

1 D. GREG DURBIN (SBN 81749)  
McCORMICK BARSTOW SHEPPARD  
2 WAYTE & CARRUTH LLP  
5 River Park Place East  
3 P.O. Box 28912  
Fresno, California 93720  
4 Telephone: (559) 433-1300  
Facsimile: (559) 433-2300  
5 Greg.Durbin@mccormickbarstow.com

6 D. PETER HARVEY (SBN 55712)  
SETH I. APPEL (SBN 233421)  
7 HARVEY SISKIND LLP  
Four Embarcadero Center, 39<sup>th</sup> Floor  
8 San Francisco, California 94111  
Telephone: (415) 354-0100  
9 Facsimile: (415) 391-7124  
pharvey@harveysiskind.com  
10 sappel@harveysiskind.com

11 Attorneys for Plaintiff  
E. & J. Gallo Winery

12  
13 **UNITED STATES DISTRICT COURT**  
14 **EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION**

15 E. & J. GALLO WINERY, a California  
corporation,

16 Plaintiff,

17 v.

18 PROXIMO SPIRITS, INC., a Delaware  
corporation; AGAVERA CAMICHINES, S.A.  
19 DE C.V., a Mexico corporation; and DOES 1-25,

20 Defendants.  
21

Case No. 1:10-CV-00411 LJO JLT

**STIPULATED PROTECTIVE ORDER**

22 1. PURPOSES AND LIMITATIONS

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

1 only to the limited information or items that are entitled to confidential treatment under the applicable  
2 legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this  
3 Stipulated Protective Order does not entitle them to file confidential information under seal; General  
4 Local Rule 141 sets forth the procedures that must be followed and the standards that will be applied  
5 when a party seeks permission from the court to file material under seal.

6 2. DEFINITIONS

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
8 information or items under this Order.

9 2.2 “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL” Information or  
10 Items: information (regardless of how it is generated, stored or maintained) or tangible things that  
11 qualify for protection under Federal Rule of Civil Procedure 26(c).

12 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
13 (as well as their support staff).

14 2.4 Designating Party: a Party or Non-Party that designates information or items  
15 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
16 CONFIDENTIAL.”

17 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
18 medium or manner in which it is generated, stored, or maintained (including, among other things,  
19 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
20 responses to discovery in this matter.

21 2.6 Expert: a person with specialized knowledge or experience in a matter  
22 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
23 witness or as a consultant in this action.

24 2.7 House Counsel: attorneys who are employees of a party to this action.  
25 House Counsel does not include Outside Counsel of Record or any other outside counsel.

26 2.8 Non-Party: any natural person, partnership, corporation, association, or  
27 other legal entity not named as a Party to this action.  
28

1           2.9    Outside Counsel of Record: attorneys who are not employees of a party to  
2 this action but are retained to represent or advise a party to this action and have appeared in this  
3 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that  
4 party.

5           2.10 Party: any party to this action, including all of its officers, directors,  
6 employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

7           2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
8 Material in this action.

9           2.12 Professional Vendors: persons or entities that provide litigation support  
10 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
11 organizing, storing, or retrieving data in any form or medium) and their employees and  
12 subcontractors.

13          2.13 Protected Material: any Disclosure or Discovery Material that is designated  
14 as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL” or “TRADE SECRET.”

15          2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
16 Producing Party.

17          2.15 Trade Secret: shall include (i) confidential forward looking business,  
18 marketing, advertising or promotional plans, (ii) confidential inventions, (iii) confidential processes,  
19 (iv) confidential methods, and (v) proprietary customer information.”.

20    3.    SCOPE

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

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

5 4. DURATION

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

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
14 Party or Non-Party that designates information or items for protection under this Order must take  
15 care to limit any such designation to specific material that qualifies under the appropriate standards.  
16 The Designating Party must designate for protection only those parts of material, documents, items,  
17 or oral or written communications that qualify – so that other portions of the material, documents,  
18 items, or communications for which protection is not warranted are not swept unjustifiably within  
19 the ambit of this Order.

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

24 If it comes to a Designating Party's attention that information or items it has  
25 designated for protection do not qualify for protection, that Designating Party must promptly notify  
26 all other Parties that it is withdrawing the mistaken designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
28 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents,  
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
6 Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL” or “TRADE SECRET”  
7 to each page that contains protected material. If only a portion or portions of the material on a page  
8 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,  
9 by making appropriate markings in the margins).

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

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

24 (c) for information produced in some form other than documentary and for any  
25 other tangible items, that the Producing Party affix in a prominent place on the exterior of the of the  
26 container or containers in which information or item is stored the legend “CONFIDENTIAL,”  
27 “HIGHLY CONFIDENTIAL” or “TRADE SECRET.” If only a portion or portions of the  
28

1 information or item warrant protection, the Producing Party, to the extent practicable, shall identify  
2 the protected portion(s).

3           5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
4 to designate qualified information or items does not, standing alone, waive the Designating Party's  
5 right to secure protection under this Order for such material. Upon timely correction of a  
6 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
7 in accordance with the provisions of this Order.

8     6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

9           6.1     Timing of Challenges. Any Party or Non-Party may challenge a designation of  
10 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidential  
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
12 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
13 confidentiality designation by electing not to mount a challenge promptly after the original  
14 designation is disclosed.

15           6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
16 process by providing written notice of each designation it is challenging and describing the basis  
17 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice  
18 must recite that the challenge to confidentiality is being made in accordance with this specific  
19 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith  
20 and must begin the process by conferring directly (in voice to voice dialogue; other forms of  
21 communication are not sufficient) within 14 days of the date of service of notice. In conferring, the  
22 Challenging Party must explain the basis for its belief that the confidentiality designation was not  
23 proper and must give the Designating Party an opportunity to review the designated material, to  
24 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for  
25 the chosen designation. A Challenging Party may proceed to the next stage of the challenge process  
26 only if it has engaged in this meet and confer process first or establishes that the Designating Party  
27 is unwilling to participate in the meet and confer process in a timely manner.  
28

1           6.3    Judicial Intervention. If the Parties cannot resolve a challenge without court  
2 intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21  
3 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and  
4 confer process will not resolve their dispute, whichever is earlier. Each such motion must be  
5 accompanied by a competent declaration affirming that the movant has complied with the meet and  
6 confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make  
7 such a motion including the required declaration within 21 days (or 14 days, if applicable) shall  
8 automatically waive the confidentiality designation for each challenged designation. In addition,  
9 the Challenging Party may file a motion challenging a confidentiality designation at any time if  
10 there is good cause for doing so, including a challenge to the designation of a deposition transcript  
11 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
12 competent declaration affirming that the movant has complied with the meet and confer  
13 requirements imposed by the preceding paragraph.

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

21    7.       ACCESS TO AND USE OF PROTECTED MATERIAL

22           7.1    Basic Principles. A Receiving Party may use Protected Material that is  
23 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
24 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
25 disclosed only to the categories of persons and under the conditions described in this Order. When  
26 the litigation has been terminated, a Receiving Party must comply with the provisions of section 13  
27 below (FINAL DISPOSITION).

28

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
5 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
6 disclose any information or item designated “CONFIDENTIAL” only to:

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

10 (b) the officers, directors, and employees (including House Counsel) of the  
11 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
12 signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
14 reasonably necessary for this litigation and who have signed the “Acknowledgement and  
15 Agreement to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, mock  
18 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
19 who have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A);

20 (f) during their depositions, witnesses in the action to whom disclosure is  
21 reasonably necessary and who have signed the “Acknowledgement and Agreement to Be Bound”  
22 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
23 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
24 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
25 under this Stipulated Protective Order;

26 (g) the author or recipient of a document containing the information or a  
27 custodian or other person who otherwise possessed or knew the information.  
28



1                   7.3     Disclosure of “HIGHLY CONFIDENTIAL” Information or Items. Unless  
2 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
3 may disclose any information or item designated “HIGHLY CONFIDENTIAL” only to:

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

7                   (b)     Two In House Counsel of the Receiving Party to whom disclosure is reasonably  
8 necessary for this litigation, who have been previously identified to opposing counsel, and who  
9 have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A);

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

13                   (d)     the court and its personnel;

14                   (e)     court reporters and their staff, professional jury or trial consultants, mock  
15 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
16 who have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A); and

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

19                   7.4     Disclosure of “TRADE SECRET” Information or Items. Unless otherwise  
20 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
21 disclose any information or item designated “TRADE SECRET” only to:

22                   (a)     the Receiving Party’s Outside Counsel of Record in this action, as well as  
23 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
24 information for this litigation;

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

28                   (c)     the court and its personnel;

- 1 (d) court reporters and their staff, professional jury or trial consultants, mock  
2 jurors, and Professional Vendors to whom disclosure is reasonably necessary for  
3 this litigation and who have signed the “Acknowledgement and Agreement to  
4 Be Bound” (Exhibit A); and
- 5 (e) the author or recipient of a document containing the information or a custodian  
6 or other person who otherwise possessed or knew the information.

