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18 UNITED STATES DISTRICT COURT  
 19 CENTRAL DISTRICT OF CALIFORNIA

20 P&P IMPORTS LLC, a California  
 21 limited liability company,  
 22 Plaintiff,

23 v.

24 OJCOMMERCE, LLC and  
 25 OJCOMMERCE.COM, INC., and  
 26 DOES 1-10, inclusive,  
 27 Defendants.

28 } Case No. 8:19-cv-00898-AG-KES  
 } Hon. Karen E. Scott  
 } **ORDER GRANTING STIPULATED  
 } PROTECTIVE ORDER**

**GOOD CAUSE EXISTS FOR THIS ORDER:**

**1. PURPOSE AND LIMITS OF THIS ORDER**

Discovery in this action is likely to involve confidential, proprietary, or private information requiring special protection from public disclosure and from

1 use for any purpose other than this litigation. Thus, the Court enters this Protective  
2 Order. This Order does not confer blanket protections on all disclosures or  
3 responses to discovery, and the protection it gives from public disclosure and use  
4 extends only to the specific material entitled to confidential treatment under the  
5 applicable legal principles. This Order does not automatically authorize the filing  
6 under seal of material designated under this Order. Instead, the parties must  
7 comply with L.R. 79-5.1 if they seek to file anything under seal. This Order does  
8 not govern the use at trial of material designated under this Order  
9

## 10 **2. DESIGNATING PROTECTED MATERIAL**

11 **2.1 Over-Designation Prohibited.** Any party or non-party who  
12 designates information or items for protection under this Order as  
13 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES  
14 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” (a “designator”)  
15 must only designate specific material that qualifies under the appropriate standards.  
16 To the extent practicable, only those parts of documents, items, or oral or written  
17 communications that require protection shall be designated. Designations with a  
18 higher confidentiality level when a lower level would suffice are prohibited. Mass,  
19 indiscriminate, or routinized designations are prohibited. Unjustified designations  
20 expose the designator to sanctions, including the Court’s striking all confidentiality  
21 designations made by that designator. Designation under this Order is allowed only  
22 if the designation is necessary to protect material that, if disclosed to persons not  
23 authorized to view it, would cause competitive or other recognized harm. Material  
24 may not be designated if it has been made public, or if designation is otherwise  
25 unnecessary to protect a secrecy interest. If a designator learns that information or  
26 items that it designated for protection do not qualify for protection at all or do not  
27

1 qualify for the level of protection initially asserted, that designator must promptly  
2 notify all parties that it is withdrawing the mistaken designation.

3       **2.2 Manner and Timing of Designations.** Designation under this Order  
4 requires the designator to affix the applicable legend (“CONFIDENTIAL,”  
5 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY  
6 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected  
7 material. For testimony given in deposition or other proceeding, the designator  
8 shall specify all protected testimony and the level of protection being asserted. It  
9 may make that designation during the deposition or proceeding, or may invoke, on  
10 the record or by written notice to all parties on or before the next business day, a  
11 right to have up to 21 days from the deposition or proceeding to make its  
12 designation.

13       **2.2.1** A party or non-party that makes original documents or materials  
14 available for inspection need not designate them for protection until after the  
15 inspecting party has identified which material it would like copied and produced.  
16 During the inspection and before the designation, all material shall be treated as  
17 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting  
18 party has identified the documents it wants copied and produced, the producing  
19 party must designate the documents, or portions thereof, that qualify for protection  
20 under this Order.

21       **2.2.2** Parties shall give advance notice if they expect a deposition or other  
22 proceeding to include designated material so that the other parties can ensure that  
23 only authorized individuals are present at those proceedings when such material is  
24 disclosed or used. The use of a document as an exhibit at a deposition shall not in  
25 any way affect its designation. Transcripts containing designated material shall  
26 have a legend on the title page noting the presence of designated material, and the  
27 title page shall be followed by a list of all pages (including line numbers as  
28

1 appropriate) that have been designated, and the level of protection being asserted.  
2 The designator shall inform the court reporter of these requirements. Any transcript  
3 that is prepared before the expiration of the 21-day period for designation shall be  
4 treated during that period as if it had been designated HIGHLY CONFIDENTIAL  
5 – ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of the  
6 21-day period, the transcript shall be treated only as actually designated.

