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7 KBK, Inc., a New York Corporation

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

11 AMERICAN INDUCTION  
TECHNOLOGIES, INC., a California  
12 corporation,

13 Plaintiff,

14 v.

15 KBK, INC., a New York corporation and  
DOES 1 through 25, inclusive,

16 Defendant.

18 KBK, INC., a New York corporation,

19 Third-Party Plaintiff,

20 v.

21 ADAPTIVE ENERGY SYSTEMS, INC.,  
a California corporation,

22 Third-Party Defendant.

No. SACV11-00350 JAK (RNBx)

~~PROPOSED~~ PROTECTIVE  
ORDER

1 The Court, having read and considered the Stipulation re: Protective Order  
2 submitted by plaintiff American Induction Technologies, Inc., defendant and third-  
3 party plaintiff KBK, Inc, and third-party defendant Adaptive Energy Systems, Inc.,  
4 and good cause appearing therefore, hereby orders as follows:

5 **I. DEFINITIONS**

6 The following definitions apply to this Protective Order. These definitions  
7 are specific to this Protective Order and have no bearing on the interpretation of  
8 words used in the parties' agreements at issue in the litigation.

9 A. "Designating Party" means any Party or any non-party from whom  
10 discovery is sought in this action, invoking the protections of this Protective Order.

11 B. "Receiving Party" means any Party who has received discovery from  
12 any Party or any non-party to this action.

13 C. "Outside Counsel" means the outside counsel of record for each Party,  
14 including all attorneys, staff, and clerical and support personnel affiliated with or  
15 employed by such outside counsel, as well as copy services, translators, and other  
16 similar vendors providing clerical, administrative or litigation support to such  
17 outside counsel in connection with this matter.

18 D. "In-House Counsel" means in-house counsel for each of the corporate  
19 Parties who are attorneys actively involved in this dispute for their employers, as  
20 well as their direct clerical, and support staff, copy services, translators, and other  
21 similar vendors providing clerical, administrative or litigation support to such In-  
22 House Counsel in connection with this matter.

23 E. "Party" means every party to this action and every director, officer,  
24 employee, and agent of every party to this action.

25 F. "Communicate" means disclose, provide, show, or make available in  
26 any way to another person or entity.

27 G. "CONFIDENTIAL" is a designation that, for purposes of expediency  
28 only, may be applied to any document or thing produced in the above-captioned

1 action. However, if such designation is challenged, the Designating Party shall  
2 bear the burden of showing that such document or thing constitutes, contains, or  
3 reveals its confidential research, trade secrets, development, technical, commercial,  
4 financial, or personnel information relating to its business, whereby the  
5 unrestricted disclosure or dissemination of such information to third parties could  
6 adversely impact its or a non-party's business, or other information of a  
7 confidential, proprietary, private, or personal nature. Information designated as  
8 "CONFIDENTIAL" may only be used and disclosed as provided in this Protective  
9 Order.

10 H. "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" is a  
11 designation that shall be limited to (1) trade secrets or other highly sensitive  
12 information that the disclosing Party or any non-party reasonably and in good faith  
13 believes will result in significant risk of competitive disadvantage or harm if  
14 disclosed to another Party in this action without restriction on use or further  
15 disclosure; or (2) any other highly sensitive material upon agreement of the Parties  
16 or by order of the Court for good cause shown that disclosure of the material will  
17 result in significant risk of competitive disadvantage or harm if disclosed to  
18 another Party in this action without restriction on use or further disclosure.  
19 Information designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
20 ONLY" may only be used and disclosed as provided in this Protective Order.

21 I. "Confidential Information" is any document or thing designated with  
22 the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
23 ONLY" legend.

