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17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF CALIFORNIA**

19 AFTERGLOW, LLC,

20 Plaintiff,

21 v.

CASE NO. 1:19-CV-0535-AWI-BAM

22 BRIGHT PATH LIGHTING, INC.,

23 Defendant.

24 **PROTECTIVE ORDER**

25 The Court recognizes that at least some of the documents, things, and
26 information being sought through discovery in the above-captioned action are, for
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1 competitive reasons, normally kept confidential by the parties and non-parties from
2 whom discovery may be sought who desires the protection of this Protective Order.
3 The parties have agreed to be bound by the terms of this Protective Order (“Order”) in
4 this action. The materials to be exchanged throughout the course of the litigation
5 between the parties and non-parties, may contain trade secret or other confidential
6 research, technical, cost, price, marketing or other commercial information, as is
7 contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The purpose of this
8 Order is to protect the confidentiality of such materials during the litigation. Pursuant
9 to Rule 26(c) of the Federal Rules of Civil Procedure and for good cause, IT IS
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13 **HEREBY ORDERED THAT:**

14 1. Each Party or Non-Party that designates information or items for
15 protection under this Order must take care to limit any such designation to specific
16 material that qualifies under the appropriate standards.
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18 **DEFINITIONS**

19 2. The term "Confidential Information" will mean and include information
20 contained or disclosed in any materials, whether produced informally or in response to
21 written discovery requests, including documents, portions of documents, answers to
22 interrogatories, responses to requests for admissions, trial testimony, deposition
23 testimony, and transcripts of trial testimony and depositions, including data, summaries,
24 and compilations derived therefrom that is deemed to be Confidential Information by
25 any party to which it belongs.
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1 3. The term "Materials" will include, but is not be limited to: confidential or
2 proprietary technical, scientific, financial, business, health, or medical information;
3 documents; correspondence; memoranda; bulletins; blueprints; specifications; customer
4 lists or other material that identify customers or potential customers; price lists or
5 schedules or other matter identifying pricing; minutes; telegrams; letters; statements;
6 cancelled checks; contracts; invoices; drafts; books of account; worksheets; notes of
7 conversations; desk diaries; appointment books; expense accounts; recordings;
8 photographs; motion pictures; compilations from which information can be obtained
9 and translated into reasonably usable form through detection devices; sketches;
10 drawings; notes (including laboratory notebooks and records); reports; instructions;
11 disclosures; other writings; models and prototypes and other physical objects.
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14 4. The term "Counsel" or "Attorneys" will mean outside counsel of either
15 party, and other attorneys, paralegals, secretaries, and other support staff employed in
16 the law firms.
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19 5. The term "Professional Vendors" mean persons or entities that provide
20 litigation support services (e.g., photocopying, videotaping, translating, preparing
21 exhibits or demonstrations, and organizing, storing or retrieving data in any form or
22 medium) and their employees and subcontractors.
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25 **GENERAL RULES**

26 6. Each party or any non-parties to this litigation that produces or
27 discloses any Materials, answers to interrogatories, responses to requests for admission,
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1 trial testimony, deposition testimony, and transcripts of trial testimony and depositions,
2 or information that the producing party believes should be subject to this Protective
3 Order may designate the same as "CONFIDENTIAL" or "CONFIDENTIAL –
4 ATTORNEYS EYES ONLY."

6 a. Designation as "CONFIDENTIAL": Any party may designate information
7 as "CONFIDENTIAL" only if, in the good faith belief of such party and its Counsel,
8 the unrestricted disclosure of such information could be potentially prejudicial to the
9 business or operations of such party.

11 b. Designation as "CONFIDENTIAL – ATTORNEYS EYES ONLY": Any
12 party may designate information as "CONFIDENTIAL - ATTORNEYS EYES ONLY"
13 only if, in the good faith belief of such party and its counsel, the information is among
14 that considered to be most sensitive by the party, including but not limited to trade
15 secret or other confidential research, development, financial or other commercial
16 information.

19 7. In the event the producing party elects to produce Materials for inspection,
20 no marking need be made by the producing party in advance of the initial inspection.
21 For purposes of the initial inspection, all Materials produced will be considered as
22 "CONFIDENTIAL - ATTORNEYS EYES ONLY," and must be treated as such
23 pursuant to the terms of this Order. Thereafter, upon selection of specified Materials for
24 copying by the inspecting party, the producing party must, within a reasonable time
25 prior to producing those Materials to the inspecting party, mark the copies of those
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1 Materials that contain Confidential Information with the appropriate confidentiality
2 marking.

