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

STARBUZZ TOBACCO, INC., a California corporation,)	Case No.: 8:16-cv-00939-JVS-JCG
	)	Honorable James V. Selna
Plaintiff,)	
	)	PROTECTIVE ORDER
vs.	)	GOVERNING DISCLOSURE OF
	)	CONFIDENTIAL INFORMATION
)	
SAMBA PREMIUM TOBACCO, a business entity form unknown; SASHA JOSEF FRIWAT, an individual; LEBANUSHI CORPORATION, a California corporation; IHAB ELZEINI, an individual; and DOES 1-10, inclusive,)	
)	
Defendant)	
)	
)	

WHEREAS, Plaintiff STARBUZZ TOBACCO, INC. (“STARBUZZ”) and Defendant SAMBA PREMIUM TOBACCO (“SAMBA”), Defendant SASHA JOSEF FRIWAT (“FRIWAT”), Defendant LEBANUSHI CORPORATION (“LEBANUSHI”), and Defendant IHAB ELZEINI (“ELZEINI”) (all of the above being, collectively, the “Parties) believe that in the course of this action certain

1 information, documents, and testimony likely to be disclosed and produced
2 through discovery may constitute or incorporate confidential commercial
3 information, research or development and/or trade secrets within the meaning of
4 Federal Rule of Civil Procedure 26(c); and

5 WHEREAS, the Parties believe that entry of a protective order pursuant to
6 Federal Rule of Civil Procedure 26(c) would best protect their interests while
7 facilitating discovery in this action; and

8 WHEREAS, the Court finds good cause exists for the entry of this Protective
9 Order in this action pursuant to Federal Rule of Civil Procedure 26(c) in order to
10 protect confidential commercial information, research and development, and/or
11 trade secrets.

12 IT IS HEREBY ORDERED, pursuant to Federal Rule of Civil Procedure
13 26(c), that this Protective Order shall govern the treatment and handling of any
14 information produced or disclosed by any Party or non-Party (“the Producing
15 Party”) to this action, including without limitation, Rule 26 disclosures,
16 documents, depositions, deposition exhibits, interrogatory responses, responses to
17 requests for admission, and testimony (such information and/or documents shall
18 hereinafter be referred to as “Confidential Material”) provided it is designated (or,
19 within the appropriate time limitation, is pending designation) as being
20 Confidential Material as required by this Protective Order.

21 It is further ordered that:

22 1. Any Producing Party may designate any Confidential Material as
23 “CONFIDENTIAL” if such producing party in good faith believes that such
24 Confidential Material contains confidential or proprietary information, including
25 information in written, oral, electronic, graphic, pictorial, audiovisual, or other
26 form, whether it is a document, information contained in a document, item
27 produced for inspection, information revealed during a deposition, information
28 revealed in an interrogatory answer, or otherwise.

1 2. Any Producing Party may designate any Confidential Material as
2 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” if such producing party in
3 good faith believes that such Confidential Material contains confidential,
4 commercially sensitive, or proprietary information related to any of the following:
5 technical data, research and development information, marketing or other business
6 plans, product or service information, customer information, trade secrets,
7 competitive information, or financial information of the Producing Party,
8 including, without limitation, sales and cost information or any other information
9 of such sensitivity to warrant “Confidential—Attorneys’ Eyes Only” treatment,
10 including, information in written, oral, electronic, graphic, pictorial, audiovisual, or
11 other form, whether it is a document, information contained in a document, item
12 produced for inspection, information revealed during a deposition, information
13 revealed in an interrogatory answer, or otherwise.

14 3. A Producing Party may designate any document or other tangible
15 information or thing as “Confidential” or “Confidential—Attorneys’ Eyes Only”
16 by stamping a conspicuous place thereof with the legend CONFIDENTIAL or
17 CONFIDENTIAL—ATTORNEYS’ EYES ONLY, respectively. For example, in
18 the case of a document, a producing party may so mark the first page of a
19 multipage document and each page thereafter that actually contains Confidential
20 Material. In the case of other tangible items, a producing party may so mark any
21 appropriate location. For example, in the case of a computer disk, a producing
22 party may so mark the disk cover.