24 J. "Copy" means any reproduction, depiction, or sample of any  
25 document, material, tangible thing, audio or video tape, computer disk, or  
26 information, regardless of format, by photographic, scanning, imaging, recording,  
27 manual input, or other electronic, magnetic, optical, or manual reproduction means.  
28

1 **II. METHODS OF PROTECTION**

2 A. Materials Subject to Designation. Any Party or non-party from whom  
3 discovery is sought may designate any of the following as Confidential  
4 Information under the terms of this Protective Order: deposition testimony; written  
5 discovery; responses to any discovery request; documents and things produced  
6 pursuant to the parties' document-production requests, or non-party subpoenas;  
7 expert-witness reports; briefs or argument submitted to the Court or from one Party  
8 to another; and facilities or other physical locations made available for inspection  
9 (and the material inspected within those facilities or other physical locations). A  
10 Party may designate as Confidential Information any document, information, or  
11 deposition testimony produced or given by any non-party, or any portion thereof,  
12 at any time up to thirty (30) days after actual receipt of copies of the documents by  
13 counsel for the Party asserting the confidentiality privilege or, in the case of  
14 deposition testimony, at any time up to thirty (30) days after the transcript is  
15 received by counsel for the Party asserting the confidentiality privilege by  
16 notifying all counsel in writing of those portions which are to be stamped or  
17 otherwise treated as Confidential Information. Prior to the expiration of such thirty  
18 (30) day period (or until a designation is made by counsel, if such a designation is  
19 made in a shorter period of time), all such documents shall be treated as Highly  
20 Confidential--Attorneys Eyes Only.

21 B. Derivative Materials. Any extract, summary, compilation or other  
22 material derived in whole or in part from Confidential Information shall itself be  
23 deemed to be Confidential Information, and the dissemination and use thereof shall  
24 be governed by this Protective Order.

25 C. Manner of Designation of Confidential Information.

26 1. Designation of Documents and Things. A Designating Party  
27 shall designate Confidential Information by placing a clear, permanent  
28 legend on each page of any document being designated or, in the case of

1 physical objects, computer disks, or other tangible things, on the thing itself  
2 or on the container in which it is produced. The legend shall bear the word  
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
4 EYES ONLY” as appropriate. All documents and things shall be so  
5 designated by the Designating Party prior to their production or delivery,  
6 except as set forth in Section D.

7 2. To expedite discovery in this action, a Designating Party may  
8 make documents and things available for inspection prior to the placement  
9 of a legend thereon, without thereby waiving the protections of this  
10 Protective Order. Thus, the Designating Party may advise the requesting  
11 Party that some or all of the documents or things to be produced for  
12 inspection are designated as “CONFIDENTIAL” or “HIGHLY  
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to this  
14 Protective Order and that the information or materials may only be inspected  
15 by a Party consistent with the terms of this Protective Order. After the  
16 inspection, the Designating Party may then designate the documents and  
17 things by marking them with the “CONFIDENTIAL” or “HIGHLY  
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” legend prior to delivery  
19 of copies to the requesting Party’s counsel. In such cases, permitting such  
20 initial inspections shall not constitute waiver of confidentiality with respect  
21 to any document or thing so inspected.

22 3. Designation of Deposition Testimony. If in the course of a  
23 deposition any Confidential Information is used (whether as an exhibit or  
24 otherwise) with or elicited from a witness, the portion of the transcript in  
25 which such Confidential Information is contained may be designated as  
26 Confidential Information under this Protective Order. To so designate such  
27 portion of a transcript, the witness (or his/her counsel) or Party intending to  
28 invoke this Protective Order shall state on the record that the testimony or

1 portion thereof is being designated as “CONFIDENTIAL” or “HIGHLY  
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or alternatively state  
3 that the entire testimony is being designated as “CONFIDENTIAL” or  
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as  
5 appropriate, subject to a good faith obligation to identify any non-  
6 confidential portions of the testimony upon receipt of the transcript of the  
7 testimony. The reporter shall separately transcribe and bind the testimony so  
8 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY” as appropriate and shall mark the face of the  
10 separate bound transcript containing such testimony with the term  
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
12 EYES ONLY” as appropriate. In the alternative, any Party or the witness  
13 (or his/her counsel) may advise all other Parties in writing, and with page  
14 and line identifications, of the designation of such testimony, within thirty  
15 (30) days after receipt of the transcript of a deposition.

