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

GENTILE FAMILY INDUSTRIES,
a Nevada corporation, aka GF
INDUSTRIES, Reorganized Debtor,
Plaintiff

vs.

DIATOM, LLC, a California Limited
Liability Company; DAVID
COOPER; STANLEY COOPER;
WANDA COOPER; ROBERT
THIESS, and DOES 1 through 30,
inclusive,

Defendants.

**Civil Case No. SACV-14-01794-
DOC(JCGx)**

[Assigned to the Hon. David O. Carter
and Magistrate Judge Jay C. Gandhi]

**STIPULATED PROTECTIVE
ORDER**

AND RELATED CROSS-ACTION.

21 **1.A. PURPOSES AND LIMITATIONS**

22 Discovery in this Action is likely to involve production of confidential,
23 proprietary, or private information for which special protection from public
24 disclosure and from use for any purpose other than prosecuting this litigation may be
25 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter
26 the following Stipulated Protective Order. The parties acknowledge that this Order
27 does not confer blanket protections on all disclosures or responses to discovery and
28 that the protection it affords from public disclosure and use extends only to the
limited information or items that are entitled to confidential treatment under the

1 applicable legal principles. The parties further acknowledge, as set forth in Section
2 12.3, below, that this Stipulated Protective Order does not entitle them to file
3 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
4 that must be followed and the standards that will be applied when a party seeks
5 permission from the court to file material under seal.
6

7 **B. GOOD CAUSE STATEMENT**

8 This Action is likely to involve trade secrets, customer and pricing lists and
9 other valuable research, development, commercial, financial, technical and/or
10 proprietary information for which special protection from public disclosure and from
11 use for any purpose other than prosecution of this Action is warranted. Such
12 confidential and proprietary materials and information consist of, among other things,
13 confidential business or financial information, information regarding confidential
14 business practices, or other confidential research, development, or commercial
15 information (including information implicating privacy rights of third parties),
16 information otherwise generally unavailable to the public, or which may be
17 privileged or otherwise protected from disclosure under state or federal statutes, court
18 rules, case decisions, or common law. Accordingly, to expedite the flow of
19 information, to facilitate the prompt resolution of disputes over confidentiality of
20 discovery materials, to adequately protect information the parties are entitled to keep
21 confidential, to ensure that the parties are permitted reasonable necessary uses of
22 such material in preparation for and in the conduct of trial, to address their handling
23 at the end of the litigation, and serve the ends of justice, a protective order for such
24 information is justified in this matter. It is the intent of the parties that information
25 will not be designated as confidential for tactical reasons and that nothing be so
26 designated without a good faith belief that it has been maintained in a confidential,
27 non-public manner, and there is good cause why it should not be part of the public
28 record of this case.

1 2. DEFINITIONS

2 2.1 Action: Gentile Family Industries, a Nevada corporation, aka GF
3 Industries, Reorganized Debtor, Plaintiff v. Diatom, LLC, a California Limited
4 Liability Company; David Cooper; Stanley Cooper; Wanda Cooper; Robert Thiess;
5 and Does 1 through 30, inclusive, Defendants; United States District Court Central
6 District of California, Southern Division, Case No. SACV-14-01794-DOC (JCGx).

7 2.2 Challenging Party: a Party or Non-Party that challenges the designation
8 of information or items under this Order.

9 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
10 how it is generated, stored or maintained) or tangible things that qualify for
11 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
12 Good Cause Statement.

13 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
14 their support staff).

15 2.5 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 "CONFIDENTIAL."
18

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

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

26 2.8 House Counsel: attorneys who are employees of a party to this Action.
27 House Counsel does not include Outside Counsel of Record or any other outside
28 counsel.

1 2.9 Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this Action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party
4 to this Action but are retained to represent or advise a party to this Action and have
5 appeared in this Action on behalf of that party or are affiliated with a law firm which
6 has appeared on behalf of that party, and includes support staff.

7 2.11 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.13 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is
17 designated as "CONFIDENTIAL."

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
19 from a Producing Party.

20 3. SCOPE

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

26 Any use of Protected Material at trial shall be governed by the orders of the
27 trial judge. This Order does not govern the use of Protected Material at trial.
28

1 4. DURATION

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

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

24 If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the mistaken designation.
27
28

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.
6

7 Designation in conformity with this Order requires:

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

14 A Party or Non-Party that makes original documents or materials available for
15 inspection need not designate them for protection until after the inspecting Party has
16 indicated which material it would like copied and produced. During the inspection
17 and before the designation, all of the material made available for inspection shall be
18 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
19 it wants copied and produced, the Producing Party must determine which documents,
20 or portions thereof, qualify for protection under this Order. Then, before producing
21 the specified documents, the Producing Party must affix the “CONFIDENTIAL”
22 legend to each page that contains Protected Material. If only a portion or portions of
23 the material on a page qualifies for protection, the Producing Party also must clearly
24 identify the protected portion(s) (e.g., by making appropriate markings in the
25 margins).
26

27 (b) for testimony given in deposition or in other pretrial or trial proceedings,
28 that the Designating Party identify on the record, before the close of the deposition,
hearing, or other proceeding, all protected testimony.

