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MADEIRA USA, LTD.

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10  
11 MARTHA MIRAMONTES,  
12 Plaintiff,

13 vs.

14 MADEIRA USA, LTD., a corporation;  
and DOES 1 through 50, inclusive,  
15 Defendant.  
16

CASE No. 1:10-cv-01256 OWW JLT

**STIPULATED PROTECTIVE  
ORDER**

17  
18 AND RELATED COUNTER-CLAIM  
19

20 Plaintiff/Counter-Defendant Martha Miramontes and Defendant/Counter-  
21 Claimant Madeira U.S.A., Ltd., by and through their respective counsel, hereby  
22 stipulate as follows:

23 WHEREAS, in connection with discovery in this case, the parties have sought  
24 and/or anticipate seeking certain documents and/or information that the others  
25 contend is private, highly confidential, and/or proprietary;

26 WHEREAS, the parties desire to protect the confidentiality of such  
27 documents and information to ensure that they can obtain and pursue discovery with  
28 a minimum of delay and expense;

1 NOW, THEREFORE, the parties hereby stipulate and agree as follows:

2 1. Definitions. As used in this Protective Order:

3 a. The term “Person” includes a natural person, association,  
4 organization, partnership, limited liability company, business, trust, corporation, or  
5 public entity and any agent of the foregoing.

6 b. The term “Material” means the original and any copy (regardless  
7 of origin or location) of any written, reported, recorded or graphic matter, however  
8 stored, produced or reproduced, including, but not limited to, computer-stored and  
9 computer retrievable information; testimony at depositions upon oral examinations  
10 or upon written questions; answers to interrogatories; information obtained from the  
11 inspection of premises; tangible objects or documents; answers to requests for  
12 admission; and anything that is a “writing” under the California Evidence Code and  
13 the Federal Rules of Civil Procedure.

14 c. The term “Provides” means the production, delivery, or transfer  
15 of any Material, voluntarily or involuntarily, regardless of whether it is performed  
16 pursuant to a request or subpoena.

17 d. The term “Confidential Information” means any information,  
18 whether documentary or oral, so designated by any producing Person or party which  
19 it reasonably and justifiably believes is of the type entitled to protection by law,  
20 subject to any party’s right to challenge such designation through court intervention,  
21 as specified herein.

22 e. The term “Action” means the case entitled *Martha Miramontes*  
23 *v. Madeira USA, Ltd.*, United States District Court, Eastern District of California,  
24 Case No. 1:10-cv-01256 OWW JLT.

25 f. The term “Plaintiff” means Plaintiff/Counter-Defendant Martha  
26 Miramontes, and her current and former agents.

1                   g. The term “Madeira” means Defendant/Counter-Claimant  
2 Madeira U.S.A., Ltd. and its current and former employees, agents, managers,  
3 officers, directors, subsidiaries, parent companies, and divisions.

4           2.     Designation/Disclosure of Confidential Material.

5                   a. The parties may designate as confidential at the time of  
6 production any Materials or information that contains Confidential Information by  
7 placing or affixing on each page of such Material the legend “CONFIDENTIAL” or  
8 a similar legend.

9                   b. Material designated as “CONFIDENTIAL” shall not be used for  
10 any purpose other than the prosecution or defense of the Action. Material  
11 designated as “CONFIDENTIAL” shall only be Provided, exhibited, or disclosed to  
12 the following persons:

- 13                           i) Parties to the Action (Plaintiffs and Madeira);  
14                           ii) Outside counsel of record engaged in the prosecution or  
15 defense of this litigation for the parties, including necessary legal assistants,  
16 stenographic, or clerical employees assisting such counsel;  
17                           iii) In-house counsel of any party engaged in the prosecution  
18 or defense of this litigation for the parties including necessary legal assistants,  
19 stenographic, or clerical employees assisting such counsel;  
20                           iv) Outside experts, consultants or investigators retained by  
21 the parties or their counsel of record in connection with this litigation under the  
22 conditions described in Paragraph 5 below;  
23                           v) The Court and its personnel, or other persons acting on its  
24 behalf.