3 8. Materials, documents and things produced or furnished during the course
4 of this action may be designated and marked as containing information which is
5 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY” by placing
6 on each page, each document (whether in paper or electronic form), or each thing a
7 legend substantially as follows: CONFIDENTIAL or
8 CONFIDENTIAL – ATTORNEYS EYES ONLY.
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11 9. Whenever a deposition taken on behalf of any party involves a disclosure
12 of Confidential Information of any party:

13 a. the deposition or portions of the deposition must be designated as
14 containing Confidential Information subject to the provisions of this Order; such
15 designation must be made on the record whenever possible, but a party may designate
16 portions of depositions as containing Confidential Information after transcription of the
17 proceedings; a party will have until thirty (30) days after receipt of the deposition
18 transcript to inform the other party or parties to the action or any non-parties of the
19 portions of the transcript to be designated "CONFIDENTIAL" or "CONFIDENTIAL -
20 ATTORNEYS EYES ONLY."
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24 b. the disclosing party will have the right to exclude from attendance at
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1 the deposition, during such time as the Confidential Information is to be disclosed, any
2 person other than the deponent, Counsel (including their staff and associates), the court
3 reporter, and the person(s) agreed upon pursuant to paragraph 9 below; and
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5 c. the originals of the deposition transcripts and all copies of the deposition
6 must bear the legend "CONFIDENTIAL" or "CONFIDENTIAL -
7 ATTORNEYS EYES ONLY," as appropriate, and the original or any copy ultimately
8 presented to a court for filing must not be filed unless it can be accomplished under
9 seal, identified as being subject to this Order, and protected from being opened except
10 by order of this Court.
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13 10. All Confidential Information designated as "CONFIDENTIAL"
14 or "CONFIDENTIAL - ATTORNEYS EYES ONLY" must not be disclosed by the
15 receiving party to anyone other than those persons designated within this Order and must
16 be handled in the manner set forth below and, in any event, must not be used for any
17 purpose other than in connection with this litigation, unless and until such designation is
18 removed either by agreement of the parties, or by order of the Court.
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21 11. Information designated "CONFIDENTIAL - ATTORNEYS EYES
22 ONLY" must be viewed only by: Counsel (as defined in paragraph 3) of the receiving
23 party; any person indicated on the face of the document to be its originator, author or a
24 recipient of a copy of the document; Professional Vendors; and by independent experts
25 under the conditions set forth in this Paragraph.
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1 12. The right of any independent expert (“Third-Party Expert”) to receive any
2 Confidential Information will be subject to the advance approval of such expert by the
3 producing party or by permission of the Court.
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5 a. Each receiving party’s Third-Party Expert shall sign a disclosure
6 agreement in the form attached hereto as **Exhibit A** (“Disclosure Agreement”). Copies
7 of the Disclosure Agreement signed by any person or entity to whom Confidential
8 Information is disclosed shall be provided to the other party promptly after execution by
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10 facsimile and overnight mail. No disclosures shall be made to a Third-Party Expert
11 until seven (7) days after the executed Disclosure Agreement is served on the other
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13 party.

14 b. Before any Confidential Information is disclosed to outside Third-Party
15 Experts, the following information must be provided in writing to the producing party
16 and received no less than seven (7) days before the intended date of disclosure to that
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18 outside Third-Party Expert: the identity of that outside Third-Party Expert, business
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20 address and/or affiliation and a current curriculum vitae of the Third-Party Expert, and,
21 if not contained in the Third-Party Expert’s curriculum vitae, a brief description,
22 including education, present and past employment and general areas of expertise of the
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24 Third-Party Expert. If the producing party objects to disclosure of Confidential
25 Information to an outside Third-Party Expert, the producing party shall within seven (7)
26 days of receipt serve written objections identifying the specific basis for the objection,
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28 and particularly identifying all information to which disclosure is objected. Failure to