16 D. Inadvertent Production or Failure to Designate.

17 1. In the event that any document or thing qualifying for  
18 designation as Confidential Information is inadvertently produced without  
19 the proper designation, the disclosing Party or non-party shall identify such  
20 document or thing promptly after its inadvertent production is discovered  
21 and provide a copy of such document or thing with the proper designation to  
22 counsel for the Receiving Party, upon receipt of which the Receiving Party  
23 shall promptly return or destroy all copies of the undesignated document or  
24 thing. Upon written request by the Designating Party, the Receiving Party  
25 will provide written verification of compliance with this provision.

26 2. In the event that any document or thing containing or  
27 constituting privileged attorney-client communications or work product is  
28 inadvertently produced, the disclosing Party or non-party shall notify the

1 Receiving Party promptly after it is discovered that the privileged material or  
2 work product was inadvertently produced for inspection or provided, and  
3 upon receipt of such notification the Receiving Party shall promptly return to  
4 counsel for the disclosing Party or non-party any and all copies of such  
5 document or thing and thereafter refrain from any use whatsoever, in this  
6 case or otherwise of such document or thing. Nothing herein shall prevent  
7 the Receiving Party from contending that any such document or thing was  
8 not inadvertently produced, or that privilege or work product was waived for  
9 reasons other than the mere inadvertent production thereof, or that no  
10 privilege or work product protection ever applied to such document or thing.

11 3. In the event that a Receiving Party receives a document or thing  
12 containing privileged attorney-client communications or work product that  
13 the Receiving Party believes has been inadvertently produced, the Receiving  
14 Party shall notify the disclosing Party or non-party promptly after it is  
15 discovered that the privileged material or work product may have been  
16 inadvertently produced for inspection or provided. If a disclosing Party or  
17 non-party has notified the Receiving Party of inadvertent production  
18 hereunder, or has confirmed the inadvertent production called to its attention  
19 by the Receiving Party, the Receiving Party shall promptly return to counsel  
20 for the disclosing Party or non-party any and all copies of such document or  
21 thing and thereafter refrain from any use whatsoever, in this case or  
22 otherwise of such document or thing. Nothing herein shall prevent the  
23 Receiving Party from contending that any such document or thing was not  
24 inadvertently produced, or that privilege or work product was waived for  
25 reasons other than the mere inadvertent production thereof or that no  
26 privilege or work product protection ever applied to such document or thing.



1 E. Treatment of Confidential Information.

2 1. "CONFIDENTIAL." All information designated with this  
3 legend, and all information derived from the information so designated  
4 (excluding such information as is derived lawfully from an independent  
5 source without reference to, or use of, the Confidential Information of a  
6 Party), shall be used only for the purposes of the above-captioned action,  
7 and not for any business, commercial or other purpose whatsoever (except as  
8 specifically outlined below in Section II(G)). Such information shall not be  
9 Communicated to any person or entity other than:

- 10 a. Any Party;
- 11 b. Outside Counsel for any Party;
- 12 c. In-House Counsel to whom it is necessary to disclose  
13 Confidential Information for purposes of the above-  
14 captioned action;
- 15 d. In the case of a corporate Parties, any natural person who  
16 is a current or former officer, director or other employee  
17 or agent of a Party, but: (i) only to the extent necessary to  
18 assist in the conduct or preparation of the above-  
19 captioned action; and (ii) only after that individual has  
20 been advised by counsel of record of the requirements of  
21 this Protective Order and has agreed to be bound by it  
22 and in such a case that corporate Party assumes  
23 responsibility for ensuring that its current or former  
24 officer, director, employee, or agent complies with the  
25 terms of this Protective Order;
- 26 e. Subject to Section F below, any person who is expressly  
27 retained or sought to be retained by a Party as a  
28 consultant or as a testifying expert, provided that



1 Confidential Information shall be disclosed to any such  
2 person only to the extent necessary for that person to  
3 perform his or her work in connection with the above-  
4 captioned action;

5 f. With respect to any particular document that has been  
6 designated as "CONFIDENTIAL," the author, addressee,  
7 or copyee of that particular document, or any person who  
8 prepared or reviewed that document prior to the date this  
9 action was filed;