25                   c. Persons to whom Material designated as “CONFIDENTIAL” is  
26 to be Provided, exhibited, or disclosed pursuant to this Paragraph 2 must have (a)  
27 read this order; (b) agreed to be bound by the terms thereof, (c) agreed to maintain  
28 said information in confidence, (d) agreed not to disclose the same except as

1 permitted by this Paragraph 2, and (e) agreed to use said information solely for  
2 purposes of the prosecution and defense of this litigation and not for any business,  
3 competitive or other purposes whatsoever.

4 3. Depositions

5 a. The parties may designate any information disclosed during  
6 depositions as “CONFIDENTIAL” either on the record at the deposition or within  
7 15 calendar days after completion of the deposition transcript.

8 b. Designation of the portion of the transcript (including exhibits)  
9 as “CONFIDENTIAL” shall be made as follows: Upon review of the transcript by  
10 counsel for the party to whose information the contents of the deposition relate, that  
11 counsel shall designate within 15 calendar days after counsel’s receipt of the  
12 transcript, by written communication to the other parties, the specific pages and  
13 lines to be designated as “CONFIDENTIAL.” Counsel shall list in a separate piece  
14 of paper the numbers of pages of the transcript containing designated information,  
15 inserting the list at the end of the transcript, and mailing copies of the list to counsel  
16 for all parties so that it may be affixed to the face of the transcript and each copy  
17 thereof. Pending such designation by counsel, the entire deposition transcript,  
18 including exhibits, shall be deemed “CONFIDENTIAL.” If no designation is made  
19 within 15 days after receipt of the transcript, the transcript shall be considered not to  
20 contain any confidential material.

21 c. In the event that any question is asked at a deposition that calls  
22 for the disclosure of Materials or information designated “CONFIDENTIAL,” the  
23 witness shall nevertheless answer such question, unless otherwise instructed not to,  
24 provided that the only Persons in attendance at the deposition are Persons to whom  
25 such information may be disclosed pursuant to this Order.

26 d. A person not otherwise authorized to be shown information or  
27 documents designated “CONFIDENTIAL” under this Order may be examined as a  
28

1 witness at deposition and may be shown and may testify concerning any such  
2 information or documents as follows:

3 i) A present employee of a producing Person or party may be  
4 examined, may be shown, and may testify concerning any “CONFIDENTIAL”  
5 information of that producing Person or party.

6 ii) A former employee or consultant of a producing Person or  
7 party may be examined, may be shown, may be interviewed, and may testify  
8 concerning any “CONFIDENTIAL” information of a producing Person or party that  
9 pertains in any way to the subject matter of his/her consultation or employment or to  
10 the subject matter of his/her communications with the producing Person or party.

11 iii) A non-party who has had any contact or relationship with  
12 a party may be examined, may be shown, may be interviewed, and may testify:

13 (1) Concerning any Material containing  
14 “CONFIDENTIAL” information that appears on its face to have been  
15 communicated between the non-party and any party; and

16 (2) Concerning any “CONFIDENTIAL” information of  
17 a party that documentary or testimonial evidence indicates was communicated  
18 between the non-party and the party.

19 4. Inadvertent Disclosure

20 a. If a producing Person or party inadvertently fails to stamp or  
21 otherwise appropriately designate certain documents or information as  
22 “CONFIDENTIAL” upon production or disclosure, the producing Person or any  
23 other party may thereafter designate by promptly giving written notice to all parties  
24 that the material is to be so designated. All parties shall then stamp or otherwise  
25 mark the designated material with a “CONFIDENTIAL” or similar legend.

26 b. To the extent provided by law, the inadvertent production of any  
27 privileged or otherwise protected materials shall not be deemed a waiver or  
28 impairment of any claim of privilege or protection, including but not limited to, the

1 attorney-client privilege and the protection afforded to work-product materials, or  
2 the subject matter thereof. Upon receiving notice from a producing Person or party  
3 that materials have been inadvertently produced, all such materials (including all  
4 copies) shall be returned to the producing Person or party within 5 business days of  
5 receipt of that notice, unless timely application is made to the Court within that  
6 period to challenge the claim of privilege.

