

1 **Brian K. Stewart, Esq. (State Bar No. 126412)**  
 2 **Rebecca S. King, Esq. (State Bar No. 305902)**  
 3 **COLLINS COLLINS MUIR + STEWART LLP**  
 4 **1100 El Centro Street**  
 5 **South Pasadena, CA 91030**  
 6 **(626) 243-1100 – FAX (626) 243-1111**

7 Attorneys for Defendants  
 8 W.S. INDUSTRIES, INC. and VINH LAM

9 **UNITED STATES DISTRICT COURT**  
 10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 A.C.T. 898 PRODUCTS, INC., a	)	CASE NO. 8:16-CV-00476-DOC-JCG
12 California Corporation,	)	[Assigned to Judge David O. Carter, Dept.
	)	9D]
13 Plaintiff,	)	
	)	<b>STIPULATED PROTECTIVE ORDER</b>
14 vs.	)	
	)	
16 W.S. INDUSTRIES, INC.; VINH	)	<b>Complaint Filed: 03/11/16</b>
17 LAM, an individual; and DOES 1	)	
18 through 10, inclusive,	)	<b>Trial Date: None</b>
	)	
19 Defendants	)	

20  
 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

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

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, information otherwise generally unavailable to the public, or which may  
16 be privileged or otherwise protected from disclosure under state or federal statutes,  
17 court rules, case decisions, or common law.

18 Accordingly, to expedite the flow of information, to facilitate the prompt  
19 resolution of disputes over confidentiality of discovery materials, to adequately  
20 protect information the parties are entitled to keep confidential, to ensure that the  
21 parties are permitted reasonable necessary uses of such material in preparation for  
22 and in the conduct of trial, to address their handling at the end of the litigation, and  
23 serve the ends of justice, a protective order for such information is justified in this  
24 matter. It is the intent of the parties that information will not be designated as  
25 confidential for tactical reasons and that nothing be so designated without a good  
26 faith belief that it has been maintained in a confidential, non-public manner, and there  
27 is good cause why it should not be part of the public record of this case.

28

1 2. DEFINITIONS

2 2.1 Action: this pending federal law suit

3 2.2 Challenging Party: a Party or Non-Party that challenges the designation of  
4 information or items under this Order.

5 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how  
6 it is generated, stored or maintained) or tangible things that qualify for protection  
7 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good  
8 Cause Statement.

9 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
10 support staff).

11 2.5 Designating Party: a Party or Non-Party that designates information or  
12 items that it produces in disclosures or in responses to discovery as  
13 “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

14 2.6 Disclosure or Discovery Material: all items or information, regardless of  
15 the medium or manner in which it is generated, stored, or maintained (including,  
16 among other things, testimony, transcripts, and tangible things), that are produced or  
17 generated in disclosures or responses to discovery in this matter.

18 2.7 Expert: a person with specialized knowledge or experience in a matter  
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
20 an expert witness or as a consultant in this Action.

21 2.8 House Counsel: attorneys who are employees of a party to this Action.  
22 House Counsel does not include Outside Counsel of Record or any other outside  
23 counsel.

24 2.9 Non-Party: any natural person, partnership, corporation, association, or  
25 other legal entity not named as a Party to this action.

26 2.10 Outside Counsel of Record: attorneys who are not employees of a party to  
27 this Action but are retained to represent or advise a party to this Action and have  
28 appeared in this Action on behalf of that party or are affiliated with a law firm which

1 has appeared on behalf of that party, and includes support staff.

2 2.11 Party: any party to this Action, including all of its officers, directors,  
3 employees, consultants, retained experts, and Outside Counsel of Record (and their  
4 support staffs).

5 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
6 Discovery Material in this Action.

7 2.13 Professional Vendors: persons or entities that provide litigation support  
8 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
9 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
10 and their employees and subcontractors.

11 2.14 Protected Material: any Disclosure or Discovery Material that is  
12 designated as “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

13 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
14 from a Producing Party.

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16 **3. SCOPE**

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

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

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25 **4. DURATION**

26 Even after final disposition of this litigation, the confidentiality obligations  
27 imposed by this Order shall remain in effect until a Designating Party agrees  
28 otherwise in writing or a court order otherwise directs. Final disposition shall be

1 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
2 or without prejudice; and (2) final judgment herein after the completion and  
3 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
4 including the time limits for filing any motions or applications for extension of time  
5 pursuant to applicable law.

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7 **5. DESIGNATING PROTECTED MATERIAL**

8       5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
9 Party or Non-Party that designates information or items for protection under this  
10 Order must take care to limit any such designation to specific material that qualifies  
11 under the appropriate standards. The Designating Party must designate for protection  
12 only those parts of material, documents, items, or oral or written communications that  
13 qualify so that other portions of the material, documents, items, or communications  
14 for which protection is not warranted are not swept unjustifiably within the ambit of  
15 this Order.