10 g. With respect to any particular document that has been  
11 designated as "CONFIDENTIAL," any person who may  
12 be referred to in the document, or any potential witnesses  
13 who are reasonably believed to have discoverable  
14 information that relates to the information designated  
15 "CONFIDENTIAL";

16 h. Any person who is designated to receive Confidential  
17 Information by order of the Court or by written  
18 stipulation of the Parties;

19 i. The Court, court personnel, any court or deposition  
20 reporters or videographers used in connection with the  
21 above-captioned action, and any such reporter's support  
22 personnel; and

23 j. Outside litigation support vendors, including commercial  
24 photocopying vendors, scanning service vendors, coders,  
25 and keyboard operators who are employed in connection  
26 with the above-captioned action.

1           2.     “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2     All information designated with this legend, and all information derived  
3     from the information so designated (excluding such information as is  
4     derived lawfully from an independent source without reference to, or use of,  
5     the Confidential Information of a Party), shall be used only for the purposes  
6     of this litigation, and not for any business, commercial, patent prosecution,  
7     or other purpose whatsoever (except as specifically outlined below in  
8     Section II(G)). Such information shall not be Communicated to any person  
9     or entity other than:

- 10           a.     Outside Counsel for any Party;
- 11           b.     In-House Counsel to whom it is necessary to disclose  
12           Confidential Information for purposes of the above-  
13           captioned action;
- 14           c.     Subject to Section F below, any person who is expressly  
15           retained or sought to be retained by a Party as a  
16           consultant or as a testifying expert, provided that such  
17           “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
18           ONLY” information shall be disclosed to any such  
19           person only to the extent necessary for that person to  
20           perform his or her work in connection with the above-  
21           captioned action;
- 22           d.     Any natural person who is a current officer, director, or  
23           other employee or agent of the Designating Party;
- 24           e.     With respect to any particular document that has been  
25           designated as “HIGHLY CONFIDENTIAL –  
26           ATTORNEYS’ EYES ONLY,” the author, addressee, or  
27           copyee of that particular document, and any person who  
28

1 prepared or reviewed that document prior to the date this  
2 action was filed;

- 3 f. Any person who is designated to receive Highly  
4 Confidential--Attorneys' Eyes Only information by order  
5 of the Court or by written stipulation of the Parties;  
6 g. The Court, court personnel, any court or deposition  
7 reporters used in connection with this action, and any  
8 such reporter's support personnel; and  
9 h. Outside litigation support vendors, including commercial  
10 photocopying vendors, scanning service vendors, coders,  
11 and keyboard operators who are employed in connection  
12 with the above-captioned action.

13 F. Outside Experts and Consultants.

14 1. Pursuant to subsection E (1) and E (2) above, Confidential  
15 Information may be communicated to outside experts or consultants retained  
16 by a Party in connection with preparation for the above-captioned action or,  
17 with respect to any particular document that has been designated as  
18 "CONFIDENTIAL" any person who may be referred to in the document, or  
19 any potential witnesses who are reasonably believed to have discoverable  
20 information that relates to the information designated "CONFIDENTIAL,"  
21 provided that before any Confidential Information is disclosed to any expert  
22 or consultant, the Party seeking to disclose such information shall provide a  
23 copy of this Protective Order to the proposed expert or consultant and shall  
24 cause that person or entity to execute a Confidentiality Agreement in the  
25 form attached hereto as Exhibit A. The signed Confidentiality Agreement  
26 shall be provided to the Designating Party upon agreement of the Parties or  
27 by order of the Court for good cause shown.  
28