7       5.     Challenge To Confidentiality Designation.

8       A party may challenge another Person's or party's designation of Material as  
9 "CONFIDENTIAL" under this Protective Order by notifying the producing party in  
10 writing of the challenge, including the identity of each document to which the  
11 challenge is directed and the specific factual and legal bases supporting the  
12 challenge. Any such challenge must be made, if at all, within 30 days of the  
13 producing party's designation of such Material. Within 14 days of receipt, the  
14 parties shall meet-and-confer telephonically or in person regarding the challenge in  
15 an effort to resolve the matter informally. If the parties are unable to resolve the  
16 matter informally, the challenging party may move the Court to determine the  
17 propriety of the challenge. To prevent the improper disclosure of any Confidential  
18 Information, the moving party shall lodge the Material at issue under seal consistent  
19 with the procedures set forth below.

20       6.     Disclosure Of Confidential Information To Experts, Consultants And  
21 Investigators.

22             a.     Before a party discloses Materials designated as  
23 "CONFIDENTIAL" to any expert, consultant or investigator, the expert, consultant  
24 or investigator must certify that he or she has read this Protective Order and must  
25 sign a copy of the "Agreement to be Bound by Protective Order," attached hereto as  
26 Exhibit A. Once the expert, consultant or investigator has executed the "Agreement  
27 to be Bound by Protective Order," it shall not be necessary for that person to sign a  
28 separate statement each time he or she is subsequently given access to information

1 or Materials designated as “CONFIDENTIAL.” An expert, consultant or  
2 investigator that is shown Material designated as “CONFIDENTIAL” may retain  
3 copies of that Material or information subject to the provisions of Paragraph 7  
4 below.

5           b. The original, executed “Agreement to be Bound by Protective  
6 Order” signed by Persons receiving Materials designated as “CONFIDENTIAL,”  
7 pursuant to this Paragraph 6 shall be maintained by the attorney of record who  
8 obtained the Agreement.

9           7. Completion Of Litigation.

10           Upon completion of all proceedings in this Action, including the expiration of  
11 all rights to judicial review, all Materials designated as “CONFIDENTIAL” shall be  
12 returned to the producing party. Each party shall also ensure that all experts  
13 retained by the party to whom Materials designated as “CONFIDENTIAL” were  
14 disclosed shall return all such Materials to the party retaining such expert or,  
15 alternatively, shall confirm in writing that all such Materials have been destroyed.  
16 Returning parties are not required to return or destroy any pleadings, discovery  
17 requests, documents filed with the Court, or attorney work-product. The provisions  
18 of this Protective Order restricting the dissemination, exhibition or other use of  
19 Materials designated as “CONFIDENTIAL” shall continue to be binding on any  
20 person subject to the terms of the Protective Order after conclusion of this Action.

21           8. Right To Seek Relief From The Court

22           Nothing in this Protective Order shall be deemed to limit, prejudice or waive  
23 any rights of any party or person: (1) to resist or compel discovery with respect to,  
24 or to seek additional or different protection for, Material claimed to be protected by  
25 attorney work-product or other applicable privilege, Material as to which the party  
26 or person claims a legal obligation not to disclose, or Material not required to be  
27 produced pursuant to governing laws and rules; (2) to seek to modify or obtain relief  
28 from any aspect of this Protective Order; (3) to object to the use, relevance or



1 admissibility at trial of any evidence, whether or not comprised of Confidential  
2 Information governed by this Protective Order; (4) otherwise to require that  
3 discovery be conducted according to governing laws and rules; or (5) to oppose  
4 production of any information on any ground allowed under Federal Rules of Civil  
5 Procedure, or any other state or federal law, rule or regulation. By signing this  
6 Order, a producing party is not deemed to waive any objection to the production of  
7 any document. In addition, the election by any party to disclose any portion of its  
8 "CONFIDENTIAL" information to others shall not be deemed a waiver of any of  
9 the rights established by this Order. The placing of any "CONFIDENTIAL"  
10 designation or a production identification number on the face of a document  
11 produced shall have no effect on the authenticity or admissibility of that document  
12 at trial.