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

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

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

28       Designation in conformity with this Order requires:

1 (a) for information in documentary form (e.g., paper or electronic documents,  
2 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
3 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter  
4 “CONFIDENTIAL legend”). Stamping the “CONFIDENTIAL legend” on the cover  
5 of any multipage document shall designate all pages of the document as confidential,  
6 unless otherwise indicated by the producing party. If only a portion or portions of the  
7 material on a page qualifies for protection, the Producing Party also must clearly  
8 identify the protected portion(s) (e.g., by making appropriate markings in the  
9 margins).

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

22 (b) for testimony given in depositions that the Designating Party identify the  
23 Disclosure or Discovery Material on the record, before the close of the deposition all  
24 protected testimony. Due to the fact that the parties are direct competitors,  
25 depositions of a party or an officer, director, or employee of a party shall be taken  
26 only in the presence of counsel for a party (including the paralegal, clerical, and  
27 secretarial staff employed by such counsel), court reporter(s) employed in this action,  
28 and any other person as to whom the parties in writing agree.

1 (c) for information produced in some form other than documentary and for any  
2 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 is stored the legend  
4 “CONFIDENTIAL.” If only a portion or portions of the information warrants  
5 protection, the Producing Party, to the extent practicable, shall identify the protected  
6 portion(s).

7 (d) The parties may further designate certain discovery material or testimony  
8 of a highly confidential and/or proprietary nature as “CONFIDENTIAL—  
9 ATTORNEY'S EYES ONLY” (hereinafter “Attorney's Eyes Only Material”). Under  
10 the terms of this order, the party making the designation is certifying to the court that  
11 there is a good faith basis both in law and in fact for the designation within the  
12 meaning of Federal Rule of Civil Procedure 26(c).

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

## 19 20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
25 resolution process under Local Rule 37.1 et seq.

26 6.3 The burden of persuasion in any such challenge proceeding shall be on the  
27 Designating Party. Frivolous challenges, and those made for an improper purpose  
28 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may

1 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
2 or withdrawn the confidentiality designation, all parties shall continue to afford the  
3 material in question the level of protection to which it is entitled under the Producing  
4 Party's designation until the Court rules on the challenge.

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6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

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

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

28       (d) the court and its personnel;

- 1 (e) court reporters and their staff;
- 2 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
- 3 to whom disclosure is reasonably necessary for this Action and who have signed the
- 4 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 5 (g) the author or recipient of a document containing the information or a
- 6 custodian or other person who otherwise possessed or knew the information;
- 7 (h) any mediator or settlement officer, and their supporting personnel,
- 8 mutually agreed upon by any of the parties engaged in settlement discussions; and
- 9 (i) any other person as to whom the parties in writing agree.

10 7.3 Disclosure of “Attorney’s Eyes Only Material”.

11 Attorney's Eyes Only Material, and the information contained therein, shall be  
12 disclosed only to the Court, to counsel for the parties (including the paralegal,  
13 clerical, and secretarial staff employed by such counsel), and to experts or  
14 consultants (together with their clerical staff) retained by such counsel to assist in the  
15 prosecution, defense, or settlement of this action. Attorney’s eyes only material shall  
16 not be disclosed to a party, or to an officer, director or employee of a party unless  
17 otherwise agreed or ordered. If disclosure of Attorney's Eyes Only Material is made  
18 pursuant to this paragraph, all other provisions in this order with respect to  
19 confidentiality shall also apply.

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
22 OTHER LITIGATION

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

- 26 (a) promptly notify in writing the Designating Party. Such notification shall
- 27 include a copy of the subpoena or court order;
- 28 (b) promptly notify in writing the party who caused the subpoena or order to

1 issue in the other litigation that some or all of the material covered by the subpoena  
2 or order is subject to this Protective Order. Such notification shall include a copy of  
3 this Stipulated Protective Order; and

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

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

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

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

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

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

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

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

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

14  
15 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

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25 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
26 **PROTECTED MATERIAL**

27 When a Producing Party gives notice to Receiving Parties that certain  
28 inadvertently produced material is subject to a claim of privilege or other protection,

1 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
2 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
3 may be established in an e-discovery order that provides for production without prior  
4 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
5 parties reach an agreement on the effect of disclosure of a communication or  
6 information covered by the attorney-client privilege or work product protection, the  
7 parties may incorporate their agreement in the stipulated protective order submitted  
8 to the court.

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10 **12. MISCELLANEOUS**

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
12 person to seek its modification by the Court in the future.

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

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

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25 **13. FINAL DISPOSITION**

26 After the final disposition of this Action, as defined in paragraph 4, within 60  
27 days of a written request by the Designating Party, each Receiving Party must return  
28 all Protected Material to the Producing Party or destroy such material. As used in this

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

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EXHIBIT A  
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that  
I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Central District of California on  
[date] in the case of A.C.T. 898 PRODUCTS, INC. vs. W.S. INDUSTRIES, INC.  
(CASE NO. 8:16-CV-00476-DOC-JCG), I agree to comply with and to be bound by  
all the terms of this Stipulated Protective Order and I understand and acknowledge  
that failure to so comply could expose me to sanctions and punishment in the nature  
of contempt. I solemnly promise that I will not disclose in any manner any  
information or item that is subject to this Stipulated Protective Order to any person or  
entity except in strict compliance with the provisions of this Order.

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

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

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

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