1 object within seven (7) days shall authorize the disclosure of Confidential Information
2 to the Third-Party Expert. As to any objections, the parties shall attempt in good faith
3 to promptly resolve any objections informally. If the objections cannot be resolved, the
4 party seeking to prevent disclosure of the Confidential Information to the expert shall
5 move within seven (7) days for an Order of the Court preventing the disclosure. The
6 burden of proving that the designation is proper shall be upon the producing party. If
7 no such motion is made within seven (7) days, disclosure to the Third-Party Expert
8 shall be permitted. In the event that objections are made and not resolved informally
9 and a motion is filed, disclosure of Confidential Information to the Third-Party Expert
10 shall not be made except by Order of the Court.
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14 c. Any disclosure agreement executed by any person affiliated with a party
15 shall be provided to any other party who, based upon a good faith belief that there has
16 been a violation of this order, requests a copy.
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18 d. No party shall attempt to depose any Third-Party Expert until such time as
19 the Third-Party Expert is designated by the party engaging the Third-Party Expert as a
20 testifying expert. Notwithstanding the preceding sentence, any party may depose a
21 Third-Party Expert as a fact witness provided that the party seeking such deposition has
22 a good faith, demonstrable basis independent of the Disclosure Agreement or the
23 information provided under subparagraph (a) above that such person possesses facts
24 relevant to this action, or facts likely to lead to the discovery of admissible evidence;
25 however, such deposition, if it precedes the designation of such person by the engaging
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1 party as a testifying expert, shall not include any questions regarding the scope or
2 subject matter of the engagement. In addition, if the engaging party chooses not to
3 designate the Third-Party Expert as a testifying expert, the non-engaging party shall be
4 barred from seeking discovery or trial testimony as to the scope or subject matter of the
5 engagement.
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7 13. Information designated "Confidential" must be viewed only by:

8 a. Counsel of the receiving party;

9 b. Third-Party Experts (pursuant to the terms of paragraph 12);

10 c. court personnel;

11 d. Professional Vendors;

12 e. any person indicated on the face of the document to be its originator, author or
13 a recipient of a copy of the document; and
14

15 f. no more than three (3) designated party executives or technical employees of
16 the receiving party who need to review the information for purposes of the case or for
17 preparation for trial; any such individuals must execute the Disclosure Agreement at
18 Exhibit A and be identified to the other party. Those individuals include those listed in
19 **Exhibit B.**
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22 14. All information which has been designated as "CONFIDENTIAL" or
23 "CONFIDENTIAL - ATTORNEYS EYES ONLY" by the producing or disclosing
24 party and any and all reproductions of that information, must be retained in the custody
25 of the Counsel for the receiving party identified in paragraph 3, except that Third-Party
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1 Experts authorized to view such information under the terms of this Order may retain
2 custody of copies such as are necessary for their participation in this litigation.

3 15. Before any Materials produced in discovery, answers to interrogatories,
4 responses to requests for admissions, deposition transcripts, or other documents which
5 are designated as Confidential Information are filed with the Court for any purpose, the
6 party seeking to file such material must seek permission of the Court to file the material
7 under seal and comply with Local Rule 141.
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10 16. At any stage of these proceedings, any party may object to a designation of
11 the Materials as Confidential Information. The party objecting to confidentiality must
12 notify, in writing, to Counsel for the designating party of the objected-to Materials and
13 the grounds for the objection. The burden of proving that the designation is proper shall
14 be upon the designating party. If the dispute is not resolved consensually between the
15 parties within seven (7) days of receipt of such a notice of objections, the objecting
16 party may move the Court for a ruling on the objection, including a statement that the
17 parties conferred on the topic and were unable to reach agreement. The Materials at
18 issue must be treated as Confidential Information, as designated by the designating
19 party, until the Court has ruled on the objection or the matter has been otherwise
20 resolved.
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25 17. All Confidential Information must be held in confidence by those
26 inspecting or receiving it and must be used only for purposes of this action. Counsel for
27 each party, and each person receiving Confidential Information must take reasonable
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1 precautions to prevent the unauthorized or inadvertent disclosure of such information. If
2 Confidential Information is disclosed to any person other than a person authorized by
3 this Order, the party responsible for the unauthorized disclosure must immediately bring
4 all pertinent facts relating to the unauthorized disclosure to the attention of the other
5 parties and, without prejudice to any rights and remedies of the other parties, make
6 every effort to prevent further disclosure by the party and by the person(s) receiving the
7 unauthorized disclosure.
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10 18. No party will be responsible to another party for disclosure of Confidential
11 Information under this Order if the information in question is not labeled or otherwise
12 identified as such in accordance with this Order.
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14 19. If a party, through inadvertence, produces any Confidential Information
15 without labeling or marking or otherwise designating it as such in accordance with this
16 Order, the designating party may give written notice to the receiving party that the
17 document or thing produced is deemed Confidential Information, and that the document
18 or thing produced should be treated as such in accordance with that designation under
19 this Order. The receiving party must treat the Materials as confidential, once the
20 designating party so notifies the receiving party. If the receiving party has disclosed the
21 Materials before receiving the designation, the receiving party must notify the
22 designating party in writing of each such disclosure. Counsel for the parties will agree
23 on a mutually acceptable manner of labeling or marking the inadvertently produced
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1 Materials as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY -
2 SUBJECT TO PROTECTIVE ORDER."

