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

DEUTSCH-HOLLANDISCHE
TABAKGESELLSCHAFT MBH
& CO., KG,

Plaintiff/Counterclaim
Defendant,

v.

TREND SETTAH, INC.,

Defendant/Counterclaim
Plaintiff.

CASE NO: 8:17-cv-00181-DOC-JDE

PROTECTIVE ORDER

District Court Judge David O. Carter
Magistrate Judge John D. Early

20 Pursuant to the Stipulation of the Parties, and good cause appearing therefor,
21 the Court finds and orders as follows:

22 1. PURPOSES AND LIMITATIONS

23 Discovery in this action is likely to involve production of confidential,
24 proprietary or private information for which special protection from public
25 disclosure and from use for any purpose other than pursuing this litigation may be
26 warranted. Accordingly, the parties hereby stipulate to and petition the Court to
27 enter the following Stipulated Protective Order. The parties acknowledge that this
28 Order does not confer blanket protections on all disclosures or responses to

1 discovery and that the protection it affords from public disclosure and use extends
2 only to the limited information or items that are entitled to confidential treatment
3 under the applicable legal principles.

4 2. GOOD CAUSE STATEMENT

5 Attempts to enforce the judgment entered in this action (*Dkt. 125*) (the
6 “Judgment”) may involve the exchange of trade secrets, customer and pricing
7 information, as well as other valuable research, development, commercial,
8 accounting, tax, financial, technical and/or proprietary information for which special
9 protection from public disclosure and from use for any purpose other than
10 prosecution of this action is warranted. Such confidential and proprietary materials
11 and information consist of, among other things, confidential business or financial
12 information, information regarding confidential business practices, or other
13 confidential research, development, or commercial information (including
14 information implicating privacy rights of third parties), information otherwise
15 generally unavailable to the public, or which may be privileged or otherwise
16 protected from disclosure under state or federal statutes, court rules, case decisions,
17 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
27 there is good cause why it should not be part of the public record of this case.

1 3. ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE

2 The parties further acknowledge, as set forth in Section 14.3, below, that this
3 Stipulated Protective Order does not entitle them to file confidential information
4 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
5 and the standards that will be applied when a party seeks permission from the court
6 to file material under seal. There is a strong presumption that the public has a right
7 of access to judicial proceedings and records in civil cases. In connection with non-
8 dispositive motions, good cause must be shown to support a filing under seal. *See*
9 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006),
10 *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-*
11 *Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even
12 stipulated protective orders require good cause showing), and a specific showing of
13 good cause or compelling reasons with proper evidentiary support and legal
14 justification, must be made with respect to Protected Material that a party seeks to
15 file under seal. The parties' mere designation of Disclosure or Discovery Material
16 as CONFIDENTIAL does not—without the submission of competent evidence by
17 declaration, establishing that the material sought to be filed under seal qualifies as
18 confidential, privileged, or otherwise protectable—constitute good cause.

19 Further, if a party requests sealing related to a dispositive motion or trial, then
20 compelling reasons, not only good cause, for the sealing must be shown, and the
21 relief sought shall be narrowly tailored to serve the specific interest to be protected.
22 *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
23 each item or type of information, document, or thing sought to be filed or introduced
24 under seal, the party seeking protection must articulate compelling reasons,
25 supported by specific facts and legal justification, for the requested sealing order.
26 Again, competent evidence supporting the application to file documents under seal
27 must be provided by declaration.

1 Any document that is not confidential, privileged, or otherwise protectable in
2 its entirety will not be filed under seal if the confidential portions can be redacted.
3 If documents can be redacted, then a redacted version for public viewing, omitting
4 only the confidential, privileged, or otherwise protectable portions of the document,
5 shall be filed. Any application that seeks to file documents under seal in their
6 entirety should include an explanation of why redaction is not feasible.

7 4. DEFINITIONS

8 4.1 Action: This federal action: Deutsch-Hollandische Tabakgesellschaft
9 mbH & Co., Kg. (“DHT”) v. Trend Settah Inc. (“TSI”) and Trendsettah USA, Inc.,
10 and its corresponding counterclaims (Case No. 8:17-cv-00181-DOC-JDE). The
11 Action remains pending before the Honorable Judge David O. Carter and Magistrate
12 Judge John D. Early in relation to enforcement of the Judgment, while its result is
13 on appeal to the Ninth Circuit Court of Appeals (Case No. 18-56177).

14 4.2 Challenging Party: a Party or Non-Party that challenges the designation
15 of information or items under this Order.

16 4.3 “CONFIDENTIAL” Information or Items: information (regardless of
17 how it is generated, stored or maintained) or tangible things that qualify for
18 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
19 the Good Cause Statement.

20 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
21 their support staff).

22 4.5 Designating Party: a Party or Non-Party that designates information or
23 items that it produces in disclosures or in responses to discovery as
24 “CONFIDENTIAL.”

25 4.6 Disclosure or Discovery Material: all items or information, regardless
26 of the medium or manner in which it is generated, stored, or maintained (including,
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1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery.

3 4.7 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as
5 an expert witness or as a consultant in this Action.

6 4.8 House Counsel: attorneys who are employees of a party to this Action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 4.9 Non-Party: any natural person, partnership, corporation, association or
10 other legal entity not named as a Party to this action.

11 4.10 Outside Counsel of Record: attorneys who are not employees of a party
12 to this Action but are retained to represent a party to this Action and have appeared
13 in this Action on behalf of that party or are affiliated with a law firm that has
14 appeared on behalf of that party, and includes support staff.

15 4.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 4.13 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 4.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL.”

26 4.15 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.

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5. SCOPE

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

Any use of Protected Material at trial shall be governed by the orders of the trial judge and other applicable authorities. This Order does not govern the use of Protected material at trial.

6. DURATION

Once a case proceeds to trial, information that was designated as CONFIDENTIAL or maintained pursuant to this protective order used or introduced as an exhibit during trial becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Except with respect to documents and information that become a matter of public record, the provisions of this Order shall continue to be binding upon all Parties, Counsel, and Non-Parties bound by this Order until the Judgment is reversed in a final and non-appealable order by a court of competent appellate jurisdiction, or alternatively until the Judgment is satisfied.

7. DESIGNATING PROTECTED MATERIAL

7.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that

1 qualifies under the appropriate standards. The Designating Party must designate for
2 protection only those parts of material, documents, items or oral or written
3 communications that qualify so that other portions of the material, documents, items
4 or communications for which protection is not warranted are not swept unjustifiably
5 within the ambit of this Order.

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

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

14 7.2 Manner and Timing of Designations. Except as otherwise provided in
15 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
16 that qualifies for protection under this Order must be clearly so designated before
17 the material is disclosed or produced.

18 Designation in conformity with this Order requires:

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

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

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

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

20 7.3 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 material.
23 Upon timely correction of a designation, the Receiving Party must make reasonable
24 efforts to assure that the material is treated in accordance with the provisions of this
25 Order.

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1 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court’s
4 Scheduling Order.

5 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37-1 et seq.

7 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
8 joint stipulation pursuant to Local Rule 37-2.

9 8.4 Challenge Process. The burden of persuasion in any such challenge
10 proceeding shall be on the Designating Party. Frivolous challenges, and those made
11 for an improper purpose (e.g., to harass or impose unnecessary expenses and
12 burdens on other parties) may expose the Challenging Party to sanctions. Unless the
13 Designating Party has waived or withdrawn the confidentiality designation, all
14 parties shall continue to afford the material in question the level of protection to
15 which it is entitled under the Producing Party’s designation until the Court rules on
16 the challenge.

17 9. ACCESS TO AND USE OF PROTECTED MATERIAL

18 9.1 Basic Principles. A Receiving Party may use Protected Material that is
19 disclosed or produced by another Party or by a Non-Party in connection with this
20 Action only for prosecuting, defending or attempting to settle this Action. Such
21 Protected Material may be disclosed only to the categories of persons and under the
22 conditions described in this Order. When the Action has been terminated, a
23 Receiving Party must comply with the provisions of section 15 below (FINAL
24 DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a secure manner that ensures that access is limited to the persons
27 authorized under this Order.
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1 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
6 well as employees of said Outside Counsel of Record to whom it is reasonably
7 necessary to disclose the information for this Action;

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

10 (c) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this Action and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A):

13 (d) the court and its personnel;

14 (e) court reporters and their staff;

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

18 (g) the author or recipient of a document containing the information or
19 a custodian or other person who otherwise possessed or knew the information;

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

3 (i) any mediators or settlement officers and their supporting personnel,
4 mutually agreed upon by any of the parties engaged in settlement discussions.

5 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
6 PRODUCED IN OTHER LITIGATION

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

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

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

16 (c) cooperate with respect to all reasonable procedures sought to be
17 pursued by the Designating Party whose Protected Material may be affected. If the
18 Designating Party timely seeks a protective order, the Party served with the
19 subpoena or court order shall not produce any information designated in this action
20 as “CONFIDENTIAL” before a determination by the court from which the
21 subpoena or order issued, unless the Party has obtained the Designating Party’s
22 permission. The Designating Party shall bear the burden and expense of seeking
23 protection in that court of its confidential material and nothing in these provisions
24 should be construed as authorizing or encouraging a Receiving Party in this Action
25 to disobey a lawful directive from another court.

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

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

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

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

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

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

20 (c) If the Non-Party fails to seek a protective order from this court
21 within 14 days of receiving the notice and accompanying information, the Receiving
22 Party may produce the Non-Party’s confidential information responsive to the
23 discovery request. If the Non-Party timely seeks a protective order, the Receiving
24 Party shall not produce any information in its possession or control that is subject to
25 the confidentiality agreement with the Non-Party before a determination by the
26 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
27 expense of seeking protection in this court of its Protected Material.
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1 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
5 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
6 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
7 persons to whom unauthorized disclosures were made of all the terms of this Order,
8 and (d) request such person or persons to execute the “Acknowledgment an
9 Agreement to Be Bound” attached hereto as Exhibit A.

10 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
11 OTHERWISE PROTECTED MATERIAL

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

22 14. MISCELLANEOUS

23 14.1 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 14.2 Right to Assert Other Objections. By stipulating to the entry of this
26 Order, no Party waives any right it otherwise would have to object to disclosing or
27 producing any information or item on any ground not addressed in this Stipulated
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1 Protective Order. Similarly, no Party waives any right to object on any ground to
2 use in evidence of any of the material covered by this Protective Order.

3 14.3 Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Local Civil Rule 79-5. Protected Material
5 may only be filed under seal pursuant to a court order authorizing the sealing of the
6 specific Protected Material. If a Party's request to file Protected Material under seal
7 is denied by the court, then the Receiving Party may file the information in the
8 public record unless otherwise instructed by the court.

9 15. FINAL DISPOSITION

10 After the final disposition of this Action, by either final appellate action or by
11 satisfaction of the Judgment, as defined in paragraph 6, within 30 days of a written
12 request by the Designating Party, each Receiving Party must return all Protected
13 Material to the Producing Party or destroy such material. As used in this
14 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
15 summaries, and any other format reproducing or capturing any of the Protected
16 Material. Whether the Protected Material is returned or destroyed, the Receiving
17 Party must submit a written certification to the Producing Party (and, if not the same
18 person or entity, to the Designating Party) by the 30-day deadline that (1) identifies
19 (by category, where appropriate) all the Protected Material that was returned or
20 destroyed and (2) affirms that the Receiving Party has not retained any copies,
21 abstracts, compilations, summaries or any other format reproducing or capturing any
22 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
23 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
24 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
25 reports, attorney work product, and consultant and expert work product, even if such
26 materials contain Protected Material. Any such archival copies that contain or
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1 constitute Protected Material remain subject to this Protective Order as set forth in
2 Section 6 (DURATION).

3 16. VIOLATION

4 Any violation of this Order may be punished by appropriate measures
5 including, without limitation, contempt proceedings and/or monetary sanctions.

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7 IT IS SO ORDERED.

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9 DATED: October 25, 2018

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12 JOHN D. EARLY
13 United States Magistrate Judge
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1 **Exhibit A: Acknowledgment and Agreement to Be Bound**

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3 I, _____, (PRINT NAME) hereby acknowledge
4 and affirm that I have read and understand the terms and conditions of the
5 Stipulation and Proposed Protective Order (the "Order") entered by the Court in
6 Deutsch-Hollandische Tabakgesellschaft mbH & Co., Kg. ("DHT") v. Trend Settah
7 Inc. ("TSI") and Trendsettah USA, Inc. (Case No. 8:17-cv-00181-DOC-JDE). I
8 understand that my agreement to its terms is a condition of my access to the
9 confidential documents, things and information.

10 I recognize that any breach of this Acknowledgement or of the Order may be
11 punishable as a contempt of court, and I hereby consent to the jurisdiction of the
12 above-captioned Court for the purpose of enforcing this Order. All civil remedies
13 for breach of this Acknowledgement are specifically reserved by the Parties, and I
14 recognize that the Parties may pursue civil remedies available to them as a third-
15 party beneficiary of my agreement.

16 Date: _____ Signature: _____
17 Associated Party: _____
18 Address: _____
19 City, State, Zip: _____
20 Telephone No.: _____

21
22 STATE OF _____
23 COUNTY\CITY OF _____

24 The foregoing instrument was acknowledged before me the above-named
25 individual, whose identity is known to me or was proven by valid identification.

26 Date: _____ (SEAL)
27 Notary: _____