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

STARBUZZ TOBACCO, INC., a	)	Case No.: 8:17-cv-0798 CJC (DFMx)
California Corporation,	)	
	)	
Plaintiff,	)	<b>PROTECTIVE ORDER</b>
vs.	)	<b>GOVERNING DISCLOSURE OF</b>
	)	<b>CONFIDENTIAL INFORMATION</b>
STAR HOOKAH, INC., a California	)	
Corporation; STAR HOOKAH	)	
LOUNGE, INC., a California	)	[Discovery Document:
Corporation; STAR HOOKAH	)	Referred to Magistrate Judge
HOLLYWOOD, INC., a California	)	Douglas F. McCormick]
Corporation; NATHAN MADANI, an	)	
individual; and DOES 1-10, inclusive,	)	
	)	
Defendants.	)	
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1           WHEREAS, Plaintiff STARBUZZ TOBACCO, INC. (“STARBUZZ”), on  
2 the one hand, and Defendants STAR HOOKAH, INC., STAR HOOKAH  
3 LOUNGE, INC., and STAR HOOKAH HOLLYWOOD, INC. (collectively, the  
4 “STAR ENTITIES”), along with Defendant NATHAN MADANI (“MADANI”),  
5 on the other hand (all of the above being, collectively, the “Parties), believe that in  
6 the course of this action certain information, documents, and testimony likely to be  
7 disclosed and produced through discovery may constitute or incorporate  
8 confidential commercial information, research or development and/or trade secrets  
9 within the meaning of Federal Rule of Civil Procedure 26(c);

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

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

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

26 It is further ordered that:

27           1. Any Producing Party may designate any Confidential Material as  
28 “CONFIDENTIAL” if such producing party in good faith believes that such

1 Confidential Material contains confidential or proprietary information, including  
2 information in written, oral, electronic, graphic, pictorial, audiovisual, or other  
3 form, whether it is a document, information contained in a document, item  
4 produced for inspection, information revealed during a deposition, information  
5 revealed in an interrogatory answer, or otherwise.

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

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

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1           4.     The terms of this Protective Order are applicable to Confidential  
2 Material produced by a non-party and designated “CONFIDENTIAL” or  
3 “CONFIDENTIAL—ATTORNEYS EYES ONLY” only when the producing non-  
4 party has a proprietary interest or other right in such Confidential Material, or  
5 where the producing non-party is contractually obligated to maintain the  
6 confidentiality of such Confidential Material. A producing party may designate  
7 documents, information, or things disclosed at a deposition of a producing party or  
8 one of its present or former officers, directors, employees, agents, or independent  
9 experts retained for purposes of this litigation as “Confidential” or “Confidential—  
10 Attorneys’ Eyes Only” on the record during the deposition; or by notifying all  
11 parties in writing of the specific item so designated, within twenty one (21) days  
12 of receiving a copy of the deposition transcript, of the specific exhibits or lines and  
13 pages of the transcript that are believed in good faith to contain Confidential  
14 Material.

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

27           b.     A deposition transcript and the exhibits thereto shall be  
28 presumed Confidential—Attorneys’ Eyes Only in their entirety until twenty

1 one (21) days after receipt of the transcript by the producing party. If, after  
2 the deposition is taken, the producing party designates any portion of the  
3 deposition transcript or exhibits as “Confidential” or “Confidential—  
4 Attorneys’ Eyes Only” by giving written notice as described above, all  
5 persons receiving notice of such designation shall affix the same to the face  
6 of their copy or copies of the transcript. At the expiration of the twenty one  
7 (21) day period, the transcript and exhibits shall automatically revert to non-  
8 Confidential status, except those portions that have been designated on the  
9 record or in writing as “Confidential” or “Confidential—Attorneys’ Eyes  
10 Only.” Nothing in this paragraph is intended to restrict any Party’s right to  
11 attend depositions pursuant to paragraph 7 hereof.

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

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

1 to bar motions in limine or similar motion to exclude the use of any document in  
2 any action between the Parties on any appropriate and available basis.

