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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

14 IRA PAZANDEH,
 15 Plaintiff,
 16 v.
 17 YAMAHA CORPORATION OF
 AMERICA,
 18 Defendant.

CASE NO. 8:16-cv-01849-JVS-DFM
 Honorable Douglas F. McCormick
PROTECTIVE ORDER

1 **PROTECTIVE ORDER**

2
3 1. A. **PURPOSES AND LIMITATIONS**

4 The parties to the above-captioned action believe that good cause exists for
5 entry of this Protective Order. In this action, Ira Pazandeh, plaintiff in pro per, is
6 suing Yamaha Corporation of America “Yamaha” for willful infringement of U.S.
7 Patent No. 7,577,265 (“the ‘265 patent”) and unfair competition under California’s
8 Business & Professions Code, §17200.

9 Mr. Pazandeh is the named inventor on several U.S. patents directed to audio
10 speaker technologies, including the ‘265 patent. Mr. Pazandeh alleges that he is
11 engaged in ongoing inventive work involving audio speaker technologies. Mr.
12 Pazandeh prosecuted, partially on his own, before the U.S. Patent and Trademark
13 Office the patent application that issued as the ‘265 patent.

14 Defendant Yamaha is engaged in selling audio speakers that are, in whole or
15 in part, designed and made by NEXO S.A. (Yamaha and Nexo are related by a
16 common parent corporation, which is Yamaha Corporation of Japan), including the
17 audio speakers accused by Mr. Pazandeh of infringing the ‘265 patent.

18 Disclosure and discovery activity in this action are likely to involve
19 production of confidential, proprietary, or private information for which special
20 protection from public disclosure and from use for any purpose other than
21 prosecuting this litigation may be warranted. Accordingly, the parties hereby
22 stipulate to and petition the Court for entry of the following Protective Order. The
23 parties acknowledge that this Order does not confer blanket protections on all
24 disclosures or responses to discovery and that the protection it affords from public
25 disclosure and use extends only to the limited information or items that are entitled
26 to confidential treatment under the applicable legal principles. The parties further
27 acknowledge, as set forth in Section 12.4 below, that this Protective Order does not
28 entitle them to file confidential information under seal; Civil Local Rule 79-5 sets

1 forth the procedures that must be followed and the standards that will be applied
2 when a party seeks permission from the court to file material under seal.

3 B. GOOD CAUSE STATEMENT

4 This action is likely to involve trade secrets, customer and pricing lists and
5 other valuable research, development, commercial, financial, technical and/or
6 proprietary information, and other internal business records of the parties and of
7 third parties for which special protection from public disclosure and from use for
8 any purpose other than prosecution of this action is warranted. Such confidential
9 and proprietary information and material consists of, among other things,
10 confidential business or financial information, information related to confidential
11 business practices, confidential research, development, technical and commercial
12 information (including information implicating privacy rights of third parties), and
13 information that otherwise is unavailable to the public, or which may be privileged
14 or otherwise protected from disclosure under state or federal statutes, court rules,
15 case decisions, or common law. In that regard, to facilitate the flow of information
16 and timely resolution of disputes over confidentiality of discovery material, to
17 adequately protect information the parties are entitled or legally bound to keep
18 confidential, to ensure that the parties are allowed reasonable necessary uses of
19 such material in preparation for and in the conduct of trial, to address the treatment
20 of the confidential and proprietary information upon termination of this action, and
21 to serve the ends of justice, a protective order for such information is justified in
22 this matter. The parties intend and agree that (1) information will not be
23 designated as confidential for any tactical reason, (2) no information be designated
24 as confidential without a good faith belief that said information has been
25 maintained in a confidential, non-public manner, and (3) there is good cause why
26 the information should not be part of the public record of this case.

27 If a confidentiality order is not granted, competitors of Yamaha and Mr.
28 Pazandeh will have access to their respective competitively sensitive information

1 and thereby obtain an unfair competitive advantage as well as the opportunity to
2 access closely protected information over which the parties, in the ordinary course
3 of business, keep as proprietary and confidential. The interests of third parties
4 from whom discovery may be sought in this action would also be harmed as each
5 would separately be required to seek entry of a protective order to maintain the
6 confidentiality of their proprietary and confidential information. The protective
7 order proposed by the parties addresses this issue and will thus minimize the
8 burden on third parties in this regard.