23 4. The terms of this Protective Order are applicable to Confidential
24 Material produced by a non-party and designated “CONFIDENTIAL” or
25 “CONFIDENTIAL—ATTORNEYS EYES ONLY” only when the producing non-
26 party has a proprietary interest or other right in such Confidential Material, or
27 where the producing non-party is contractually obligated to maintain the
28 confidentiality of such Confidential Material. A producing party may designate

1 documents, information, or things disclosed at a deposition of a producing party or
2 one of its present or former officers, directors, employees, agents, or independent
3 experts retained for purposes of this litigation as “Confidential” or “Confidential—
4 Attorneys’ Eyes Only” on the record during the deposition; or by notifying all
5 parties in writing of the specific item so designated, within twenty one (21) days
6 of receiving a copy of the deposition transcript, of the specific exhibits or lines and
7 pages of the transcript that are believed in good faith to contain Confidential
8 Material.

9 a. If a producing party designates such materials as “Confidential”
10 or “Confidential—Attorneys’ Eyes Only” on the record, the court reporter
11 shall indicate on the cover page of the transcript that the transcript includes
12 Confidential or Confidential—Attorneys’ Eyes Only information, shall list
13 the pages and lines numbers and/or exhibits of the transcript on or in which
14 such information is contained, and shall bind the transcript in separate
15 portions containing Confidential, Confidential—Attorneys’ Eyes Only, and
16 non-Confidential material. Further, during the period in which such
17 Confidential or Confidential—Attorneys’ Eyes Only information is
18 discussed during the deposition, any person present during the deposition
19 who is not a Qualified Person, as defined below, or the court reporter, shall
20 be excluded from that portion of the deposition.

21 b. A deposition transcript and the exhibits thereto shall be
22 presumed Confidential—Attorneys’ Eyes Only in their entirety until twenty
23 one (21) days after receipt of the transcript by the producing party. If, after
24 the deposition is taken, the producing party designates any portion of the
25 deposition transcript or exhibits as “Confidential” or “Confidential—
26 Attorneys’ Eyes Only” by giving written notice as described above, all
27 persons receiving notice of such designation shall affix the same to the face
28 of their copy or copies of the transcript. At the expiration of the twenty one

1 (21) day period, the transcript and exhibits shall automatically revert to non-
2 Confidential status, except those portions that have been designated on the
3 record or in writing as “Confidential” or “Confidential—Attorneys’ Eyes
4 Only.” Nothing in this paragraph is intended to restrict any Party’s right to
5 attend depositions pursuant to paragraph 7 hereof.

6 c. A non-producing party may designate documents, information,
7 or things disclosed at a deposition as “Confidential” or “Confidential—
8 Attorneys’ Eyes Only” in the same manner as a producing party if it has a
9 good faith basis for claiming a proprietary interest or other right in the
10 Confidential Material.

11 5. Material designated as confidential under this Protective Order, the
12 information contained therein, and any summaries, copies, abstracts, or other
13 documents derived in whole or in part from material designated as confidential
14 (hereinafter “Confidential Material”) shall be used only for the purpose of the
15 prosecution, defense, or settlement of this action, and for no other purpose, except
16 that a Party may seek permission from another court to use Confidential Material
17 produced under this Protective Order provided said Party gives advance notice to
18 the parties whose materials are sought to be used and provided no disclosure of
19 such Confidential Material is made until such other court grants the request for
20 permission. The restrictions contained in this paragraph No. 5 may be modified by
21 written agreement of the parties, but such modifications will not be considered part
22 of this order unless approved by the Court. Nothing in this paragraph shall operate
23 to bar motions in limine or similar motion to exclude the use of any document in
24 any action between the Parties on any appropriate and available basis.

25 6. Confidential Material produced pursuant to this Protective Order may
26 be disclosed or made available only to the Court, to counsel for a Party (including
27 the paralegal, clerical, and secretarial staff employed by such counsel), and to the
28 “qualified persons” designated below:

1 a. FRIWAT in her individual capacity, and as officer or director
2 of SAMBA, and Josef Friwat in his capacity as an employee of SAMBA;

3 b. ELZEINI in his individual capacity, and as officer or director of
4 LEBANUSHI;

5 c. **three** officers or directors of STARBUZZ, or full-time
6 employees designated in writing as a representative of STARBUZZ who has
7 supervisory responsibility for this matter and is necessary to the prosecution,
8 defense, or settlement of this action, namely: Wael Elhalwani, Majda
9 Haddoudi, and Ghassan ElSaadi;

10 d. experts or consultants (together with their clerical staff) retained
11 by such counsel to assist in the prosecution, defense, or settlement of this
12 action, including outside photocopying, imaging, data base, graphics or
13 design services retained by outside counsel in connection with this action;

14 e. court reporter(s) employed in this action; and

15 f. any other person as to whom the parties in writing agree.