7 7.5 Disclosure to Experts. Any party who seeks to disclose any information or  
8 item designated “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “TRADE SECRET” to an  
9 Expert (as defined in this Order) must first notify the party that so designated the information or  
10 item. Notification shall include the proposed Expert’s name, occupation, and professional  
11 background. The party receiving such notification will then have ten (10) days to serve a written  
12 objection to disclosure to the Expert. If objection is made, the parties will meet and confer in good  
13 faith to resolve the dispute. If the parties are unable to resolve the dispute despite making a  
14 reasonable effort to do so, the party objecting to disclosure may file a motion with the Court to  
15 prevent disclosure. If the objecting party fails to file such a motion within fourteen (14) days of  
16 service of its written objection, however, the other party may proceed to disclose the information or  
17 item to the Expert.

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
19 LITIGATION

20 If a Party is served with a subpoena or a court order issued in other litigation that compels  
21 disclosure of any information or items designated in this action as “CONFIDENTIAL,” “HIGHLY  
22 CONFIDENTIAL” or “TRADE SECRET,” that Party must:

- 23 (a) promptly notify in writing the Designating Party. Such notification shall include a  
24 copy of the subpoena or court order;
- 25 (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
26 other litigation that some or all of the material covered by the subpoena or order is subject to this  
27 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and  
28

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

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

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

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

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

- 20 1. promptly notify in writing the Requesting Party and the Non-Party that some  
21 or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- 22 2. promptly provide the Non-Party with a copy of the Stipulated Protective  
23 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
24 the information requested; and
- 25 3. make the information requested available for inspection by the Non-Party.

26 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
27 days of receiving the notice and accompanying information, the Receiving Party may produce the  
28 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely

1 seeks a protective order, the Receiving Party shall not produce any information in its possession or  
2 control that is subject to the confidentiality agreement with the Non-Party before a determination by  
3 the court.<sup>1</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of  
4 seeking protection in this court of its Protected Material.

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

23 12. MISCELLANEOUS

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

26 \_\_\_\_\_  
27 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
interests in this court.

1           12.2 Right to Assert Other Objections. By stipulating to the entry of this  
2 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
3 producing any information or item on any ground not addressed in this Stipulated Protective Order.  
4 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
5 material covered by this Protective Order.

6           12.3 Filing Protected Material. Without written permission from the Designating  
7 Party or a court order secured after appropriate notice to all interested persons, a Party may not file  
8 in the public record in this action any Protected Material. A Party that seeks to file under seal any  
9 Protected Material must comply with General Local Rule 141. Protected Material may only be  
10 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material  
11 at issue. Pursuant to General Local Rule 141, a sealing order will issue only upon a request  
12 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
13 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
14 Material under seal pursuant to General Local Rule 141 is denied by the court, then the Receiving  
15 Party may file the information in the public record unless otherwise instructed by the court.

16 13. FINAL DISPOSITION.

17           Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
18 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As  
19 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries,  
20 and any other format reproducing or capturing any of the Protected Material. Whether the Protected  
21 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
22 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day  
23 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was  
24 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
25 compilations, summaries or any other format reproducing or capturing any of the Protected Material.  
26 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,  
27 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
28 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work

1 product, even if such materials contain Protected Material. Any such archival copies that contain or  
2 constitute Protected Material remain subject to this Protective Order as set forth in Section 4  
3 (DURATION).

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

5 Dated: December 10, 2010

McCORMICK BARSTOW LLP  
D. GREG DURBIN

HARVEY SISKIND LLP  
D. PETER HARVEY  
SETH I. APPEL

6  
7  
8  
9 By:  /s/ D. Peter Harvey

10 Attorneys for Plaintiff  
E. & J. Gallo Winery

11 Dated: December 10, 2010

KIMBLE, MacMICHAEL & UPTON  
MARK D. MILLER

12  
13 ABELMAN FRAYNE & SCHWAB  
MICHAEL ASCHEN  
ANTHONY A. COPPOLA

14  
15 By:  /s/ Michael Aschen

16 Attorneys for Defendants  
17 PROXIMO SPIRITS, INC., and  
AGAVERA CAMICHINES, S.A. DE C.V.

18  
19 IT IS SO ORDERED.

20 Dated:  December 15, 2010

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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  
5 of perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Eastern District of California on  
7 \_\_\_\_\_[date] in the case of *E. & J. Gallo Winery v. Proximo Spirits, Inc., et al.*, Case  
8 No. 1:10-cv-00411-LJO-SKO. I agree to comply with and to be bound by all the terms of this  
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose  
10 me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose  
11 in any manner any information or item that is subject to this Stipulated Protective Order to any person  
12 or entity except in strict compliance with the provisions of this Order.

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

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

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

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

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

24 [printed name]

25  
26 Signature: \_\_\_\_\_

27 [signature]

28