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

7 a. MADANI in his individual capacity, and as officer or director  
8 of the STAR ENTITIES;

9 b. two officers or directors of STARBUZZ, or full-time  
10 employees designated in writing as a representative of STARBUZZ who  
11 have supervisory responsibility for this matter and is necessary to the  
12 prosecution, defense, or settlement of this action, namely: Wael Elhalwani,  
13 and Majda Haddoudi;

14 c. experts or consultants (together with their clerical staff) retained  
15 by such counsel to assist in the prosecution, defense, or settlement of this  
16 action, including outside photocopying, imaging, data base, graphics or  
17 design services retained by outside counsel in connection with this action  
18 who have signed the “Acknowledgement and Agreement to be Bound” that  
19 is attached hereto as Exhibit A;

20 d. court reporter(s) employed in this action; and

21 e. any other person as to whom the parties in writing agree who  
22 have signed the “Acknowledgement and Agreement to be Bound” that is  
23 attached hereto as Exhibit A.

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

1           7.     Subject to the Federal Rules of Civil Procedure and applicable law,  
2 depositions may be taken in the presence of any persons, including Parties, but any  
3 Party may request that (a) non-qualified persons leave the room for responses  
4 containing any Confidential Material; and (b) Parties leave the room for responses  
5 containing CONFIDENTIAL – ATTORNEYS’ EYES ONLY information. No  
6 Party shall be entirely excluded from any deposition. This Order does not affect  
7 applicable law regarding the attendance of depositions by non-party persons,  
8 including potential witnesses.

9           8.     Material designated “CONFIDENTIAL – ATTORNEYS’ EYES  
10 ONLY” and the information contained therein, shall be disclosed only to the Court,  
11 to outside counsel for the Parties (including the paralegal, clerical, and secretarial  
12 staff employed by such counsel) and to the “qualified persons” listed in  
13 subparagraphs 6(c) through (e) above, but shall not be disclosed to a Party, or to an  
14 officer, director or employee of a Party, except as provided above or unless  
15 otherwise agreed in writing or ordered by the Court. If disclosure of Attorneys’  
16 Eyes Only Material is made pursuant to this paragraph, all other provisions in this  
17 order with respect to confidentiality shall also apply.

18           9.     Copies of Confidential or Confidential—Attorneys’ Eyes Only  
19 material may be submitted to the Court in connection with any proceedings,  
20 motions or hearings, provided that such materials are filed along with an  
21 application to have those materials filed under seal. The application must show  
22 good cause for the under seal filing. To the extent possible, only those portions of  
23 a filing with the Court that contain material designated as “Confidential” or  
24 “Confidential—Attorneys’ Eyes Only” shall be filed under seal. To the extent that  
25 no Confidential or Confidential—Attorneys’ Eyes Only information is disclosed,  
26 the parties may refer to, and quote from, documents designated as “Confidential”  
27 or “Confidential—Attorneys’ Eyes Only” in pleadings, motions, briefs, affidavits,  
28 or exhibits filed with the Court, without the need to file such pleadings, motions,

1 briefs, affidavits, or exhibits under seal. A Party's counsel shall not unilaterally  
2 decide that material that the other Party designated as "Confidential" or  
3 "Confidential—Attorneys' Eyes Only" does not contain any Confidential or  
4 Confidential—Attorneys' Eyes Only information. If a Party's counsel disagrees  
5 with a designation, that counsel shall follow the procedures described in paragraph  
6 11 of this Order to challenge the designation.

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

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

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

22 a. Showing materials designated as "Confidential" or  
23 "Confidential—Attorneys' Eyes Only" to an individual who either prepared  
24 or reviewed the document prior to the filing of this action, or is shown by the  
25 document to have received the document;

26 b. Disclosing or using, in any manner or for any purpose, any  
27 information, documents, or things from the Party's own files that the Party  
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1 itself designated as “Confidential” or “Confidential—Attorneys’ Eyes  
2 Only”;

3 c. Disclosing or using, in any manner or for any purpose, any  
4 information, documents, or things that were obtained from a source other  
5 than discovery or to which a Party has a right of access independent of  
6 discovery, or that were already known to such Party by lawful means, prior  
7 to obtaining from or disclosure by, the other Party in the action, provided,  
8 however, that the alternate source of such information, documents or things  
9 was not under an obligation of confidentiality (as evidenced by a writing) to  
10 a Party in the litigation at the time such information, documents or things  
11 were obtained; or