9 In view of Mr. Pazandeh's decision to prosecute this lawsuit pro per
10 (without the assistance of a lawyer), his positions as an inventor and *pro se*
11 prosecutor of his patent applications, and his assertion that he and Yamaha are
12 competitors (as evidenced by the allegation in the Complaint that Yamaha has
13 competed unfairly with him) it is necessary to establish parameters by which Mr.
14 Pazandeh can have access to and use protectable confidential information of
15 Yamaha and third parties whose confidential information may be produced in this
16 action, including information of Yamaha Corporation of Japan and NEXO S.A.

17 The proposed protective order will not harm the public interest in
18 access to public record information because the parties must still follow the
19 Court's procedures for filing information and materials under seal. See e.g.,
20 *WhatRU Holding, LLC v. Bouncing Angels, Inc.*, No. CV 14-5187, slip op., at *2
21 (C.D. Cal. Oct. 9, 2014).

22 As the Court has reminded the parties of their obligation under Rule
23 26(a)(1) "to disclose information (without awaiting a discovery request)" and
24 ordered the parties to "comply fully with the letter and spirit of Rule 26(a) and
25 thereby obtain and produce most of what would be produced in the early stage of
26 discovery" before the Scheduling Conference (currently scheduled for January 23,
27 2017), the parties cannot delay seeking entry of a protective order that will govern
28 disclosure and treatment of confidential information. (Dkt. No. 11).

1 2. DEFINITIONS

2 2.1 Challenging Party: a Party or Non-Party that challenges the
3 designation of information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
5 how it is generated, stored or maintained) or tangible things that qualify for
6 protection under Federal Rule of Civil Procedure 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of record and House
8 Counsel (as well as their support staff).

9 2.4 Designated House Counsel: House Counsel who seek access to
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this
11 matter.

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

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

20 2.7 Expert: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who (1) has been retained by a Party or its counsel to
22 serve as an expert witness or as a consultant in this action, (2) is not a Party, a
23 current employee or consultant of a Party or of a Party's competitor, and has not
24 been employed by or been a consultant to a Party or a Party’s competitor during
25 the past five (5) years, and (3) at the time of retention, is not anticipated to become
26 an employee of a Party or of a Party's competitor.

27 At least fourteen (14) days before Protected Material is disclosed to an
28 Expert, the Receiving Party shall give to the Designating Party: (1) the Expert’s

1 signed ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND, (2) a list
2 of the Expert's current employer, past employers for the past five years, and a list
3 of persons (including corporations) for whom the Expert has been a consultant, in
4 the field of audio engineering from the present and any time during the past five
5 years. Within ten (10) days after receiving this information on an Expert, the
6 Designating Party may serve a written objection to the Receiving Party stating
7 grounds for why Protected Material should not be given to the Expert. If a timely
8 written objection is served, the Receiving Party and/or the Designating Party will
9 not give Protected Material to the Expert until the Designating Party withdraws the
10 objection or the Court issues an Order governing the Expert's access to the
11 Protected Material.

12 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
13 Information or Items: extremely sensitive "Confidential Information or Items,"
14 disclosure of which to another Party or Non-Party would create a substantial risk of
15 serious harm that could not be avoided by less restrictive means.

16 2.9 House Counsel: Employees, and their support staff, of each party who
17 provide legal-related advice on an exclusive basis to their party or related
18 companies to the party, are substantively involved in the management or
19 supervision of the litigation, and are not involved decision making regarding the
20 design, marketing, distribution of sales of products for the party. An employee of a
21 related corporation of a party, such as Yamaha Corporation of Japan and Nexco
22 S.A., may be treated as an "employee" for purposes of this section. House Counsel
23 are not required to be U.S. attorneys and are not Outside Counsel of record.

24 2.10 Non-Party: any natural person, partnership, corporation, association,
25 or other legal entity not named as a Party to this action.

26 2.11 Outside Counsel of record: attorneys who are not employees of a
27 party to this action but are retained to represent or advise a party to this action and
28 have appeared in this action on behalf of that party or are affiliated with a law firm

1 which has appeared on behalf of that party. Yamaha’s outside counsel in France
2 (the Santarelli law firm) is Outside Counsel of record for purposes of this Order.

3 2.12 Party: any party to this action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of record (and their
5 support staffs).

6 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this action.

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

12 2.15 Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY”

15 2.16 Receiving Party: a Party that receives Disclosure or Discovery
16 Material from a Producing Party.

17

18 3. SCOPE

19 The protections conferred by this Stipulation and Order cover not only
20 Protected Material (as defined above), but also (1) any information copied or
21 extracted from Protected Material; (2) all copies, excerpts, summaries, or
22 compilations of Protected Material; and (3) any testimony, conversations, or
23 presentations by Parties or their Counsel that might reveal Protected Material.
24 However, the protections conferred by this Stipulation and Order do not cover the
25 following information: (a) any information that is in the public domain at the time
26 of disclosure to a Receiving Party or becomes part of the public domain after its
27 disclosure to a Receiving Party as a result of publication not involving a violation
28 of this Order, including becoming part of the public record through trial or

1 otherwise; and (b) any information known to the Receiving Party prior to the
2 disclosure or obtained by the Receiving Party after the disclosure from a source
3 who obtained the information lawfully and under no obligation of confidentiality to
4 the Designating Party. Any use of Protected Material at trial shall be governed by a
5 separate agreement or order.

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7 4. DURATION

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

16

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.

19 Each Party or Non-Party that designates information or items for protection under
20 this Order must take care to limit any such designation to specific material that
21 qualifies under the appropriate standards. To the extent it is practical to do so, the
22 Designating Party must designate for protection only those parts of material,
23 documents, items, or oral or written communications that qualify – so that other
24 portions of the material, documents, items, or communications for which
25 protection is not warranted are not swept unjustifiably within the ambit of this
26 Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations
28 that are shown to be clearly unjustified or that have been made for an improper

1 purpose (e.g., to unnecessarily encumber or retard the case development process or
2 to impose unnecessary expenses and burdens on other parties) expose the
3 Designating Party to sanctions.

4 If it comes to a Designating Party’s attention that information or items that it
5 designated for protection do not qualify for protection at all or do not qualify for
6 the level of protection initially asserted, that Designating Party must promptly
7 notify all other Parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations.

9 Except as otherwise provided in this Order (see, e.g., second paragraph of
10 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
11 Discovery Material that qualifies for protection under this Order must be clearly so
12 designated before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic
15 documents, but excluding transcripts of depositions or other pretrial or trial
16 proceedings), that the Producing Party affix the legend “CONFIDENTIAL,” or
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that
18 contains protected material. If only a portion or portions of the material on a page
19 qualifies for protection, the Producing Party also must clearly identify the
20 protected portion(s) (e.g., by making appropriate markings in the margins) and
21 must specify, for each portion, the level of protection being asserted.

22 A Party or Non-Party that makes original documents or materials available
23 for inspection need not designate them for protection until after the inspecting
24 Party has indicated which material it would like copied and produced. During the
25 inspection and before the designation, all of the material made available for
26 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
27 ONLY.” After the Inspecting Party has identified the documents it wants copied
28 and produced, the Producing Party must determine which documents, or portions

1 thereof, qualify for protection under this Order. Then, before producing the
2 specified documents, the Producing Party must affix the appropriate legend
3 (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY”) to each page that contains Protected Material. If only a portion or
5 portions of the material on a page qualifies for protection, the Producing Party also
6 must clearly identify the protected portion(s) (e.g., by making appropriate
7 markings in the margins) and must specify, for each portion, the level of protection
8 being asserted.

