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23 **UNITED STATES DISTRICT COURT**
 24 **CENTRAL DISTRICT OF CALIFORNIA**
 25 **SOUTHERN DIVISION**

26 TRENDSETTAH USA, INC. and
 27 TREND SETTAH, INC.

28 Plaintiffs,

v.

SWISHER INTERNATIONAL,
 INC.

Defendant.

Case No. 8:14-CV-01664-JDS (DFMx)

**[PROPOSED] PROTECTIVE
 ORDER**

1 The Court having considered the parties' Stipulated Protective Order, and
2 good cause appearing thereto, hereby grants the following Protective Order:
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4 1. A. PURPOSES AND LIMITATIONS

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

18 B. GOOD CAUSE STATEMENT

19 This action may involve trade secrets, customer and pricing lists and other
20 valuable research, development, commercial, financial, technical and/or proprietary
21 information for which special protection from public disclosure and from use for
22 any purpose other than prosecution of this action is warranted. Such confidential
23 and proprietary materials and information consist of, among other things,
24 confidential and proprietary information about the manufacturing process and
25 composition of Plaintiffs' and Defendant's cigarillo products, and the parties'
26 confidential business or financial information, including information showing sales,
27 costs, and profits. As this action progresses, the parties may determine that
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1 discovery calls for the disclosure of additional types of confidential information.
2 There are various ways in which the disclosure of such confidential information
3 would harm the parties. For example, the disclosure of information about the
4 manufacturing process and composition of the products at issue in this litigation
5 could harm Plaintiffs and/or Defendant by making such information available to
6 competitors or potential counterfeiters. In addition, the disclosure of customer and
7 pricing information could harm Plaintiffs or Defendant by making such confidential
8 information available to their competitors. Accordingly, to expedite the flow of
9 information, to facilitate the prompt resolution of disputes over confidentiality of
10 discovery materials, to adequately protect information the parties are entitled to
11 keep confidential, to ensure that the parties are permitted reasonable necessary uses
12 of such material in preparation for and in the conduct of trial, to address their
13 handling at the end of the litigation, and serve the ends of justice, a protective order
14 for such information is justified in this matter. It is the intent of the parties that
15 information will not be designated as confidential for tactical reasons and that
16 nothing be so designated without a good faith belief that it has been maintained in a
17 confidential, non-public manner, and there is good cause why it should not be part
18 of the public record of this case.

19 2. DEFINITIONS

20 2.1. Action: *Trendsetta USA, Inc., et al. v. Swisher International, Inc.*, No.
21 8:14-CV-01664-JDS (DFMx) (C.D. Cal.)

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

24 2.3. “CONFIDENTIAL” Information or Items: information (regardless of
25 how it is generated, stored or maintained) or tangible things that qualify for
26 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
27 the Good Cause Statement.
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1 2.4. “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
2 Items: information (regardless of how it is generated, stored or maintained) or
3 tangible things that relate to proprietary, trade secret, confidential research,
4 development, business, financial, or commercial information.

5 2.5. Counsel: Outside Counsel of Record and In-House Counsel (as well as
6 their respective support staff).

7 2.6. Designating Party: a Party or Non-Party that designates information or
8 items or tangible things that it produces in disclosures or in responses to discovery
9 as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

10 2.7. Disclosure or Discovery Material: all items or information, regardless
11 of the medium or manner in which it is generated, stored, or maintained (including,
12 among other things, testimony, transcripts, and tangible things), that are produced
13 or generated in disclosures or responses to discovery in this matter.

14 2.8. Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its counsel to serve as
16 an expert witness or as a consultant in this Action.

17 2.9. In-House Counsel: attorneys who are employees of a party to this
18 Action. In-House Counsel does not include Outside Counsel of Record retained for
19 this Action, but does include outside general counsel including, but not limited to,
20 Tate Hilmoe or his law firm, Tate S. Hilmoe, APC.

21 2.10. Non-Party: any natural person, partnership, corporation, association, or
22 other legal entity not named as a Party to this action.

23 2.11. Outside Counsel of Record: attorneys who are not employees of a
24 party to this Action but are retained to represent or advise a party to this Action and
25 have appeared in this Action on behalf of that party or are affiliated with a law firm
26 which has appeared on behalf of that party, and includes their support staff.
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1 2.12. Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.13. Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

6 2.14. Professional Vendors: persons or entities that provide litigation
7 support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.15. Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY.”

13 2.16. Receiving Party: a Party that receives Disclosure or Discovery
14 Material from a Producing Party.

15 3. SCOPE

16 The protections conferred by this Stipulation and Order cover not only
17 Protected Material (as defined above), but also (1) any information copied or
18 extracted from Protected Material; (2) all copies, excerpts, summaries, or
19 compilations of Protected Material; and (3) any testimony, conversations, or
20 presentations by Parties or their Counsel that might reveal Protected Material.
21 Any use of Protected Material at trial shall be governed by the orders of the trial
22 judge. This Order does not govern the use of Protected Material at trial.

