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

MACEDONIA DISTRIBUTING INC.
on behalf of itself and all others
similarly situated,

Plaintiff,

v.

S-L DISTRIBUTION COMPANY, LLC,
Defendant.

Case No. 8:17-cv-01692-JVS-KES

ORDER RE
STIPULATED PROTECTIVE
ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. GOOD CAUSE STATEMENT

This action is likely to involve trade secrets, sales and pricing lists, and other valuable development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary

1 materials and information consists of, among other things, confidential company
2 documents and records; agreements, contracts, correspondence and notices regarding
3 business relationships; policies, rules, and procedures; financial or tax information;
4 information implicating privacy rights of third parties; competitively sensitive
5 information; sales and pricing lists and information; and information otherwise
6 generally unavailable to the public.

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

17 3. DEFINITIONS

18 3.1 Action: This matter, Macedonia Distributing, Inc. v. S-L Distribution
19 Company, LLC, Case No. 8:17-01692-JVS-KES.

20 3.2 Challenging Party: a Party or Non-Party that challenges the designation
21 of information or items under this Order.

22 3.3 “CONFIDENTIAL” Information or Items: information (regardless of
23 how it is generated, stored or maintained) or tangible things that qualify for protection
24 under Federal Rule of Civil Procedure 26(c) and as specified above in the Good Cause
25 Statement.

26 3.4 Counsel (without qualifier): Outside Counsel of Record and House
27 Counsel (as well as their support staff).

28 3.5 Designating Party: a Party or Non-Party that designates information or

1 items that it produces in disclosures or in responses to discovery as
2 “CONFIDENTIAL.”

3 3.6 Disclosure or Discovery Material: all items or information, regardless of
4 the medium or manner in which it is generated, stored, or maintained (including,
5 among other things, testimony, transcripts, and tangible things), that are produced or
6 generated in disclosures or responses to discovery in this matter.

7 3.7 Expert: a person with specialized knowledge or experience in a matter
8 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
9 expert witness or as a consultant in this action.

10 3.8 House Counsel: attorneys who are employees of a Party to this action.
11 House Counsel does not include Outside Counsel of Record or any other outside
12 counsel.

13 3.9 Non-Party: any natural person, partnership, corporation, association, or
14 other legal entity not named as a Party to this action.

15 3.10 Outside Counsel of Record: attorneys who are not employees of a Party
16 to this Action but are retained to represent or advise a Party to this Action and have
17 appeared in this Action on behalf of that Party or are affiliated with a law firm which
18 has appeared on behalf of that Party.

19 3.11 Party: any party to this action, including all of its officers, directors,
20 employees, consultants, retained experts, and Outside Counsel of Record (and their
21 support staffs).

22 3.12 Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this action.

24 3.13 Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or
26 demonstrations, and organizing, storing, or retrieving data in any form or medium)
27 and their employees and subcontractors.

28 3.14 Protected Material: any Disclosure or Discovery Material that is

1 designated as “CONFIDENTIAL.”

2 3.15 Receiving Party: a Party that receives Disclosure or Discovery Material
3 from a Producing Party.

4 4. SCOPE

5 The protections conferred by this Stipulation and Order cover not only
6 Protected Material (as defined above), but also (1) any information copied or extracted
7 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
8 Protected Material; and (3) any testimony, conversations, or presentations by Parties
9 or their Counsel that might reveal Protected Material. However, the protections
10 conferred by this Stipulation and Order do not cover the following information: (a)
11 any information that is in the public domain at the time of disclosure to a Receiving
12 Party or becomes part of the public domain after its disclosure to a Receiving Party as
13 a result of publication not involving a violation of this Order, including becoming part
14 of the public record through trial or otherwise; and (b) any information known to the
15 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
16 disclosure from a source who obtained the information lawfully and under no
17 obligation of confidentiality to the Designating Party.

18 Any use of Protected Material at trial shall be governed by a separate agreement
19 or order.

20 5. DURATION

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

1 6. DESIGNATING PROTECTED MATERIAL

2 6.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under this
4 Order must take care to limit any such designation to specific material that qualifies
5 under the appropriate standards. The Designating Party must designate for protection
6 only those parts of material, documents, items, or oral or written communications that
7 qualify – so that other portions of the material, documents, items, or communications
8 for which protection is not warranted are not swept unjustifiably within the ambit of
9 this Order.

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

15 If it comes to a Designating Party’s attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the mistaken designation.