1 (c) for information produced in some form other than documentary and for
2 any other tangible items, that the Producing Party affix in a prominent place on the
3 exterior of the container or containers in which the information or item is stored the
4 legend "CONFIDENTIAL." If only a portion or portions of the information or item
5 warrant protection, the Producing Party, to the extent practicable, shall identify the
6 protected portion(s).
7

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

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
16 designation of confidentiality at any time that is consistent with the Court's
17 Scheduling Order.
18

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37.1 et seq.

21 6.3 The burden of persuasion in any such challenge proceeding shall be on
22 the Designating Party. Frivolous challenges, and those made for an improper purpose
23 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
24 expose the Challenging Party to sanctions. Unless the Designating Party has waived
25 the confidentiality designation, all parties shall continue to afford the material in
26 question the level of protection to which it is entitled under the Producing Party's
27 designation until the Court rules on the challenge.
28

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
14 otherwise ordered by the court or permitted in writing by the Designating Party, a
15 Receiving Party may disclose any information or item designated
16 "CONFIDENTIAL" only to:

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

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

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

25 (d) the Court and its personnel;

26 (e) court reporters and their staff;

27
28

1 (f) 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 (g) 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 (h) during their depositions, witnesses in the Action to whom disclosure is
7 reasonably necessary and who have signed the “Acknowledgment and Agreement to
8 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
9 by the Court. However, during a deposition, the receiving party may disclose any
10 information or item designated confidential to witnesses who refuse to execute the
11 Acknowledgment and Agreement to Be Bound (Exhibit A). Pages of transcribed
12 deposition testimony or exhibits to depositions that reveal Protected Material must be
13 separately bound by the court reporter and may not be disclosed to anyone except as
14 permitted under this Stipulated Protective Order.

15
16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
17 OTHER LITIGATION

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

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

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

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

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

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

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

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

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

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

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

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

12 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

21
22 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
23 PROTECTED MATERIAL

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

1 parties reach an agreement on the effect of disclosure of a communication or
2 information covered by the attorney-client privilege or work product protection, the
3 parties may incorporate their agreement in the stipulated protective order submitted
4 to the Court.
5

6 **12. MISCELLANEOUS**

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

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

14 12.3 Filing Protected Material. A Party that seeks to file under seal any
15 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
16 only be filed under seal pursuant to a court order authorizing the sealing of the
17 specific Protected Material at issue. If a Party's request to file Protected Material
18 under seal is denied by the Court, then the Receiving Party may file the information
19 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed
20 by the court.
21

22 **13. FINAL DISPOSITION**


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

1 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
2 (by category, where appropriate) all the Protected Material that was returned or
3 destroyed and (2) affirms that the Receiving Party has not retained any copies,
4 abstracts, compilations, summaries or any other format reproducing or capturing any
5 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
6 retain an archival copy of all pleadings, motion papers, trial, deposition and hearing
7 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
8 reports, attorney work product, and consultant and expert work product, even if such
9 materials contain Protected Material. Any such archival copies that contain or
10 constitute Protected Material remain subject to this Protective Order as set forth in
11 Section 4 (DURATION).
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1 14. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions. Nothing in this Order shall limit or be construed to limit, or affect or be
4 construed to affect, any party's rights or obligations pursuant to the Land Use
5 Agreement between the parties.
6

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
8

9 DATED: Nov 16, 2015


Mark C. Bailey
Attorneys for Plaintiff, Gentile Family Industries

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13 DATED: 11/16/15

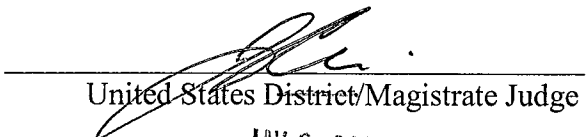

D. Max Gardner
Attorneys for Defendants, Diatom LLC,
David Cooper, Stanley Cooper, and Wanda Cooper

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17 DATED: _____

Robert Thiess
Defendant in Pro Per

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21 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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23 DATED: 11.16.2015


United States District/Magistrate Judge

JAY C. GANDHI
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print full name], of _____
5 _____ [print full address], declare under penalty of perjury that I
6 have read in its entirety and understand the Stipulated Protective Order that was issued by
7 the United States District Court for the Northern District of California on _____
8 [date] in the case of Gentile Family Industries, a Nevada corporation, aka GF Industries,
9 Reorganized Debtor, Plaintiff v. Diatom, LLC, a California Limited Liability Company;
10 David Cooper; Stanley Cooper; Wanda Cooper; Robert Thiess; and Does 1 through 30,
11 inclusive, Defendants; United States District Court Central District of California, Southern
12 Division, Case No. SACV-14-01794-DOC (JCGx). I agree to comply with and to be bound
13 by all the terms of this Stipulated Protective Order and I understand and acknowledge that
14 failure to so comply could expose me to sanctions and punishment in the nature of
15 contempt. I solemnly promise that I will not disclose in any manner any information or item
16 that is subject to this Stipulated Protective Order to any person or entity except in strict
17 compliance with the provisions of this Order. I further agree to submit to the jurisdiction of
18 the United States District Court for the Central District of California for the purpose of
19 enforcing the terms of this Stipulated Protective Order, even if such enforcement
20 proceedings occur after termination of this Action.

21 I hereby appoint _____ [print full name] of
22 _____ [print full address and telephone number]
23 as my California agent for service of process in connection with this Action or any
24 proceedings related to enforcement of this Stipulated Protective Order.

25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____