13       9.     Filing Confidential Information With The Court

14       Whenever a party files any document with the Court that contains (a)  
15 Materials that has been designated as "CONFIDENTIAL," or (b) Confidential  
16 Information of any party, the filing party shall first request permission to file the  
17 Material under seal in accordance with California Rule of Court Rule 2.551.

18       10.    Use Of "Confidential" Material In Court

19       Should counsel for any party desire to use "CONFIDENTIAL" material, or  
20 any portion or summary thereof, during any proceedings held in open court, he or  
21 she shall, prior to such use, make reference to the confidentiality thereof, and  
22 counsel for the designating party may at the time of that use request that any portion  
23 of the transcript containing that reference to "CONFIDENTIAL" information, and  
24 any "CONFIDENTIAL" documents attached as exhibits, be filed under seal with  
25 this Court and be accorded treatment as "CONFIDENTIAL" as provided by this  
26 Order. Counsel for the parties shall exercise due care not to disclose  
27 "CONFIDENTIAL" information needlessly in the public record of any proceedings.  
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11. Maintenance Of “Confidential” Material

A person with custody of Materials designated as “CONFIDENTIAL” shall maintain it in a manner that ensures that access to it is strictly limited to Persons entitled to receive Confidential Information in accordance with this Protective Order.

12. Subpoenas

In the event a party or its attorneys receive a subpoena or other process or order to produce Confidential Information in another action or proceeding, that party and/or its attorneys shall, not later than 14 days prior to compliance with the subpoena or other process or order, notify the other party’s attorney of record in this Action and specify the Confidential Information sought by the subpoena or other process or order.

13. Jurisdiction

Upon conclusion of this litigation, this Court shall retain such jurisdiction with respect to this Protective Order for purposes of enforcing its terms and conditions and to enable any party herein affected to apply for such other and further orders concerning the subject of this Protective Order as may be necessary or appropriate. Counsel for the designating party shall have the opportunity to oppose any request for public inspection.

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1           14.   Rights Intact

2           Except as described herein, this Protective Order shall not abrogate or  
3 diminish any contractual, statutory or other legal obligation or right of any party or  
4 person with respect to any Confidential Information.

5  
6 Dated: March 23, 2011

RUTAN & TUCKER, LLP

7  
8 By: /s/ Shawn M. Larsen  
9 Shawn M. Larsen  
10 Attorneys for Defendant and Counter-  
Claimant MADEIRA USA, LTD.

11 Dated: March 23, 2011

WILD, CARTER & TIPTON

12  
13  
14 By: /s/Monrae English (as authorized on 3/23/11)  
15 Monrae English  
16 Attorneys for Plaintiff and Counter-  
Defendant MARTHA  
MIRAMONTES

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20  
21                               ORDER

22 IT IS SO ORDERED:

23 Dated: March 25, 2011

/s/ OLIVER W. WANGER  
Judge Of U.S. District Court  
Eastern District of California

1                                    **CERTIFICATION TO BE BOUND BY PROTECTIVE ORDER**

2            I hereby acknowledge that I am about to receive Confidential Information  
3 provided in connection with the litigation entitled *Martha Miramontes v. Madeira*  
4 *USA, Ltd.*, United States District Court, Eastern District of California, Case No.  
5 1:10-cv-01256 OWW JLT (the “Action”). I certify my understanding that such  
6 Confidential Information is to be provided to me pursuant to the terms and  
7 restrictions of the Protective Order in the action and that I have been given a copy  
8 of and have read said Protective Order and agree to be bound by the terms thereof.  
9 I understand that such Confidential Information and any copies I make of any  
10 Document containing Confidential Information or any notes or other records that  
11 may be made regarding any such Confidential Information shall not be disclosed to  
12 any persons other than those persons to whom such information may be disclosed  
13 pursuant to this Protective Order.

14  
15 Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature