all copies thereof) shall be
26 separately bound by the court reporter and shall thereafter be subject to the
27 same provisions herein as apply to any other “HIGHLY CONFIDENTIAL -
28 ATTORNEYS’ EYES ONLY” Information.

1 **TREATMENT OF PROTECTED INFORMATION**

2 18. The substance or content of Protected Information, as well as all notes
3 and memoranda relating thereto, shall not be disclosed to anyone other than the
4 persons designated in paragraphs 11 and 12 above, respectively, either during the
5 pendency of this action, or subsequent to its final determination. The Parties and
6 their counsel shall take reasonable precautions to ensure that no unauthorized
7 disclosure of Protected Information occurs. Nothing in this Revised First Amended
8 Stipulated Protective Order shall prevent any producing party from using or
9 disclosing its own “CONFIDENTIAL Protected Information” or “HIGHLY
10 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” Protected Information.

11 19. If a Party seeks to include or reference any Protected Information in any
12 filings with the Court, the Party must first comply with the procedures and
13 requirements for filing under seal set forth in Civil Local Rule 79-5 of the United
14 States District Court for the Central District of California. No Party shall file any
15 documents with Protected Information without complying with these procedures and
16 requirements for filing under seal.

17 20. In the event that this matter proceeds to trial, if any Party seeks to
18 introduce Protected Information designated as “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” the Parties shall meet and
20 confer regarding whether and, if so, in what manner such information can be used
21 and presented at trial. Any use of Protected Information at trial shall be governed by
22 the orders of the trial judge. This Order does not govern the use of Protected
23 Information at trial.

24 21. Upon the final determination of this action (and all appeals and writs),
25 whether by final non-appealable judgment, settlement, or otherwise:

26 (a) The Court and court personnel will continue to be subject only to the
27 Court’s internal procedures regarding the handling of material filed or lodged,
28 including material filed or lodged under seal.

1 (b) The terms of this Revised First Amended Stipulated Protective
2 Order shall be binding in perpetuity on all persons designated in paragraphs
3 11 and 12, and all obligations and duties arising under this Revised First
4 Amended Stipulated Protective Order shall survive the termination of this
5 action;

6 (c) Counsel of record for each party receiving Protected Information
7 shall, upon written request by the party that produced the Protected
8 Information, either assemble and return to the disclosing party all Documents
9 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
10 ATTORNEYS’ EYES ONLY” or shall assemble and destroy all Documents
11 so designated, including all summaries or other material containing or
12 disclosing Protected Information, the destruction of which shall be confirmed
13 in writing to the party that produced the Protected Information within thirty
14 (30) days of a request for such return or destruction made by that party. All
15 materials returned to the Parties or their counsel by the Court likewise shall be
16 disposed of in accordance with this paragraph. However, nothing herein shall
17 require any party or counsel to disclose to any other Party or counsel any
18 materials protected by the attorney-client privilege or attorney-work product
19 doctrine even if they contain another party’s Protected Information. Such
20 materials shall be destroyed, not returned, in response to a request made
21 pursuant to this Paragraph. Also, nothing herein shall preclude counsel of
22 record from maintaining one copy of all case files in connection with the
23 action even if they contain Protected Information, but such counsel of record
24 shall continue to treat such filings containing Protected Information according
25 to the protections afforded by this Stipulated Revised First Amended
26 Protective Order.

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1 **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
2 **IN OTHER LITIGATION**

3 22. Nothing in this Revised First Amended Stipulated Protective Order shall
4 be construed as authorizing a party to disobey a lawful subpoena or court order
5 issued in another action. If a Party is served with a subpoena or a court order issued
6 in other litigation that compels disclosure of any information or items designated in
7 this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
8 ATTORNEYS’ EYES ONLY” that Party must:

9 (a) promptly notify in writing the designating party. Such notification shall
10 include a copy of the subpoena or court order;

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

15 (c) cooperate with respect to all reasonable procedures sought to be pursued
16 by the designating party whose Protected Material may be affected.

17 If the designating party timely seeks a protective order, the Party served with
18 the subpoena or court order shall not produce any information designated in this
19 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’
20 EYES ONLY” before a determination by the court from which the subpoena or
21 order issued, unless the Party has obtained the designating party’s permission. The
22 designating party shall bear the burden and expense of seeking protection in that
23 court of its confidential material and nothing in these provisions should be construed
24 as authorizing or encouraging a receiving party in this action to disobey a lawful
25 directive from another court.

26 **CHALLENGES TO DESIGNATIONS OR PROTECTIVE ORDER**

27 23. No party shall be obligated to challenge the propriety of any designation
28 of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES

1 ONLY” Protected Information by another party or non-party, and the failure
2 to do so shall not constitute a waiver or otherwise preclude a subsequent
3 challenge to the designation. In the event a dispute arises regarding this
4 Stipulated Revised First Amended Protective Order or the parties’ activities
5 relating to it (including but not limited to, challenging the propriety of
6 specific designations, objecting to a Party’s abuse of its ability to designate
7 materials “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
8 ATTORNEYS’ EYES ONLY,” or seeking a modification of this Stipulated
9 Revised First Amended Protective Order), the parties shall follow the
10 procedures set forth in Rule 37 of the Federal Rules of Civil Procedure to
11 resolve the dispute unless otherwise ordered by the Court. The party
12 challenging the designations shall treat the materials according to the
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
14 ONLY” designations and this Stipulated Revised First Amended Protective
15 Order until the Court orders otherwise. The party seeking to enforce the
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
17 ONLY” designations shall have the burden on the motion to prove the legal
18 and factual basis for upholding the designations. If a party wants to file under
19 seal a motion pursuant to Rule 37 of the Federal Rules of Civil Procedure, it
20 or he may file a stipulation to that effect or the party seeking to file under seal
21 may file an ex parte application making the appropriate request in accordance
22 with paragraph 1 of this Revised First Amended Stipulated Protective Order.
23 To be clear, regardless of any stipulation between the parties, any party
24 seeking to file a motion under seal must comply with Civil Local Rule 79-5
25 (setting forth the procedures that must be followed and standards that will be
26 applied when a party seeks permission from the court to file material under
27 seal).

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1 **MISCELLANEOUS PROVISIONS**

2 24. Inadvertent production by any party of a document containing privileged
3 attorney-client or other privileged communications, attorney work product
4 immunity, or other information not subject to discovery, shall not constitute a
5 waiver of any privilege, immunity or other right not to produce such a document. In
6 the event a receiving party discovers or believes it has received information that was
7 inadvertently produced and would normally be subject to a claim of attorney-client
8 privilege or work product immunity, it will bring that fact to the attention of the
9 producing party immediately upon discovery. In the event that a producing party
10 discovers that it has produced either attorney-client privilege or work-product
11 protected documents, it will bring that fact to the attention of the receiving party
12 immediately upon discovery. Upon request by the producing party, the receiving
13 party will promptly return to the producing party any attorney-client privilege or
14 work-product-protected document and any copies that the receiving party may have
15 made, which the producing party will keep separately and preserve. Upon request
16 by the producing party, the receiving party will promptly disclose the names of any
17 individuals who have read or have had access to the attorney-client privilege or
18 work-product-protected document. Further, the receiving party must take
19 reasonable steps to retrieve the information if the receiving party disclosed it before
20 being notified. Return of the documents by the receiving party shall not constitute
21 an admission or concession, or permit any inference, that the returned document or
22 thing is, in fact, properly subject to a claim of attorney-client privilege or work
23 product immunity.

24 25. This Revised First Amended Stipulated Protective Order shall survive the
25 final conclusion of this action and shall continue in full force and effect, and the
26 Court shall retain jurisdiction to enforce this Order. Within ninety (90) days after
27 the final conclusion of this action and all related appeals and/or writs seeking review
28 of the judgment in this action and all orders therein and re-trial, if any, and of the

1 judgment and all related appeals and/or writs seeking review of the judgment
2 in this action and all orders therein and re-trial, if any, all Protected
3 Information designated as provided herein as “CONFIDENTIAL” or
4 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” shall, upon
5 request of the designating party or non-party, be either destroyed or returned
6 to that person or entity. Notwithstanding any of the foregoing, the parties’
7 counsel may retain any attorney work product they have created which
8 incorporates designated material on the condition that they will maintain the
9 confidentiality of such material and will not use such material in
10 contravention of the provisions of this Revised First Amended Stipulated
11 Protective Order.

12 26. Nothing in this Revised First Amended Stipulated Protective Order
13 shall be construed as an admission as to the relevance, authenticity,
14 foundation, or admissibility of any Protected Information.

15 27. Nothing in this Revised First Amended Stipulated Protective Order
16 shall be construed to supersede other protective orders entered in this matter.
17 To the extent that certain information is subject to other protective orders
18 entered in this matter and also qualifies as “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” Protected Information
20 pursuant to paragraphs 7 and 8 of this Revised First Amended Stipulated
21 Protective Order, such information shall be governed and protected by all
22 applicable protective orders. In addition, nothing in this Revised First
23 Amended Stipulated Protective Order shall be construed to restrict the ability
24 of any party or non-party to seek an order from this Court imposing further
25 restrictions on the dissemination of “CONFIDENTIAL” or “HIGHLY
26 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” Protected Information, or
27 seek to rescind, modify, alter, or amend this Revised First Amended
28 Stipulated Protective Order with respect to specific information. To the

1 extent that a conflict arises concerning the treatment and level of protection afforded
2 to certain information that is subject to different protective orders, such information
3 shall be governed and treated in accordance with the narrowest protective order
4 affording the most stringent protections for such information.

5 28. Nothing in this Revised First Amended Stipulated Protective Order shall
6 bar or otherwise restrict any attorney herein from rendering legal advice to a party in
7 this case, so long as information subject to a HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY designation is not revealed.

9 29. Nothing in this Order abridges the right of any person to seek its
10 modification by the Court in the future.

11 30. This Revised First Amended Stipulated Protective Order shall apply to all
12 new parties added to this action, including, but not limited to, Technation, Inc.
13 and/or 2uTEC, LLC, if so added.

14 31. By the signature of their undersigned attorneys, the Parties and their
15 counsel stipulate that they will be bound by the foregoing provisions and further
16 stipulate that this Revised First Amended Stipulated Protective Order may be
17 signed, filed and entered by the Court.

18 32. The Parties have met and conferred in good faith about the scope and
19 terms of this Revised First Amended Stipulation for Protective Order. The Parties
20 have agreed to this Statement of Good Cause for the sole purpose of entering into

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1 this Revised First Amended Stipulation for Protective Order; the Statement of Good
2 Cause shall be inadmissible for any other purpose.

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

4 LAW OFFICE OF HENRY B. LA TORRACA

5
6 DATED: February 8, 2017

By: /s/ - Henry B. LaTorraca

7 HENRY B. LA TORRACA
8 Attorneys for Plaintiff and Counterclaim
9 Defendant Netecs Corporation, a
10 California corporation; and Counterclaim
11 Defendants Jeffery Tooley and Chris
12 Tooley

11 RAINES FELDMAN, LLP

12
13 DATED: February 8, 2017

By: /s/ - Scott M. Lesowitz

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

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

18 DATED: February 17, 2017



19 Hon. Kenly Kiya Kato
20 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 Revised First Amended Stipulated
6 Protective Order that was issued by the United States District Court for the Central
7 District of California on _____ [date] in the case of
8 Netecs Corporation v. Damon McClure, et al. pending in the United States District
9 Court for the Central District of California, Eastern Division, case No. 5:16-cv-
10 02452 JGB (KKx)

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

18 I further agree to submit to the jurisdiction of the United States District Court
19 for the Central District of California for the purpose of enforcing the terms of this
20 Revised First Amended Stipulated Protective Order, even if such enforcement
21 proceedings occur after termination of this action. I hereby appoint
22 _____ [print or type full name] of
23 _____ [print or type full address and
24 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 Revised First Amended 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: _____