1           2.     Before any information designated as “HIGHLY  
2 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” is disclosed to any  
3 expert or consultant, the Party seeking to disclose such information shall  
4 provide the Designating Party with (i) the name of the person; (ii) the  
5 present employer and title of the person; (iii) an up-to-date curriculum vitae  
6 of the person; and (iv) an identification of any work performed for or on  
7 behalf of the other party by that person within the five (5) year period before  
8 the filing of the above-captioned action. Within five (5) business days of  
9 receipt of this information, the Designating Party may object to the proposed  
10 outside expert or consultant on any reasonable basis. If objection to  
11 disclosure is made within the time required, the parties shall meet and confer  
12 within five (5) business days; and, if not resolved, the Designating Party  
13 shall move for a protective order precluding the disclosure of the  
14 information to the designated expert or consultant within five (5) business  
15 days after completion of the meet and confer. Where objection is made, no  
16 such information shall be disclosed to the consultant or expert until the day  
17 after the last day to file a motion for a protective order (where no protective  
18 order is sought), or upon entry of the Judge’s order denying the producing  
19 party’s motion for protection. Failure to object to a proposed outside expert  
20 or consultant shall not preclude the non-objecting party from later objecting  
21 to continued access by that outside expert or consultant where facts  
22 suggesting a basis for objection could not have been discovered by the  
23 objecting party or its counsel, exercising due diligence, within the period for  
24 making a timely objection. If a later objection is made, no further “HIGHLY  
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information shall be  
26 disclosed to the outside expert or consultant until the matter is resolved by  
27 the Judge or the producing party withdraws its objection.  
28

1           G.    Persons Referenced in a Document and Potential Witnesses Who May  
2 Have Discoverable Information. Pursuant to subsection E (1) and E (2) above,  
3 Confidential Information may be communicated to any person who may be  
4 referred to in a particular document that has been designated as  
5 “CONFIDENTIAL,” or any potential witnesses who are reasonably believed to  
6 have discoverable information that relates to the information designated  
7 “CONFIDENTIAL,” provided that before any Confidential Information is  
8 disclosed to such person, the Party seeking to disclose such information shall  
9 provide a copy of this Protective Order to such person shall cause that person to  
10 execute a Confidentiality Agreement in the form attached hereto as Exhibit A. The  
11 signed Confidentiality Agreement shall be provided to the Designating Party upon  
12 agreement of the Parties or by order of the Court for good cause shown.

13           H.    Request for Additional Disclosure. If any counsel of record desires to  
14 Communicate a Designating Party’s Confidential Information to any person other  
15 than those otherwise permitted access to such information under the terms of this  
16 Protective Order, such counsel shall first obtain written consent of the Designating  
17 Party or the Judge authorizing such disclosure. Except as expressly agreed in  
18 writing by the Designating Party or ordered by the Judge, each person to whom the  
19 Confidential Information is to be communicated pursuant to this paragraph must  
20 execute a written Confidentiality Agreement, in the form attached hereto as Exhibit  
21 A.

22           I.    Maintenance of Designated Information. Counsel to the parties in the  
23 above-captioned action and those persons to whom disclosure is permitted under  
24 the terms of this Protective Order who have received Confidential Information that  
25 is provided pursuant to this Protective Order shall maintain such Confidential  
26 Information in a secure and safe location and shall exercise due and proper care  
27 with respect to the storage, custody, use, and disposal of all Confidential  
28 Information, so as to prevent the unauthorized or inadvertent disclosure of any of

1 it. Nothing herein imposes any affirmative obligations on the Court or court  
2 personnel, who are subject to the Court's internal procedures regarding the  
3 handling of material filed or lodged under seal.

4 J. Stenographers and Videographers. Any stenographer or videographer  
5 shall be entitled to hear Confidential Information and receive and handle exhibits  
6 containing Confidential Information as necessary or appropriate for the  
7 performance of his or her duties, provided that either (a) the stenographer or the  
8 videographer, or (b) the company or business providing stenographic or  
9 videographic services, has been provided with a copy of this Protective Order, or  
10 its terms have been communicated to them, and they have orally or in writing  
11 agreed to maintain the confidentiality of Confidential Information consistent with  
12 the terms of this Protective Order. The stenographer may allow a deponent (or his  
13 or her counsel) to review the original transcript or may deliver the original  
14 transcript for such review to the attorney for a deponent, if that attorney has  
15 executed and delivered to the Party's counsel of record a Confidentiality  
16 Agreement in the form attached hereto as Exhibit A or is one of the Outside  
17 Counsel or In-House Counsel defined above.