18 6.2 Manner and Timing of Designations. Except as otherwise provided in
19 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
21 under this Order must be clearly so designated before the material is disclosed or
22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions or other pretrial or trial
26 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
27 page that contains protected material. If only a portion or portions of the material on a
28 page qualifies for protection, the Producing Party also must clearly identify the

1 protected portion(s) (e.g., by making appropriate markings in the margins).

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

14 (b) for testimony given in deposition or in other pretrial or trial proceedings,
15 that the Designating Party identify on the record, before the close of the deposition,
16 hearing, or other proceeding, all protected testimony.

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

23 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
24 failure to designate qualified information or items does not, standing alone, waive the
25 Designating Party’s right to secure protection under this Order for such material.
26 Upon timely correction of a designation, the Receiving Party must make reasonable
27 efforts to assure that the material is treated in accordance with the provisions of this
28 Order.

1 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 7.1 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 7.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process by providing written notice of each designation it is challenging
7 and describing the basis for each challenge. To avoid ambiguity as to whether a
8 challenge has been made, the written notice must recite that the challenge to
9 confidentiality is being made in accordance with this specific paragraph of the
10 Protective Order. The parties shall attempt to resolve each challenge in good faith and
11 must begin the process by conferring directly (in voice to voice dialogue; other forms
12 of communication are not sufficient) within 14 days of the date of service of notice. In
13 conferring, the Challenging Party must explain the basis for its belief that the
14 confidentiality designation was not proper and must give the Designating Party an
15 opportunity to review the designated material, to reconsider the circumstances, and, if
16 no change in designation is offered, to explain the basis for the chosen designation. A
17 Challenging Party may proceed to the next stage of the challenge process only if it has
18 engaged in this meet and confer process first or establishes that the Designating Party
19 is unwilling to participate in the meet and confer process in a timely manner.

20 7.3 Judicial Intervention. If the Parties cannot resolve a challenge without
21 court intervention, the Challenging Party shall file and serve a Motion to Strike the
22 Confidentiality designation within 21 days of the initial notice of challenge or within
23 14 days of the parties agreeing that the meet and confer process will not resolve their
24 dispute, whichever is earlier. Each such motion must be accompanied by a competent
25 declaration affirming that the movant has complied with the meet and confer
26 requirements imposed in the preceding paragraph.

27 The burden of persuasion in any such challenge proceeding shall be on the
28 Designating Party. Frivolous challenges, and those made for an improper purpose

1 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
2 expose the Challenging Party to sanctions. During the pendency of any Motion, all
3 parties shall continue to afford the material in question the level of protection to which
4 it is entitled under the Producing Party's designation until the court rules on the
5 challenge.

6 8. ACCESS TO AND USE OF PROTECTED MATERIAL

7 8.1 Basic Principles. A Receiving Party may use Protected Material that is
8 disclosed or produced by another Party or by a Non-Party in connection with this case
9 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
10 Material may be disclosed only to the categories of persons and under the conditions
11 described in this Order. When the litigation has been terminated, a Receiving Party
12 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

16 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party, a
18 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
19 only to:

20 (a) the Receiving Party's Outside Counsel of Record in this action, as well
21 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
22 disclose the information for this litigation and who have signed the "Acknowledgment
23 and Agreement to Be Bound" that is attached hereto as Exhibit A;

24 (b) the officers, directors, and employees (including House Counsel) of the
25 Receiving Party to whom disclosure is reasonably necessary for this Action and who
26 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

27 (c) Experts (as defined in this Order) of the Receiving Party to whom
28 disclosure is reasonably necessary for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (d) the court and its personnel;

3 (e) court reporters and their staff,

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

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

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

18 (i) any mediator or settlement officer, and their supporting personnel,
19 mutually agreed upon by any of the parties engaged in settlement discussions.

20 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
21 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,” that Party must:

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

27 (b) promptly notify in writing the party who caused the subpoena or order to
28 issue in the other litigation that some or all of the material covered by the subpoena or

1 order is subject to this Protective Order. Such notification shall include a copy of this
2 Stipulated Protective Order; and

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

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

13 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
14 IN THIS LITIGATION

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

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

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

27 (2) promptly provide the Non-Party with a copy of the Stipulated
28 Protective Order in this litigation, the relevant discovery request(s), and a reasonably

1 specific description of the information requested; and

2 (3) make the information requested available for inspection by the Non-
3 Party.