9 (b) for testimony given in deposition or in other pretrial or trial
10 proceedings, that the Designating Party identify on the record, before the close of
11 the deposition, hearing, or other proceeding, all protected testimony and specify
12 the level of protection being asserted. When it is impractical to identify separately
13 each portion of testimony that is entitled to protection and it appears that
14 substantial portions of the testimony may qualify for protection, the Designating
15 Party may invoke on the record (before the deposition, hearing, or other
16 proceeding is concluded) a right to have up to 21 days to identify the specific
17 portions of the testimony as to which protection is sought and to specify the level
18 of protection being asserted. Only those portions of the testimony that are
19 appropriately designated for protection within the 21 days shall be covered by the
20 provisions of this Protective Order. Alternatively, a Designating Party may specify,
21 at the deposition or up to 21 days afterwards if that period is properly invoked, that
22 the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

24 Parties shall give the other parties notice if they reasonably expect a
25 deposition, hearing, or other proceeding to include Protected Material so that the
26 other parties can ensure that only authorized individuals who have signed the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A or B, as appropriate)
28 are present at those proceedings. The use of a document as an exhibit at a

1 deposition shall not in any way affect its designation as “CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

3 Transcripts containing Protected Material shall have an obvious legend on
4 the title page that the transcript contains Protected Material, and the title page shall
5 be followed by a list of all pages (including line numbers as appropriate) that have
6 been designated as Protected Material and the level of protection being asserted by
7 the Designating Party. The Designating Party shall inform the court reporter of
8 these requirements. Any transcript that is prepared before the expiration of a 21-
9 day period for designation shall be treated during that period as if it had been
10 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its
11 entirety unless otherwise agreed. After the expiration of that period, the transcript
12 shall be treated only as actually designated.

13 (c) for information produced in some form other than documentary and
14 for any other tangible items, that the Producing Party affix in a prominent place on
15 the exterior of the container or containers in which the information or item is
16 stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or
18 item warrant protection, the Producing Party, to the extent practicable, shall
19 identify the protected portion(s) and specify the level of protection being asserted.

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
21 failure to designate qualified information or items does not, standing alone, waive
22 the Designating Party’s right to secure protection under this Order for such
23 material. Upon timely correction of a designation, the Receiving Party must make
24 reasonable efforts to assure that the material is treated in accordance with the
25 provisions of this Order.

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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a
4 Designating Party's confidentiality designation is necessary to avoid foreseeable,
5 substantial unfairness, unnecessary economic burdens, or a significant disruption
6 or delay of the litigation, a Party does not waive its right to challenge a
7 confidentiality designation by electing not to mount a challenge promptly after the
8 original designation is disclosed.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
10 resolution process by providing written notice of each designation it is challenging
11 and describing the basis for each challenge. To avoid ambiguity as to whether a
12 challenge has been made, the written notice must recite that the challenge to
13 confidentiality is being made in accordance with this specific paragraph of the
14 Protective Order. The parties shall attempt to resolve each challenge in good faith
15 and must begin the process by conferring directly (in voice to voice dialogue; other
16 forms of communication are not sufficient) within 14 days of the date of service of
17 notice. In conferring, the Challenging Party must explain the basis for its belief
18 that the confidentiality designation was not proper and must give the Designating
19 Party an opportunity to review the designated material, to reconsider the
20 circumstances, and, if no change in designation is offered, to explain the basis for
21 the chosen designation. A Challenging Party may proceed to the next stage of the
22 challenge process only if it has engaged in this meet and confer process first or
23 establishes that the Designating Party is unwilling to participate in the meet and
24 confer process in a timely manner.

25 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
26 court intervention, the Designating Party shall file and serve a motion to retain
27 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
28 79-5 and General Order 62, if applicable) within 21 days of the initial notice of

1 challenge or within 14 days of the parties agreeing that the meet and confer process
2 will not resolve their dispute, whichever is earlier. Each such motion must be
3 accompanied by a competent declaration affirming that the movant has complied
4 with the meet and confer requirements imposed in the preceding paragraph. Failure
5 by the Designating Party to make such a motion including the required declaration
6 within 21 days (or 14 days, if applicable) shall automatically waive the
7 confidentiality designation for each challenged designation. In addition, the
8 Challenging Party may file a motion challenging a confidentiality designation at
9 any time if there is good cause for doing so, including a challenge to the
10 designation of a deposition transcript or any portions thereof. Any motion brought
11 pursuant to this provision must be accompanied by a competent declaration
12 affirming that the movant has complied with the meet and confer requirements
13 imposed by the preceding paragraph.

14 The burden of persuasion in any such challenge proceeding shall be on the
15 Designating Party. Frivolous challenges and those made for an improper purpose
16 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
17 expose the Challenging Party to sanctions. Unless the Designating Party has
18 waived the confidentiality designation by failing to file a motion to retain
19 confidentiality as described above, all parties shall continue to afford the material
20 in question the level of protection to which it is entitled under the Producing
21 Party's designation until the court rules on the challenge.

22 23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this
26 case only for prosecuting, defending, or attempting to settle this litigation. Such
27 Protected Material may be disclosed only to the categories of persons and under
28 the conditions described in this Order. When the litigation has been terminated, a

1 Receiving Party must comply with the provisions of section 13 below (FINAL
2 DISPOSITION).

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

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items.

7 A Designating Party shall deliver Protected Material directly to the Outside
8 Counsel of record for the Receiving Party. Where Mr. Pazandeh is the Receiving
9 Party and only while he is not represented by Outside Counsel of record, the
10 Designating Party shall deliver Protected Material that is designated
11 CONFIDENTIAL directly to Mr. Pazandeh.

12 Unless otherwise ordered by the court or permitted in writing by the
13 Designating Party, a Receiving Party may disclose any information or item
14 designated “CONFIDENTIAL” only to:

15 (a) Plaintiff (Mr. Pazandeh) and up to five individuals employed by
16 Defendant (Yamaha Corporation of America) and/or non-party Nexo S.A.,
17 provided that they have signed the “Acknowledgment and Agreement to Be
18 Bound” (Exhibit A);

19 (b) the Receiving Party’s Outside Counsel of record in this action, as well
20 as employees of said Outside Counsel of record to whom it is reasonably necessary
21 to disclose the information for this litigation;

22 (c) House Counsel to who it is reasonably necessary to disclose the
23 information for this litigation. House Counsel are persons in addition to the
24 individuals having access under section 7.2(a);

25 (d) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this litigation and who have signed the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit B);

28 (e) the court and its personnel;

1 (f) court reporters and their staff, professional jury or trial consultants,
2 and Professional Vendors to whom disclosure is reasonably necessary for this
3 litigation;

4 (g) during their depositions, witnesses in the action to whom disclosure is
5 reasonably necessary and who have signed the “Acknowledgment and Agreement
6 to Be Bound” (Exhibit A or B, as appropriate), unless otherwise agreed by the
7 Designating Party or ordered by the court. Pages of transcribed deposition
8 testimony or exhibits to depositions that reveal Protected Material must be
9 separately bound by the court reporter and may not be disclosed to anyone except
10 as permitted under this Protective Order.

11 (h) the author or recipient of a document containing the information or a
12 custodian or other person who otherwise possessed or knew the information.

13 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY” Information or Items.

15 Where Mr. Pazandeh is the Receiving Party and while he is not represented
16 by Outside Counsel of record, the Designating Party shall hold Protected Material
17 that is designated HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY
18 until Mr. Pazandeh is represented by Outside Counsel of record or until
19 Mr. Pazandeh arranges for an Expert who agrees to the attached
20 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND, and who is
21 disclosed by Mr. Pazandeh to the Designating Party in accordance with Section
22 2.7. Any objection to the Expert shall be resolved as stated in Section 2.7.