7 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to  
8 designate does not, standing alone, waive protection under this Order. Upon timely  
9 assertion or correction of a designation, all recipients must make reasonable efforts  
10 to ensure that the material is treated according to this Order.

11  
12 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 All challenges to confidentiality designations shall proceed under L.R. 37-1  
14 through L.R. 37-4.

15  
16 **4. ACCESS TO DESIGNATED MATERIAL**

17 **4.1 Basic Principles.** A receiving party may use designated material only  
18 for this litigation. Designated material may be disclosed only to the categories of  
19 persons and under the conditions described in this Order.

20 **4.2 Disclosure of CONFIDENTIAL Material Without Further**  
21 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the  
22 designator, a receiving party may disclose any material designated  
23 CONFIDENTIAL only to:

24 **4.2.1** The receiving party's counsel of record in this action and employees  
25 of counsel of record to whom disclosure is reasonably necessary. Counsel of record  
26 includes in-house counsel that have appeared in this action;

1           **4.2.2** The officers, directors, and employees of the receiving party to whom  
2 disclosure is reasonably necessary (Exhibit A);

3           **4.2.3** Experts retained by the receiving party’s outside counsel of record to  
4 whom disclosure is reasonably necessary, and who have signed the Agreement to  
5 Be Bound (Exhibit A);

6           **4.2.4** The Court and its personnel;

7           **4.2.5** Outside court reporters and their staff, professional jury or trial  
8 consultants, and professional vendors to whom disclosure is reasonably necessary,  
9 and who have signed the Agreement to Be Bound (Exhibit A);

10          **4.2.6** During their depositions, witnesses in the action to whom disclosure is  
11 reasonably necessary and who have signed the Agreement to Be Bound (Exhibit  
12 A); and

13          **4.2.7** The author or recipient of a document containing the material, or a  
14 custodian or other person who otherwise possessed or knew the information.

15          **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**  
16 **ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without**  
17 **Further Approval.** Unless permitted in writing by the designator, a receiving  
18 party may disclose material designated HIGHLY CONFIDENTIAL –  
19 ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE  
20 without further approval only to:

21          **4.3.1** The receiving party’s counsel of record in this action and employees  
22 of counsel of record to whom it is reasonably necessary to disclose the  
23 information. Counsel of record includes in-house counsel that have appeared in  
24 this action;

25          **4.3.2** The Court and its personnel;

26          **4.3.3** Outside court reporters and their staff, professional jury or trial  
27 consultants, and professional vendors to whom disclosure is reasonably necessary,  
28

1 and who have signed the Agreement to Be Bound (Exhibit A); and

2 **4.3.4** The author or recipient of a document containing the material, or a  
3 custodian or other person who otherwise possessed or knew the information.

4 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**  
5 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY**  
6 **CONFIDENTIAL – SOURCE CODE Material to In-House Counsel or**  
7 **Experts.** Unless agreed to in writing by the designator:

8  
9 **4.4.1** A party seeking to disclose to an expert retained by outside counsel of  
10 record any information or item that has been designated HIGHLY  
11 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –  
12 SOURCE CODE must first make a written request to the designator that (1)  
13 identifies the general categories of HIGHLY CONFIDENTIAL – ATTORNEY  
14 EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE information that  
15 the receiving party seeks permission to disclose to the expert, (2) sets forth the full  
16 name of the expert and the city and state of his or her primary residence, (3)  
17 attaches a copy of the expert’s current resume, (4) identifies the expert’s current  
18 employer(s), (5) identifies each person or entity from whom the expert has  
19 received compensation or funding for work in his or her areas of expertise  
20 (including in connection with litigation) in the past five years, and (6) identifies  
21 (by name and number of the case, filing date, and location of court) any litigation  
22 where the expert has offered expert testimony, including by declaration, report, or  
23 testimony at deposition or trial, in the past five years. If the expert believes any of  
24 this information at (4) - (6) is subject to a confidentiality obligation to a third party,  
25 then the expert should provide whatever information the expert believes can be  
26 disclosed without violating any confidentiality agreements, and the party seeking  
27  
28