16 Prior to receiving any Confidential Material, each “qualified person” defined
17 in (a), (b), (c), (d) and (e) above shall be provided with a copy of this Protective
18 Order and shall execute and be bound by this Protective Order by signing a
19 nondisclosure agreement in the form annexed hereto as Exhibit A, a copy of which
20 shall be provided forthwith to counsel for each other party.

21 7. Subject to the Federal Rules of Civil Procedure and applicable law,
22 depositions may be taken in the presence of any persons, including Parties, but any
23 Party may request that (a) non-qualified persons leave the room for responses
24 containing any Confidential Material; and (b) Parties leave the room for responses
25 containing CONFIDENTIAL – ATTORNEY’S EYES ONLY information. No
26 Party shall be entirely excluded from any deposition. This Order does not affect
27 applicable law regarding the attendance of depositions by non-party persons,
28 including potential witnesses.

1 8. Material designated “CONFIDENTIAL – ATTORNEY’S EYES
2 ONLY” and the information contained therein, shall be disclosed only to the Court,
3 to outside counsel for the Parties (including the paralegal, clerical, and secretarial
4 staff employed by such counsel) and to the “qualified persons” listed in
5 subparagraphs 6(d) through (f) above, but shall not be disclosed to a Party, or to an
6 officer, director or employee of a Party, except as provided above or unless
7 otherwise agreed in writing or ordered by the Court. If disclosure of Attorney’s
8 Eyes Only Material is made pursuant to this paragraph, all other provisions in this
9 order with respect to confidentiality shall also apply.

10 9. Copies of Confidential or Confidential—Attorneys’ Eyes Only
11 material may be submitted to the Court in connection with any proceedings,
12 motions or hearings, provided that such materials are filed **along with an**
13 **application to have those materials filed under seal. The application must**
14 **show good cause for the under seal filing.** To the extent possible, only those
15 portions of a filing with the Court that contain material designated as
16 “Confidential” or “Confidential—Attorneys’ Eyes Only” shall be filed under seal.
17 To the extent that no Confidential or Confidential—Attorneys’ Eyes Only
18 information is disclosed, the parties may refer to, and quote from, documents
19 designated as “Confidential” or “Confidential—Attorneys’ Eyes Only” in
20 pleadings, motions, briefs, affidavits, or exhibits filed with the Court, without the
21 need to file such pleadings, motions, briefs, affidavits, or exhibits under seal. A
22 Party’s counsel shall not unilaterally decide that material that the other Party
23 designated as “Confidential” or “Confidential—Attorneys’ Eyes Only” does not
24 contain any Confidential or Confidential—Attorneys’ Eyes Only information. If a
25 Party’s counsel disagrees with a designation, that counsel shall follow the
26 procedures described in paragraph 11 of this Order to challenge the designation.

1 10. In the event that any Confidential Material is used in any court
2 proceeding in this action, the Party using such material shall take all steps
3 reasonably available to protect its confidentiality during such use.

4 11. At any stage of these proceedings, should any party object to a
5 designation of any information, documents, or things as “Confidential” or
6 “Confidential—Attorneys’ Eyes Only,” the Party shall provide written notice of its
7 objection with the designation. The parties and/or the producing party shall first
8 attempt to resolve such objection in good faith on informal basis. If the objection
9 is not thereby resolved, the objecting Party may apply for a ruling from the Court
10 pursuant to Local Rule 37 determining whether the materials in question are
11 properly designated under the terms of this Protective Order. Until the Court
12 makes such determination, all material designated as “Confidential” or
13 “Confidential—Attorneys’ Eyes Only” shall be treated as such.

14 12. Nothing in this Protective Order shall preclude any party to the
15 lawsuit or their attorneys from:

16 a. Showing materials designated as “Confidential” or
17 “Confidential—Attorneys’ Eyes Only” to an individual who either prepared
18 or reviewed the document prior to the filing of this action, or is shown by the
19 document to have received the document;

20 b. Disclosing or using, in any manner or for any purpose, any
21 information, documents, or things from the Party’s own files that the Party
22 itself designated as “Confidential” or “Confidential—Attorneys’ Eyes
23 Only”;

24 c. Disclosing or using, in any manner or for any purpose, any
25 information, documents, or things that were obtained from a source other
26 than discovery or to which a Party has a right of access independent of
27 discovery, or that were already known to such Party by lawful means, prior
28 to obtaining from or disclosure by, the other Party in the action, provided,

1 however, that the alternate source of such information, documents or things
2 was not under an obligation of confidentiality (as evidenced by a writing) to
3 a Party in the litigation at the time such information, documents or things
4 were obtained; or

5 d. Disclosing or using, in any manner or for any purpose, any
6 information, document, or thing that is at the time of production or
7 disclosure, or subsequently becomes, through no wrongful act or failure to
8 act on the part of the receiving party, generally available to the relevant
9 public through publication or otherwise or is already rightfully in the
10 possession of the receiving party at the time of production; or

11 13. If either party is served with a subpoena or similar process, from any
12 entity whatsoever, directing that Party to produce any materials designated as
13 “Confidential” or “Confidential—Attorneys’ Eyes Only” not so designated by that
14 Party, the counsel for that Party shall immediately give counsel for the designating
15 party written notice, by hand delivery or facsimile transmission, of the fact of such
16 service so that the designating Party may seek a protective order or otherwise act to
17 protect the confidentiality of the designated materials.