18 **III. ADDITIONAL PROVISIONS**

19 A. Filing Documents with the Court. In accordance with Local Rule 79-  
20 5.1, if any papers to be filed with the Court contain information and/or documents  
21 that have been designated as "Confidential Information," the proposed filing shall  
22 be accompanied by an application to file the papers or the portion thereof  
23 containing the designated information or documents (if such portion is segregable)  
24 under seal; and the application shall be directed to the judge to whom the papers  
25 are directed. For motions, the parties shall publicly file a redacted version of the  
26 motion and supporting papers.

1           B.    No Effect on Party's Own Use. A Designating Party's designation of  
2 information as Confidential Information shall not affect its own right to  
3 Communicate or use any of its information so designated.

4           C.    Information Excluded From This Protective Order. The restrictions  
5 set forth in this Protective Order shall not apply to any information which the  
6 Receiving Party can demonstrate:

- 7                   1.    is available to the public at the time of disclosure hereunder; or
- 8                   2.    becomes available to the public after disclosure hereunder  
9                   through no act, or failure to act, by the Receiving Party.

10          D.    Additional Parties. In the event additional parties join or are joined in  
11 this litigation, they shall be deemed to have executed, and agreed to be bound by,  
12 this Protective Order.

13          E.    No Legal Effect of Confidentiality Designations. The designation by  
14 a Designating Party of any document, material, tangible thing, or information as  
15 Confidential Information is intended solely to facilitate discovery in the above-  
16 captioned action, and neither such designation nor treatment in conformity with  
17 such designation shall be construed in any way as an admission or agreement by a  
18 Receiving Party that the designated disclosure constitutes or contains any trade  
19 secret or proprietary information.

20          F.    Legal Process Seeking Production of Confidential Information. In the  
21 event a Receiving Party is served with legal process seeking production of  
22 Confidential Information obtained through discovery and protected under the terms  
23 of this Protective Order, the Receiving Party shall promptly notify the Designating  
24 Party or non-party whose material is sought of the service of legal process, as well  
25 as provide the Designating Party or non-party a copy of the legal process. The  
26 Designating Party or non-party may then seek relief as deemed appropriate.  
27 However, nothing in this Protective Order is intended or should be construed as  
28 authorizing a party to disobey a lawful subpoena issued in another action.



1           G.    Final Disposition of Litigation. Upon the conclusion of the above-  
2 captioned action, including confirmation of the judgment, each counsel of record  
3 shall: (a) within forty-five (45) days return to counsel of record for the Designating  
4 Party, or confirm to the Designating Party the destruction of all Confidential  
5 Information provided by that Designating Party, and all copies made of such  
6 materials; and (b) within forty-five (45) days destroy or see to the destruction of all  
7 materials related to Confidential Information, including, but not limited to notes,  
8 analyses, memoranda, or reports provided to or by other persons, and certify to the  
9 Designating Party that such destructions have been done. As an exception to the  
10 above, counsel of record may retain a single file copy of any document filed with  
11 the Court, a copy of any written discovery response, a transcript of any deposition  
12 or trial, along with all exhibits to that transcript, and a copy of any notes, analyses,  
13 memoranda or other work product prepared by counsel, the Parties, witnesses, or  
14 experts retained in the Litigation. Upon the conclusion of the above-captioned  
15 action, including confirmation of the judgment, counsel of record may not disclose  
16 these retained documents to any individual or entity, including, but not limited to,  
17 the Parties. Counsel of record shall immediately notify opposing counsel of record  
18 or counsel for the Designating Party of any attempt by third parties to inspect or  
19 copy said documents.

20           H.    Motion for Relief from Designation. If, after a Party receives  
21 information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
22 ATTORNEYS’ EYES ONLY,” it appears to the Receiving Party that any such  
23 information is not entitled to the protection afforded under this Protective Order,  
24 such Receiving Party shall first notify counsel of record for the Designating Party,  
25 in writing, providing its reasons for challenging the designation. Any motion  
26 challenging the designation will be governed by Local Rules 37-1 and 37-2. The  
27 Designating Party shall bear the burden of proving that the designated information  
28 warrants its designated level of protection under this Protective Order, which may

1 include showing the information constitutes, contains, reveals, or reflects trade  
2 secrets or other confidential research, development, commercial, financial, or  
3 personnel information that relates to the Designating Party's business or that was  
4 disclosed to it in confidence by any third party, and that disclosure of the  
5 designated information to competitors, customers, or others (including the general  
6 public) would adversely prejudice the Designating Party or its business or would  
7 violate an obligation of confidentiality to a third party. No Party to this action,  
8 however, shall be obligated to challenge the propriety of any designation by any  
9 other Party or non-party, and a failure to do so shall not constitute a waiver or in  
10 any way preclude a subsequent challenge in this or any other action of the  
11 propriety of such designations.