12 d. Disclosing or using, in any manner or for any purpose, any  
13 information, document, or thing that is at the time of production or  
14 disclosure, or subsequently becomes, through no wrongful act or failure to  
15 act on the part of the receiving party, generally available to the relevant  
16 public through publication or otherwise or is already rightfully in the  
17 possession of the receiving party at the time of production; or

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

25 14. This Protective Order is entered solely for the purpose of facilitating  
26 the exchange of documents and information between the parties to this action  
27 without involving the Court unnecessarily in the process. Nothing in this  
28 Protective Order nor the production of any information or document under the

1 terms of this Protective Order nor any proceedings pursuant to this Protective  
2 Order shall be deemed to have the effect of an admission or waiver by either Party  
3 or of altering the confidentiality or non-confidentiality of any such document or  
4 information or altering any existing obligation of any Party or the absence thereof.

5 15. This Protective Order shall survive the final termination of this action,  
6 to the extent that the information contained in Confidential Material is not or does  
7 not become known to the public, and the Court shall retain jurisdiction to resolve  
8 any dispute concerning the use of information disclosed hereunder. Within thirty  
9 (30) days of the conclusion of this action, including any appeals, counsel for the  
10 parties shall assemble and return to each other all documents, material and  
11 deposition transcripts designated as confidential and all copies of same, or shall  
12 certify the destruction thereof. Notwithstanding this provision, Counsel are  
13 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal  
14 memoranda, correspondence or attorney work product, even if such material  
15 contain Confidential Material, for the period of one (1) year. Any such archival  
16 copies that contain or constitute Confidential Material remain subject to this  
17 Protective Order.

18 16. The inadvertent or unintentional disclosure by the Producing Party of  
19 attorney-client privileged information or attorney work-product, either by way of  
20 document production or deposition testimony, shall not be deemed a waiver of  
21 privilege for such information, provided that the Producing Party promptly makes  
22 a good-faith representation that such production was inadvertent or mistaken and  
23 takes prompt remedial action to withdraw the disclosure. Within three (3) business  
24 days of receiving a written request to do so from the Producing Party, the  
25 Receiving Party shall return to the Producing Party any documents or tangible  
26 items that the Producing Party represents are covered by a claim of attorney-client  
27 privilege or work product immunity and were inadvertently or mistakenly  
28 produced. The receiving party shall also destroy any extra copies or summaries of,

1 or notes relating to, any such inadvertently or mistakenly produced information,  
2 and certifying compliance with this provision; provided, however, that this  
3 Protective Order shall not preclude the Party returning such information from  
4 making a motion to compel production of the returned information pursuant to  
5 Local Rule 37. The Producing Party shall retain copies of all returned documents  
6 and tangible items for further disposition and, if such a motion is filed, shall  
7 provide copies to the Court of the documents, item or information which is the  
8 subject of the motion. In the event that a Producing Party discovers in a  
9 deposition, inadvertently or unintentionally disclosed documents containing  
10 attorney-client privileged information or attorney work-product, the Producing  
11 Party may make a request on the record for the receiving party to return the  
12 documents or tangible items that the Producing Party represents 1) are covered by  
13 a claim of attorney-client privilege or work product immunity and 2) were  
14 inadvertently or mistakenly produced; in which event, the receiving party shall be  
15 precluded from deposing a witness with respect to such inadvertently or mistakenly  
16 produced documents, other than to explore the basis for a claim of privilege or  
17 work product.

18 17. The inadvertent or unintentional disclosure by the Producing Party of  
19 “CONFIDENTIAL” and/or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”,  
20 information either by way of document production or deposition testimony,  
21 regardless of whether the information was so designated at the time of disclosure,  
22 shall not be deemed a waiver in whole or in part of a Party’s claim of  
23 confidentiality as to the information disclosed. Any such inadvertently or  
24 unintentionally disclosed “CONFIDENTIAL” and/or “CONFIDENTIAL-  
25 ATTORNEYS’ EYES ONLY” information, not designated as such pursuant to  
26 paragraph 1 or 2, shall be designated as “CONFIDENTIAL” or  
27 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”, as soon as reasonably possible  
28 after the Producing Party becomes aware of the inadvertent or unintentional

1 disclosure and provides written notice to the Receiving Parties. The Receiving  
2 Party shall thereafter mark and treat the materials as “CONFIDENTIAL” or  
3 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” as appropriate, and such  
4 materials shall be fully subject to this Protective Order as if they had been initially  
5 so designated. The party who made such inadvertent or unintentional disclosure  
6 shall request said person to which an inadvertent or unintentional disclosure was  
7 made to execute the “Acknowledgement and Agreement to be Bound” that is  
8 attached hereto as Exhibit A.

9 18. For documents produced pursuant to subpoena or subpoena duces  
10 tecum or in other proceedings outside of open court or trial, that any party or non-  
11 party believes should be designated “CONFIDENTIAL” or “CONFIDENTIAL-  
12 ATTORNEY’S EYES ONLY”, that Designating Party shall have a right up to  
13 twenty-one (21) days to designate the document to which protection is sought. The  
14 twenty-one (21) day period shall run from the date the documents are produced by  
15 the third party. During the initial fourteen (14) day period documents produced by  
16 a third party shall be treated as “CONFIDENTIAL-ATTORNEY’S EYES ONLY”  
17 until the twenty-one (21) day designation period has expired. Only those  
18 documents that are appropriately designated for protection within the twenty-one  
19 (21) days shall be covered by the provisions of this Protective Order. The  
20 Designating Party shall be required to provide notice detailing those documents  
21 that are being designated “CONFIDENTIAL” or “CONFIDENTIAL-  
22 ATTORNEY’S EYES ONLY.”

23 19. This Protective Order is without prejudice to the right of any  
24 interested party to apply to the Court for an order permitting the disclosure of any  
25 “CONFIDENTIAL” and/or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”  
26 information, or to apply for an order modifying or limiting this Protective Order in  
27 any respect.

1 **GOOD CAUSE STATEMENT**

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

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


19 b. Good cause exists for the designation of information as  
20 "CONFIDENTIAL" when the information has not been revealed to the  
21 public and the information falls into one of the categories identified in  
22 paragraph 1 hereof.

23 c. The Parties shall use reasonable efforts to minimize the amount  
24 of material designated as "CONFIDENTIAL" or "CONFIDENTIAL –  
25 ATTORNEYS' EYES ONLY."

26 d. This Protective Order applies to such "CONFIDENTIAL" and  
27 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" information furnished  
28 in this litigation regardless of the form in which it is transmitted and

1 regardless whether the information is furnished by a party or third party.  
2 Such information may be contained in documents, written discovery  
3 responses, declarations, deposition testimony, exhibits, and other materials  
4 or deposition testimony provided by any Party.

5 IT IS SO ORDERED at Santa Ana, California this 12<sup>th</sup> day of October 2017.

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8 DOUGLAS F. McCORMICK  
9 United States Magistrate Judge  
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1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare  
5 under penalty of perjury that I have read in its entirety and understand the  
6 Protective Order that was issued by the District Court for the Central District of  
7 California in the case of *Starbuzz Tobacco, Inc. v. Star Hookah, Inc., et al.*, Case  
8 No. 8:17-cv-0798 CJC-DFMx. ***I agree to comply with and to be bound by all the***  
9 ***terms of this Protective Order and I understand and acknowledge that failure to***  
10 ***so comply could expose me to sanctions and punishment in the nature of***  
11 ***contempt.***

12 I solemnly promise that I will not disclose in any manner any information or  
13 item that is subject to the Protective Order to any person or entity except in strict  
14 compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the District Court for the  
16 Central District of California for the purpose of enforcing the terms of this  
17 Protective Order, even if such enforcement proceedings occur after termination of  
18 this action.

19 I hereby appoint \_\_\_\_\_ [print or type full name]  
20 of \_\_\_\_\_ [print or  
21 type full address and telephone number] as my California agent for service of  
22 process in connection with this action or any proceedings related to enforcement of  
23 this Protective Order.

24  
25 Date: \_\_\_\_\_

26 Printed Name: \_\_\_\_\_

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