23 4. DURATION

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

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1. Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

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

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Designation in conformity with this Order requires:

(a) for information in documentary form (*e.g.*, paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

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

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

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the “CONFIDENTIAL” legend. If only a portion or portions of the information

1 warrants protection, the Producing Party, to the extent practicable, shall identify the
2 protected portion(s).

3 (d) information shall be designated as “CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” in the same manner as information designated
5 “CONFIDENTIAL,” with the exception that such information shall be stamped
6 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

17 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process under Local Rule 37-11 *et seq.*

19 6.3. The burden of persuasion in any such challenge proceeding shall be on
20 the Designating Party. Frivolous challenges, and those made for an improper
21 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other
22 parties) may expose the Challenging Party to sanctions. Unless the Designating
23 Party has waived or withdrawn the confidentiality designation, all parties shall
24 continue to afford the material in question the level of protection to which it is
25 entitled under the Producing Party’s designation until the Court rules on the
26 challenge.

27 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

11 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
12 otherwise ordered by the Court or permitted in writing by the Designating Party,
13 any information or item designated “CONFIDENTIAL” may not be given, shown,
14 made available, disclosed, or communicated to anyone except the following:

- 15 (a) the Receiving Party;
 - 16 (b) the Receiving Party’s Outside Counsel of Record in this Action, as
17 well as employees of said Outside Counsel of Record to whom it is reasonably
18 necessary to disclose the information for this Action;
 - 19 (c) the officers, directors, and employees (including In-House Counsel) of
20 the Receiving Party to whom disclosure is reasonably necessary for this Action;
 - 21 (d) Experts (as defined in this Order) of the Receiving Party to whom
22 disclosure is reasonably necessary for this Action and who have signed the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
 - 24 (e) the Court and its personnel;
 - 25 (f) court reporters and their staff;
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1 (g) professional jury or trial consultants, mock jurors, and Professional
2 Vendors to whom disclosure is reasonably necessary for this Action and who have
3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

15 (j) any mediator or settlement officer, and their supporting personnel,
16 mutually agreed upon by any of the parties engaged in settlement discussions.

17 7.3 Disclosure of “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
18 Information or Items. Unless otherwise ordered by the Court or permitted in
19 writing by the Designating Party, any information or item designated
20 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may not be given, shown,
21 made available, disclosed, or communicated to anyone except the following:

22 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
23 well as employees of said Outside Counsel of Record to whom it is reasonably
24 necessary to disclose the information for this Action (as set forth in section 2.9, this
25 excludes Tate Hilmoie and his law firm, Tate Hilmoie, APC);
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1 (b) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this Action and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (c) the Court and its personnel;

5 (d) court reporters and their staff;

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

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

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
12 PRODUCED IN OTHER LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation
14 that compels disclosure of any information or items designated in this Action as
15 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that
16 Party must:

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

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

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

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

7 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
8 PRODUCED IN THIS LITIGATION

9 (a) The terms of this Order are applicable to information produced by a
10 Non-Party in this Action and designated as “CONFIDENTIAL” or
11 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced
12 by Non-Parties in connection with this litigation is protected by the remedies and
13 relief provided by this Order. Nothing in these provisions should be construed as
14 prohibiting a Non-Party from seeking additional protections.

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

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

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

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

10 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

19 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
20 OTHERWISE PROTECTED MATERIAL

21 When a Producing Party gives notice to Receiving Parties that certain
22 inadvertently produced material is subject to a claim of privilege or other
23 protection, the obligations of the Receiving Parties are those set forth in Federal
24 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
25 whatever procedure may be established in an e-discovery order that provides for
26 production without prior privilege review. Pursuant to Federal Rule of Evidence
27 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
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1 of a communication or information covered by the attorney-client privilege or work
2 product protection, the parties may incorporate their agreement in the stipulated
3 protective order submitted to the court.

4 12. MISCELLANEOUS

5 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
6 person to seek its modification by the Court in the future.

7 12.2. Right to Assert Other Objections. By stipulating to the entry of this
8 Protective Order no Party waives any right it otherwise would have to object to
9 disclosing or producing any information or item on any ground not addressed in
10 this Stipulated Protective Order. Similarly, no Party waives any right to object on
11 any ground to use in evidence of any of the material covered by this Protective
12 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
15 may 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.

19 13. FINAL DISPOSITION

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

11 14. Any violation of this Order may be punished by any and all
12 appropriate measures including, without limitation, contempt proceedings and/or
13 monetary sanctions.
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15 **IT IS SO ORDERED.**



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17 Dated: June 12, 2015

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19 Hon. Douglas F. McCormick
20 United States Magistrate Judge
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