12 I. Survival of Terms. Absent written modification by the Parties, the  
13 provisions of this Protective Order that restrict the disclosure and use of  
14 Confidential Information shall survive the final disposition of this matter and  
15 continue to be binding on all persons and entities subject to the terms of this  
16 Protective Order.

17 J. Effect on Discovery. This Protective Order shall not preclude or limit  
18 the right of any Party to object to or resist discovery on any ground that would  
19 otherwise be available, except that no Party shall object to or resist discovery  
20 conducted in accordance with this Protective Order on the ground that such  
21 information is of a sensitive, trade secret or confidential nature. This Protective  
22 Order shall not relieve the Party of the necessity of proper response or objection to  
23 discovery requests. This Protective Order shall be without prejudice to the right of  
24 the Parties to bring before the Court at any time the question of whether any  
25 particular document or information constitutes Confidential Information. This  
26 Protective Order shall not be deemed to prejudice the Parties in any way in any  
27 future application or modification of the Protective Order.

1 K. Modification. This Protective Order may be modified by further order  
2 of the Court. Counsel for all Parties and any other Designating Party who has  
3 designated any documents or information as Confidential Information may execute  
4 a stipulation modifying this stipulation. However, no amendment or modification  
5 pursuant to such a stipulation shall have the force or effect of a Court order unless  
6 the Court approves the amendment or modification.

7 L. Entire Agreement. This Protective Order contains the entire  
8 agreement and understanding between the parties with respect to the Protective  
9 Order's subject matter. This Protective Order completely replaces and supersedes  
10 any prior understanding or agreement between the parties with respect to this  
11 Protective Order's subject matter.


12 M. Submitting to the Jurisdiction of the Court. Outside Counsel, In-  
13 House Counsel, the Parties, and every person to whom Confidential Information is  
14 disclosed pursuant to the terms of this Protective Order agrees to submit to the *in*  
15 *personam* jurisdiction of the United States District Court, Central District of  
16 California solely for purposes of enforcing his or her obligations under this  
17 Protective Order.

18 N. Violation of Order. The Parties stipulated that this Protective Order  
19 shall be entered by United States District Court, Central District of California and  
20 may be enforced according to its terms by the Court. The Parties further stipulated  
21 that in the event of any violation or threatened violation of this Protective Order,  
22 the Court may impose any civil or criminal penalties that would otherwise be  
23 available if that Court had entered the Protective Order in the first instance,  
24 including, but not limited to, injunctive relief and/or an order in aid of litigation  
25 against any Party, person, or entity violating or threatening to violate this  
26 Protective Order. The Party, person, or entity committing or threatening to commit  
27 such violation shall not argue or otherwise employ as a defense that the  
28 Designating Party has an adequate remedy at law.

1        Effective Date. This Protective Order shall become effective among the  
2 parties when executed, with or without the Court's entry of the same.  
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5        **IT IS SO ORDERED.**

6        Dated: 9/7/2011



United States Magistrate Judge

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1 **EXHIBIT A**

2 **CONFIDENTIALITY AGREEMENT**

3 I, \_\_\_\_\_, declare under penalty of perjury under  
4 the laws of the United States and California that:

5 1. My address is

6 \_\_\_\_\_  
7 \_\_\_\_\_

8 2. My present employer is

9 \_\_\_\_\_  
10 \_\_\_\_\_

11 3. My present occupation or job description is

12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_

15 4. I HEREBY CERTIFY AND AGREE that I have read and understand  
16 the terms of the Protective Order in the matter of *American Induction*  
17 *Technologies, Inc. v. KBK, Inc. et al.*, Case No. SACV11-00350 JAK (RNBx),  
18 pending before the United States District Court, Central District of California; that  
19 I will not use or disclose to anyone any of the contents of any Confidential  
20 Information received under the protection of the Protective Order except in  
21 accordance with the Protective Order; that I will comply with and be bound by the  
22 terms and conditions of the Protective Order; and that I hereby submit to the  
23 jurisdiction of the United States District Court, Central District of California solely  
24 for the purposes of enforcement of the Protective Order.