1 to disclose the information to the expert shall be available to meet and confer with  
2 the designator regarding any such confidentiality obligations.

3 **4.4.2** A party that makes a request and provides the information specified in  
4 paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified in-  
5 house counsel or expert unless, within seven days of delivering the request, the  
6 party receives a written objection from the designator providing detailed grounds  
7 for the objection.

8 **4.4.3** All challenges to objections from the designator shall proceed under  
9 L.R. 37-1 through L.R. 37-4.

10  
11 **5. SOURCE CODE**

12 **5.1 Designation of Source Code.** If production of source code is  
13 necessary, a party may designate it as HIGHLY CONFIDENTIAL – SOURCE  
14 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

15  
16 **5.2 Location and Supervision of Inspection.** Any HIGHLY  
17 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made  
18 available for inspection, in a format allowing it to be reasonably reviewed and  
19 searched, during normal business hours or at other mutually agreeable times, at an  
20 office of the designating party’s counsel or another mutually agreeable location.  
21 The source code shall be made available for inspection on a secured computer in a  
22 secured room, and the inspecting party shall not copy, remove, or otherwise  
23 transfer any portion of the source code onto any recordable media or recordable  
24 device. The designator may visually monitor the activities of the inspecting party’s  
25 representatives during any source code review, but only to ensure that there is no  
26 unauthorized recording, copying, or transmission of the source code.

1           **5.3 Paper Copies of Source Code Excerpts.** The inspecting party may  
2 request paper copies of limited portions of source code that are reasonably  
3 necessary for the preparation of court filings, pleadings, expert reports, other  
4 papers, or for deposition or trial. The designator shall provide all such source code  
5 in paper form, including Bates numbers and the label “HIGHLY CONFIDENTIAL  
6 – SOURCE CODE.”

7           **5.4 Access Record.** The inspecting party shall maintain a record of any  
8 individual who has inspected any portion of the source code in electronic or paper  
9 form, and shall maintain all paper copies of any printed portions of the source code  
10 in a secured, locked area. The inspecting party shall not convert any of the  
11 information contained in the paper copies into any electronic format other than for  
12 the preparation of a pleading, exhibit, expert report, discovery document,  
13 deposition transcript, or other Court document. Any paper copies used during a  
14 deposition shall be retrieved at the end of each day and must not be left with a  
15 court reporter or any other unauthorized individual

16  
17 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
18 **PRODUCED IN OTHER LITIGATION**

19           **6.1 Subpoenas and Court Orders.** This Order in no way excuses non-  
20 compliance with a lawful subpoena or court order. The purpose of the duties  
21 described in this section is to alert the interested parties to the existence of this  
22 Order and to give the designator an opportunity to protect its confidentiality  
23 interests in the court where the subpoena or order issued.

24           **6.2 Notification Requirement.** If a party is served with a subpoena or a  
25 court order issued in other litigation that compels disclosure of any information or  
26 items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL  
27 – ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE,  
28



1 that party must:

2           **6.2.1** Promptly notify the designator in writing. Such notification shall  
3 include a copy of the subpoena or court order;

4           **6.2.2** Promptly notify in writing the party who caused the subpoena or order  
5 to issue in the other litigation that some or all of the material covered by the  
6 subpoena or order is subject to this Order. Such notification shall include a copy of  
7 this Order; and

8  
9           **6.2.3** Cooperate with all reasonable procedures sought by the designator  
10 whose material may be affected.