23 Unless otherwise ordered by the court or permitted in writing by the
24 Designating Party, a Receiving Party may disclose any information or item
25 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

26 (a) the Receiving Party’s Outside Counsel of record in this action, as well
27 as employees of said Outside Counsel of record to whom it is reasonably necessary
28 to disclose the information for this litigation;

1 (b) Designated House Counsel of the Receiving Party (1) who has no
2 involvement in competitive decision-making, (2) to whom disclosure is reasonably
3 necessary for this litigation, (3) who has signed the “Acknowledgment and
4 Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth
5 in paragraph 7.4(a)(1), below, have been followed;

6 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
7 necessary for this litigation, (2) who have signed the “Acknowledgment and
8 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth
9 in paragraph 7.4(a)(2), below, have been followed;

10 (d) the court and its personnel;

11 (e) court reporters and their staff, professional jury or trial consultants,
12 and Professional Vendors to whom disclosure is reasonably necessary for this
13 litigation; and

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

16 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to
18 Designated House Counsel or Experts.

19 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
20 Designating Party, a Party that seeks to disclose to Designated House Counsel any
21 information or item that has been designated “HIGHLY CONFIDENTIAL –
22 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a
23 written request to the Designating Party that (1) sets forth the full name of the
24 Designated House Counsel, and (2) describes the Designated House Counsel’s
25 current and reasonably foreseeable future primary job duties and responsibilities in
26 sufficient detail to determine if House Counsel is involved, or may become
27 involved, in any competitive decision-making regarding products.

1 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
2 Designating Party, a Party that seeks to disclose to an Expert (as defined in this
3 Order) any information or item that has been designated “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c)
5 first must make a written request to the Designating Party that (1) identifies the
6 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY” information that the Receiving Party seeks permission to disclose to the
8 Expert, (2) sets forth the full name of the Expert and the city and state of his or her
9 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies
10 the Expert’s current employer(s), (5) identifies each person or entity from whom
11 the Expert has received compensation or funding for work in his or her areas of
12 expertise or to whom the expert has provided professional services, including in
13 connection with a litigation, at any time during the preceding five years,¹ and (6)
14 identifies (by name and number of the case, filing date, and location of court) any
15 litigation in connection with which the Expert has offered expert testimony,
16 including through a declaration, report, or testimony at a deposition or trial, during
17 the preceding five years.

18 (b) A Party that makes a request and provides the information specified in
19 the preceding respective paragraphs may disclose the subject Protected Material to
20 the identified Designated House Counsel or Expert unless, within 14 days of
21 delivering the request, the Party receives a written objection from the Designating
22 Party. Any such objection must set forth in detail the grounds on which it is based.

23 (c) A Party that receives a timely written objection must meet and confer
24 with the Designating Party (through direct voice to voice dialogue) to try to resolve
25

26 ¹ If the Expert believes any of this information is subject to a confidentiality
27 obligation to a third-party, then the Expert should provide whatever information
28 the Expert believes can be disclosed without violating any confidentiality
agreements, and the Party seeking to disclose to the Expert shall be available to
meet and confer with the Designating Party regarding any such engagement.

1 the matter by agreement within 10 days of the written objection pursuant to Civil
2 Local Rule 37-1. If no agreement is reached, the Party seeking to make the
3 disclosure to Designated House Counsel or the Expert may file a motion as
4 provided in Civil Local Rule 37 (and in compliance with Civil Local Rule 79-5, if
5 applicable) seeking permission from the court to do so. Any such motion must
6 describe the circumstances with specificity, set forth in detail the reasons why
7 disclosure to Designated House Counsel or the Expert is reasonably necessary,
8 assess the risk of harm that the disclosure would entail, and suggest any additional
9 means that could be used to reduce that risk. In addition, any such motion must be
10 accompanied by a competent declaration describing the parties' efforts to resolve
11 the matter by agreement (i.e., the extent and the content of the meet and confer
12 discussions) and setting forth the reasons advanced by the Designating Party for its
13 refusal to approve the disclosure.

14 In any such proceeding, the Party opposing disclosure to Designated House
15 Counsel or the Expert shall bear the burden of proving that the risk of harm that the
16 disclosure would entail (under the safeguards proposed) outweighs the Receiving
17 Party's need to disclose the Protected Material to its Designated House Counsel or
18 Expert.

19

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

22 If a Party is served with a subpoena or a court order issued in other litigation
23 that compels disclosure of any information or items designated in this action as
24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
25 ONLY," that Party must:

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

28

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

5 (c) cooperate with respect to all reasonable procedures sought to be
6 pursued by the Designating Party whose Protected Material may be affected.²

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

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

19 (a) The terms of this Order are applicable to information produced by a
20 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced
22 by Non-Parties in connection with this litigation is protected by the remedies and
23 relief provided by this Order. Nothing in these provisions should be construed as
24 prohibiting a Non-Party from seeking additional protections.

25
26 _____
27 ² The purpose of imposing these duties is to alert the interested parties to the
28 existence of this Protective Order and to afford the Designating Party in this case
an opportunity to try to protect its confidentiality interests in the court from which
the subpoena or order issued.

1 (b) In the event that a Party is required, by a valid discovery request, to
2 produce a Non-Party's confidential information in its possession, and the Party is
3 subject to an agreement with the Non-Party not to produce the Non-Party's
4 confidential information, then the Party shall:

5 1. promptly notify in writing the Requesting Party and the Non-Party
6 that some or all of the information requested is subject to a confidentiality
7 agreement with a Non-Party;

8 2. promptly provide the Non-Party with a copy of the Protective Order in
9 this litigation, the relevant discovery request(s), and a reasonably specific
10 description of the information requested; and

11 3. make the information requested available for inspection by the Non-
12 Party.

13 (c) If the Non-Party fails to object or seek a protective order from this
14 court within 14 days of receiving the notice and accompanying information, the
15 Receiving Party may produce the Non-Party's confidential information responsive
16 to the discovery request. If the Non-Party timely seeks a protective order, the
17 Receiving Party shall not produce any information in its possession or control that
18 is subject to the confidentiality agreement with the Non-Party before a
19 determination by the court.³ Absent a court order to the contrary, the Non-Party
20 shall bear the burden and expense of seeking protection in this court of its
21 Protected Material.

22
23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has
25 disclosed Protected Material to any person or in any circumstance not authorized
26

27 ³ The purpose of this provision is to alert the interested parties to the existence of
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to
protect its confidentiality interests in this court.

1 under this Protective Order, the Receiving Party must immediately (a) notify in
2 writing the Designating Party of the unauthorized disclosures, (b) use its best
3 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
4 person or persons to whom unauthorized disclosures were made of all the terms of
5 this Order, and (d) request such person or persons to execute the
6 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
7 A.

8
9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

11 When a Producing Party gives notice to Receiving Parties that certain
12 inadvertently produced material is subject to a claim of privilege or other
13 protection, the obligations of the Receiving Parties are those set forth in Federal
14 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
15 whatever procedure may be established in an e-discovery order that provides for
16 production without prior privilege review. Pursuant to Federal Rule of Evidence
17 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
18 of a communication or information covered by the attorney-client privilege or
19 work product protection, the parties may incorporate their agreement in the
20 protective order submitted to the court.

21
22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
24 person to seek its modification by the court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this
26 Protective Order no Party waives any right it otherwise would have to object to
27 disclosing or producing any information or item on any ground not addressed in
28

1 this Protective Order. Similarly, no Party waives any right to object on any ground
2 to use in evidence of any of the material covered by this Protective Order.

3 12.3 Export Control. Disclosure of Protected Material shall be subject to all
4 applicable laws and regulations relating to the export of technical data contained in
5 such Protected Material, including the release of such technical data to foreign
6 persons or nationals in the United States or elsewhere. The Producing Party shall
7 be responsible for identifying any such controlled technical data, and the Receiving
8 Party shall take measures necessary to ensure compliance.

9 12.4 Filing Protected Material. Without written permission from the
10 Designating Party or a court order secured after appropriate notice to all interested
11 persons, a Party may not file in the public record in this action any Protected
12 Material. A Party that seeks to file under seal any Protected Material must comply
13 with Civil Local Rule 79-5. Protected Material may only be filed under seal
14 pursuant to a court order authorizing the sealing of the specific Protected Material
15 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
16 request establishing that the Protected Material at issue is privileged, protectable as
17 a trade secret, or otherwise entitled to protection under the law. If a Receiving
18 Party's request to file Protected Material under seal pursuant to Civil Local Rule
19 79-5 is denied by the court, then the Receiving Party may file the Protected
20 Material in the public record unless (1) the Designating Party seeks reconsideration
21 within four days of the denial, or (2) is otherwise instructed by the court.

22
23 13. FINAL DISPOSITION

24 Within 60 days after the final disposition of this action, as defined in
25 paragraph 4, each Receiving Party must return all Protected Material to the
26 Producing Party or destroy such material. As used in this subdivision, "all
27 Protected Material" includes all copies, abstracts, compilations, summaries, and
28 any other format reproducing or capturing any of the Protected Material. Whether

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

14

15 **IT IS SO ORDERED.**

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DATED: FEBRUARY 14, 2017

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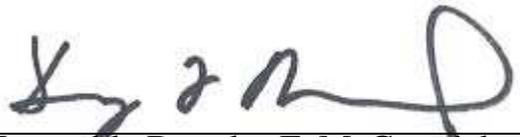
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Honorable Douglas F. McCormick
United States Magistrate Judge

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EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

IRA PAZANDEH,
Plaintiff,

v.

YAMAHA CORPORATION OF
AMERICA,
Defendant.

CASE NO. 8:16-cv-01849-JVS-DFM

Honorable James V. Selna

**ACKNOWLEDGMENT AND
AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
_____ [print or type full address], state that I have read in its
entirety and understand the Protective Order that was issued by the United States
District Court for the Central District of California on _____ in the above
captioned civil action. I agree to comply with and to be bound by all the terms of
this 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 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 Protective Order, even if such enforcement proceedings occur after
termination of this action.

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I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signed: _____
Name: _____
Date: _____

1 **EXHIBIT B**

2
3 UNITED STATES DISTRICT COURT
4 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION
5

6 IRA PAZANDEH,
7 Plaintiff,

8 v.

9 YAMAHA CORPORATION OF
10 AMERICA,
11 Defendant.

CASE NO. 8:16-cv-01849-JVS-DFM

Honorable James V. Selna

**ACKNOWLEDGMENT AND
AGREEMENT TO BE BOUND
[EXPERTS]**

12
13 I, _____ [print or type full name], of
14 _____ [print or type full address], state that I have read in its
15 entirety and understand the Protective Order that was issued by the United States
16 District Court for the Central District of California on _____ in the above
17 captioned civil action. I agree to comply with and to be bound by all the terms of
18 this Protective Order and I understand and acknowledge that failure to so comply
19 could expose me to sanctions and punishment in the nature of contempt. I solemnly
20 promise that I will not disclose in any manner any information or item that is
21 subject to this Protective Order to any person or entity except in strict compliance
22 with the provisions of this Order.
23

24 I have been retained by _____ (insert name of Party) or its counsel
25 to serve as an expert witness or as a consultant in this lawsuit. I am not a Party to
26 this lawsuit, am not a current employee or a consultant of a Party or of a Party's
27 competitor, have not been employed by or been a consultant to any Party or Party's
28 competitor during the past five (5) years, and do not anticipate to become an

1 employee or consultant of any Party or of a Party's competitor, other than to serve
2 as an expert witness. Attached is a list of my current employer, my past employers
3 for the past five years, and a list of persons (including corporations) that I have
4 done work, including consulting work, in the field of audio engineering from the
5 present and any time during the past five years.

6 I understand and agree that Protected Material marked as HIGHLY
7 CONFIDENTIAL – ATTORNEYS' EYES ONLY is to be shared with and
8 discussed only with Outside Counsel, and specifically may not be shared with or
9 discussed with Mr. Pazandeh or employees of Yamaha Corporation of America
10 unless they are the authors or source of the Protected Material.

11 I further agree to submit to the jurisdiction of the United States District
12 Court for the Central District of California for the purpose of enforcing the terms
13 of this Protective Order, even if such enforcement proceedings occur after
14 termination of this action.

15
16 I state under penalty of perjury under the laws of the United States of
17 America that the foregoing is true and correct.

18
19
20 Signed: _____

21 Name: _____

22 Date: _____

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