18 14. This Protective Order is entered solely for the purpose of facilitating
19 the exchange of documents and information between the parties to this action
20 without involving the Court unnecessarily in the process. Nothing in this
21 Protective Order nor the production of any information or document under the
22 terms of this Protective Order nor any proceedings pursuant to this Protective
23 Order shall be deemed to have the effect of an admission or waiver by either Party
24 or of altering the confidentiality or non-confidentiality of any such document or
25 information or altering any existing obligation of any Party or the absence thereof.

26 15. This Protective Order shall survive the final termination of this action,
27 to the extent that the information contained in Confidential Material is not or does
28 not become known to the public, and the Court shall retain jurisdiction to resolve

1 any dispute concerning the use of information disclosed hereunder. Within **thirty**
2 **(30)** days of the conclusion of this action, including any appeals, counsel for the
3 parties shall assemble and return to each other all documents, material and
4 deposition transcripts designated as confidential and all copies of same, or shall
5 certify the destruction thereof. Notwithstanding this provision, Counsel are
6 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
7 memoranda, correspondence or attorney work product, even if such material
8 contain Confidential Material, for the period of one (1) year. Any such archival
9 copies that contain or constitute Confidential Material remain subject to this
10 Protective Order.

11 16. The inadvertent or unintentional disclosure by the Producing Party of
12 attorney-client privileged information or attorney work-product, either by way of
13 document production or deposition testimony, shall not be deemed a waiver of
14 privilege for such information, provided that the Producing Party promptly makes
15 a good-faith representation that such production was inadvertent or mistaken and
16 takes prompt remedial action to withdraw the disclosure. Within three (3) business
17 days of receiving a written request to do so from the Producing Party, the
18 Receiving Party shall return to the Producing Party any documents or tangible
19 items that the Producing Party represents are covered by a claim of attorney-client
20 privilege or work product immunity and were inadvertently or mistakenly
21 produced. The receiving party shall also destroy any extra copies or summaries of,
22 or notes relating to, any such inadvertently or mistakenly produced information,
23 and certifying compliance with this provision; provided, however, that this
24 Protective Order shall not preclude the Party returning such information from
25 making a motion to compel production of the returned information **pursuant to**
26 **Local Rule 37**. The Producing Party shall retain copies of all returned documents
27 and tangible items for further disposition and, if such a motion is filed, shall
28 provide copies to the Court of the documents, item or information which is the

1 subject of the motion. In the event that a Producing Party discovers in a
2 deposition, inadvertently or unintentionally disclosed documents containing
3 attorney-client privileged information or attorney work-product, the Producing
4 Party may make a request on the record for the receiving party to return the
5 documents or tangible items that the Producing Party represents 1) are covered by
6 a claim of attorney-client privilege or work product immunity and 2) were
7 inadvertently or mistakenly produced; in which event, the receiving party shall be
8 precluded from deposing a witness with respect to such inadvertently or mistakenly
9 produced documents, other than to explore the basis for a claim of privilege or
10 work product.

11 17. The inadvertent or unintentional disclosure by the Producing Party of
12 “CONFIDENTIAL” and/or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”,
13 information either by way of document production or deposition testimony,
14 regardless of whether the information was so designated at the time of disclosure,
15 shall not be deemed a waiver in whole or in part of a Party’s claim of
16 confidentiality as to the information disclosed. Any such inadvertently or
17 unintentionally disclosed “CONFIDENTIAL” and/or “CONFIDENTIAL-
18 ATTORNEYS’ EYES ONLY” information, not designated as such pursuant to
19 paragraph 1 or 2, shall be designated as “CONFIDENTIAL” or
20 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”, as soon as reasonably possible
21 after the Producing Party becomes aware of the inadvertent or unintentional
22 disclosure and provides written notice to the Receiving Parties. The Receiving
23 Party shall thereafter mark and treat the materials as “CONFIDENTIAL” or
24 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” as appropriate, and such
25 materials shall be fully subject to this Protective Order as if they had been initially
26 so designated.

27 18. This Protective Order is without prejudice to the right of any
28 interested party to apply to the Court for an order permitting the disclosure of any

1 “CONFIDENTIAL” and/or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”
2 information, or to apply for an order modifying or limiting this Protective Order in
3 any respect.

4 **GOOD CAUSE STATEMENT**

5 19. In discovery in this case, the parties will be required to exchange
6 competitively sensitive information about the opposing parties’ business activities
7 to which they and third parties would not otherwise have access, including
8 information regarding the parties’ business proprietary and/or confidential
9 information. Allowing the parties or third parties to use such competitively
10 sensitive information would cause harm to the competitive position of the
11 disclosing party. The parties seek the entry of this Protective Order to prevent the
12 unauthorized use or dissemination of confidential information produced in
13 discovery during this action by competitors.

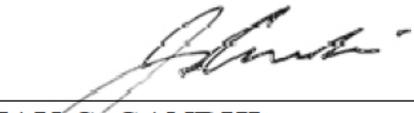
14 a. No document, information, or thing shall be designated
15 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
16 unless good cause exists for such designation under the standards set forth in
17 *Phillips v. G.M. Corp.*, 307 F.2d 1206, 1209 (9th Cir. 2002) and other
18 relevant authority. Good cause exists for the designation of information as
19 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” when the information
20 has not been made public and falls into one of the categories identified in
21 paragraph 2 hereof.

22 b. Good cause exists for the designation of information as
23 “CONFIDENTIAL” when the information has not been revealed to the
24 public and the information falls into one of the categories identified in
25 paragraph 1 hereof.

26 c. The Parties shall use reasonable efforts to minimize the amount
27 of material designated as “CONFIDENTIAL” or “CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY.”

1 d. This Protective Order applies to such “CONFIDENTIAL” and
2 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information furnished
3 in this litigation regardless of the form in which it is transmitted and
4 regardless whether the information is furnished by a party or third party.
5 Such information may be contained in documents, written discovery
6 responses, declarations, deposition testimony, exhibits, and other materials
7 or deposition testimony provided by any Party.

8 IT IS SO ORDERED at Santa Ana, California this 5th day of January, 2017.

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12 JAY C. GANDHI
13 United States Magistrate Judge
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

STARBUZZ TOBACCO, INC., a)	Case No.: 8:16-cv-00939-JVS-JCG
California corporation,	)	Honorable James V. Selna
)	
Plaintiff,	)	NON-DISCLOSURE
	)	AGREEMENT IN RE
vs.	)	PROTECTIVE ORDER
	)	GOVERNING DISCLOSURE OF
SAMBA PREMIUM TOBACCO, a	)	CONFIDENTIAL INFORMATION
business entity form unknown; SASHA)	
JOSEF FRIWAT, an individual;)	
LEBANUSHI CORPORATION, a)	
California corporation; IHAB ELZEINI,)	
an individual; and DOES 1-10,)	
inclusive,)	
)	
Defendant)	
)	
)	

DECLARATION

I, _____, declare:

1. I reside at _____

I am employed as [state position] _____ by [name and address of employer] _____.

1 2. I am aware that an Protective Order dated _____ 2017 has
2 been entered in Case No. 8:16-cv-00939-JVS-JCG in the United States District Court
3 for the Central District of California. A copy of that Protective Order has been given to
4 me.

5 3. I hereby certify that I am one of the persons allowed under paragraphs 6 or
6 8 of the Protective Order to receive access to information, documents, or things
7 designated “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY,”
8 respectively. I also agree to be bound by the terms of the Protective Order, specifically
9 including the requirement that information, documents, and things I may receive that are
10 designated as “CONFIDENTIAL” and/or “CONFIDENTIAL-ATTORNEYS’ EYES
11 ONLY,” and all copies, notes, summaries, and other records made regarding such
12 information, documents, and things, shall be disclosed to no one other than persons
13 specifically allowed by paragraphs 6 or 8 of the Protective Order, respectively, to have
14 access to such information.

15 4. I agree to act in good faith in carrying out my duties under the Protective
16 Order.

17 5. I understand that any use or disclosure by me which is contrary to my
18 undertakings in this declaration will constitute a violation of the Protective Order and
19 may subject me to sanctions by the Court for contempt.

20 6. I hereby consent the Court’s continuing exercise of jurisdiction over me for
21 the purpose of enforcing the Protective Order.

22 I declare under penalty of perjury that the foregoing is true and correct.

23
24 Dated: _____