25 5. I understand and agree that, pursuant to the Protective Order, I am  
26 required to retain all Copies of any of the materials that I receive that have been so  
27 designated as containing Confidential Information in a container, cabinet, drawer,  
28 room or other safe place in a manner consistent with this Protective Order, and that

1 all Copies are to remain in my custody until they are to be returned or destroyed as  
2 specified in the Protective Order. I acknowledge that such return or the destruction  
3 of such materials shall not relieve me from any of the continuing obligations  
4 imposed on me by the Protective Order.

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6  
7 Dated: \_\_\_\_\_

8 (Signature)  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 2, 2011, I electronically filed the foregoing  
3 with the clerk of the court for the U.S. District Court, Central District of California, using the  
4 electronic case filing system of the court. The electronic case filing system sent a "Notice of  
5 Electronic filing" to the following attorneys of record who have consent in writing to accept this  
6 notice of service of this document by electronic means:

7 William B. Hanley, Esq.  
8 Law Offices of William B. Hanley  
9 5000 Birch Street  
10 Suite 9400  
11 Newport Beach, CA 92660  
12 Phone: 949.263.0040  
13 Fax: 949.263.0077  
14 Email: wbh@hanley-law.com

Laura M. Sullivan, Esq.  
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5000 Birch Street  
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12 Victor E. Hobbs, Esq.  
13 Victor E. Hobbs Law Offices  
14 17981 Sky Park Circle  
15 Suite C  
16 Irvine, CA 92614  
17 Phone: 949.221.9700  
18 Fax: 949.221.9707  
19 Email:  
20 victorhobbs@hobbslegalsolutions.com

21 /s/ Michael A. Sherman  
22 Michael A. Sherman  
23 Counsel for KBK, Inc., a New York  
24 Corporation  
25  
26  
27  
28



1 **PROOF OF SERVICE**

2 I am over eighteen years of age, not a party in this action, and employed in Los  
3 Angeles County, California at The Water Garden, Fourth Floor, North Tower, 1620 26th Street,  
4 Santa Monica, California 90404-4060. I am readily familiar with the practice of this office for  
5 collection and processing of correspondence for mail/fax/hand delivery/next business day  
6 delivery, and they are deposited that same day in the ordinary course of business.

7 On September 2, 2011, I served the attached:

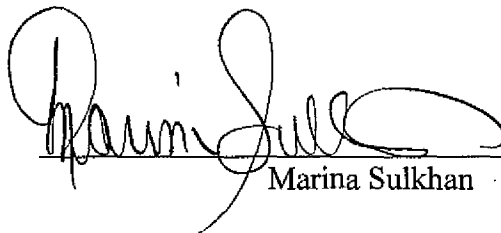
8 **[PROPOSED] PROTECTIVE ORDER**

9  (EXPRESS MAIL/OVERNIGHT DELIVERY) by causing a true and correct copy  
10 of the document(s) listed above to be delivered by Federal Express in sealed  
11 envelope(s) with all fees prepaid at the address(es) set forth below.

12  (BY UNITED STATES DISTRICT COURT ELECTRONIC FILING SERVICE)  
13 on the parties as set forth below:

14 **SEE ATTACHED SERVICE LIST**

15 I declare under penalty of perjury under the laws of the State of California that the  
16 foregoing is true and correct and that this declaration was executed on September 2, 2011, at  
17 Santa Monica, California.

18   
19 \_\_\_\_\_  
20 Marina Sulkhan

**SERVICE LIST**

1  
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3 William B. Hanley, Esq.  
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