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

12 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

21 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
22 PROTECTED MATERIAL

23 When a Producing Party gives notice to Receiving Parties that certain
24 inadvertently produced material is subject to a claim of privilege or other protection,
25 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
26 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
27 may be established in an e-discovery order that provides for production without prior
28 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the

1 parties reach an agreement on the effect of disclosure of a communication or
2 information covered by the attorney-client privilege or work product protection, the
3 parties may incorporate their agreement in the stipulated protective order submitted to
4 the court.

5 13. MISCELLANEOUS

6 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
7 person to seek its modification by the court in the future.

8 13.2 Right to Assert Other Objections. By stipulating to the entry of this
9 Protective Order no Party waives any right it otherwise would have to object to
10 disclosing or producing any information or item on any ground not addressed in this
11 Stipulated Protective Order. Similarly, no Party waives any right to object on any
12 ground to use in evidence of any of the material covered by this Protective Order.

13 13.3 Filing Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
15 only be filed under seal pursuant to a court order authorizing the sealing of the
16 specific Protected Material at issue. If a Party's request to file Protected Material
17 under seal is denied by the court, then the Receiving Party may file the information in
18 the public record unless otherwise instructed by the court.

19 14. FINAL DISPOSITION

20 Within 60 days after the final disposition of this action, as defined in paragraph
21 5, each Receiving Party must return all Protected Material to the Producing Party or
22 destroy such material. As used in this subdivision, "all Protected Material" includes
23 all copies, abstracts, compilations, summaries, and any other format reproducing or
24 capturing any of the Protected Material. Whether the Protected Material is returned or
25 destroyed, the Receiving Party must submit a written certification to the Producing
26 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
27 deadline that (1) identifies (by category, where appropriate) all the Protected Material
28 that was returned or destroyed and (2) affirms that the Receiving Party has not

1 retained any copies, abstracts, compilations, summaries or any other format
2 reproducing or capturing any of the Protected Material. Notwithstanding this
3 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
4 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
5 deposition and trial exhibits, expert reports, attorney work product, and consultant and
6 expert work product, even if such materials contain Protected Material. Any such
7 archival copies that contain or constitute Protected Material remain subject to this
8 Protective Order as set forth in Section 5 (DURATION).

9 15. Any violation of this Order may be punished by any and all appropriate
10 measures including, without limitation, contempt proceedings and/or monetary
11 sanctions.

12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13
14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

15
16 DATED: March 14, 2018



Hon. Karen E. Scott
United States Magistrate Judge

17
18
19
20 Dated: March 8, 2018

By: /s/ Annick M. Persinger
Annick M. Persinger

21 **TYCKO & ZAVAREEI LLP**
22 ANNICK M. PERSINGER (SBN 272996)
23 apersinger@tzlegal.com
483 Ninth Street, Suite 200
Oakland, CA 94607
Telephone (510) 254-6808
Facsimile (510) 210-0571

24
25 HASSAN A. ZAVAREEI (SBN 181547)
26 hzavareei@tzlegal.com
1828 L Street, NW, Suite 1000
27 Washington, DC 20036
Telephone (202) 973-0900
28 Facsimile (202) 973-0950

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**SPANGENBERG SHIBLEY & LIBER
LLP**

STUART E. SCOTT (OH 0064834) *pro hac
vice forthcoming*
sscott@spanglaw.com
1001 Lakeside Avenue East, Suite 1700
Cleveland, OH 44114
Telephone (216) 696-3232
Facsimile (216) 696-3924

Attorneys for Plaintiff

Dated: March 8, 2018

By: /s/ Joel L. Lennen
Joel L. Lennen

**ECKERT SEAMANS CHERIN &
MELLOTT, LLC**

JOEL L. LENNEN (*pro hac vice*)
jlennen@eckerseamans.com
MATTHEW J. WHIPPLE (*pro hac vice*)
mwhipple@eckerseamans.com
600 Grant Street, 44th Fl.
Pittsburgh, PA 15219
Telephone: (412) 566-6197
Facsimile: (412) 566-6099

WINSTON & STRAWN LLP

EMILIE C. WOODHEAD (SBN: 240464)
ewoodhead@winston.com
AUDREY SHEN CHUI (SBN: 254510)
achui@winston.com
333 S. Grand Avenue
Los Angeles, CA 90071-1543
Telephone: (213) 615-1700
Facsimile: (213) 615-1750

Attorneys for Defendant

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that
5 I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Central District of California on
7 [date] in the case of Macedonia Distributing, Inc. v. S-L Distribution Company, LLC,
8 Case No. 8:17-01692-JVS-KES. I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any information
12 or item that is subject to this Stipulated Protective Order to any person or entity except
13 in strict compliance with the provisions of this Order.

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

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

22
23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____