11  
12           **6.3 Wait For Resolution of Protective Order.** If the designator timely  
13 seeks a protective order, the party served with the subpoena or court order shall not  
14 produce any information designated in this action as CONFIDENTIAL, HIGHLY  
15 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –  
16 SOURCE CODE before a determination by the court where the subpoena or order  
17 issued, unless the party has obtained the designator’s permission. The designator  
18 shall bear the burden and expense of seeking protection of its confidential material  
19 in that court.

20  
21 **7. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

22           If a receiving party learns that, by inadvertence or otherwise, it has  
23 disclosed designated material to any person or in any circumstance not authorized  
24 under this Order, it must immediately (1) notify in writing the designator of the  
25 unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies  
26 of the designated material, (3) inform the person or persons to whom unauthorized  
27 disclosures were made of all the terms of this Order, and (4) use reasonable efforts

1 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

2  
3 **8. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
4 **OTHERWISE PROTECTED MATERIAL**

5 When a producing party gives notice that certain inadvertently produced  
6 material is subject to a claim of privilege or other protection, the obligations of the  
7 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
8 This provision is not intended to modify whatever procedure may be established in  
9 an e-discovery order that provides for production without prior privilege review  
10 pursuant to Federal Rule of Evidence 502(d) and (e).

11  
12 **9. FILING UNDER SEAL**

13 Without written permission from the designator or a Court order, a party  
14 may not file in the public record in this action any designated material. A party  
15 seeking to file under seal any designated material must comply with L.R. 79-5.1.  
16 Filings may be made under seal only pursuant to a court order authorizing the  
17 sealing of the specific material at issue. The fact that a document has been  
18 designated under this Order is insufficient to justify filing under seal. Instead,  
19 parties must explain the basis for confidentiality of each document sought to be  
20 filed under seal. Because a party other than the designator will often be seeking to  
21 file designated material, cooperation between the parties in preparing, and in  
22 reducing the number and extent of, requests for under seal filing is essential. If a  
23 receiving party's request to file designated material under seal pursuant to L.R. 79-  
24 5.1 is denied by the Court, then the receiving party may file the material in the  
25 public record unless (1) the designator seeks reconsideration within four days of  
26 the denial, or (2) as otherwise instructed by the Court.

1 **10. FINAL DISPOSITION**

2 Within 60 days after the final disposition of this action, each party shall  
3 return all designated material to the designator or destroy such material, including  
4 all copies, abstracts, compilations, summaries, and any other format reproducing or  
5 capturing any designated material. The receiving party must submit a written  
6 certification to the designator by the 60-day deadline that (1) identifies (by  
7 category, where appropriate) all the designated material that was returned or  
8 destroyed, and (2) affirms that the receiving party has not retained any copies,  
9 abstracts, compilations, summaries, or any other format reproducing or capturing  
10 any of the designated material. This provision shall not prevent counsel from  
11 retaining an archival copy of all pleadings, motion papers, trial, deposition, and  
12 hearing transcripts, legal memoranda, correspondence, deposition and trial  
13 exhibits, expert reports, attorney work product, and consultant and expert work  
14 product, even if such materials contain designated material. Any such archival  
15 copies remain subject to this Order.

16  
17 **11. VIOLATION**

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

20  
21 **IT IS SO ORDERED.**

22 DATED: October 16, 2019

  
\_\_\_\_\_  
Honorable KAREN E. SCOTT

United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_, of [print or type full name],  
of \_\_\_\_\_ [print or type full address] declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective  
Order that was issued by the United States District Court for the Central District of  
California on [date] in the case of *P&P IMPORTS LLC v. OJCOMMERCE, LLC*  
*OJCOMMERCE.COM, INC.*, Case No. 8:19-cv-00898-AG-KES.

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 for 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 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 this Order, even if  
such enforcement proceedings occur after termination of this action.

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

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

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