3 20. Nothing within this order will prejudice the right of any party to object to
4 the production of any discovery material on the grounds that the material is protected as
5 privileged or as attorney work product.
6

7 21. No individual (including Counsel, attorneys, agents, paralegals, support
8 staff, and any Third-Party Expert) who receives material designated as
9 "CONFIDENTIAL —ATTORNEYS EYES ONLY" under the terms of this Order that
10 is not publicly known and that relates to the subject matter of a pending patent
11 application or undisclosed invention or photoluminescent method, system, or apparatus,
12 in whole or in part (including without limitation any exit sign or emergency signage
13 products or methods of manufacture), shall prosecute any patent application or
14 participate in the prosecution of any patent application (including but not limited to any
15 division, continuation, continuation-in-part, reissue, reexamination, renewal, extension,
16 or any foreign counterpart) on behalf of the receiving party in the field of
17 photoluminescent signage and pigments including methods of manufacture or
18 production of those products, for any application during this litigation or for any
19 application claiming a priority date earlier than one (1) year after the final conclusion of
20 this litigation, including appeals; provided that nothing in this paragraph shall operate to
21 preclude any such person from fulfilling and/or assisting in the fulfillment of any prior-
22 art disclosure obligations to the United States Patent and Trademark Office ("USPTO")
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1 that may arise as a consequence of knowledge obtained during the course of this
2 litigation.

3 22. This Order will be without prejudice to the right of any party to oppose
4 production of any information for lack of relevance or any other ground other than the
5 mere presence of Confidential Information. The existence of this Order must not be
6 used by either party as a basis for discovery that is otherwise improper under the
7 Federal Rules of Civil Procedure.
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10 23. Nothing within this order will be construed to prevent disclosure of
11 Confidential Information if such disclosure is required by law or by order of the Court.
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13 24. At the conclusion of this action, including through all appeals, each party
14 or other person subject to the terms hereof shall be under an obligation to destroy or
15 return to the producing party all Materials and documents containing CONFIDENTIAL
16 or CONFIDENTIAL– ATTORNEYS EYES ONLY and to certify to the producing
17 party such destruction or return. The written certification must be provided to the
18 producing party no later than sixty (60) days after the final conclusion of this action.
19 Such return or destruction shall not relieve said parties or persons from any of the
20 continuing obligations imposed upon them by this Order.
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23 25. After this action, Counsel for each party may retain one archive copy of all
24 documents and discovery material even if they contain or reflect another party's
25 CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION –
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1 ATTORNEYS EYES ONLY. Counsel's archive copy shall remain subject to all
2 obligations of this Order.

3 26. The restrictions and obligations set forth within this Order will not
4 apply to any information that: (a) the parties agree should not be designated
5 Confidential Information; (b) the parties agree, or the Court rules, is already public
6 knowledge; (c) the parties agree, or the Court rules, has become public knowledge other
7 than as a result of disclosure by the receiving party, its employees, or its agents in
8 violation of this Order; or (d) has come or will come into the receiving party's
9 legitimate knowledge independently of the production by the designating party. Prior
10 knowledge must be established by pre-production documentation.
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14 27. The restrictions and obligations within this Order will not be deemed to
15 prohibit discussions of any Confidential Information with anyone if that person already
16 has or obtains legitimate possession of that information.
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18 28. The parties hereto also acknowledge that regardless of the producing
19 party's diligence an inadvertent production of attorney-client privileged or attorney
20 work product Materials may occur. In accordance with Fed. R. Civ. P. 26(b)(5) and
21 Fed. R. Evid. 502, they therefore agree that if a party through inadvertence produces or
22 provides discovery that it believes is subject to a claim of attorney-client privilege or
23 attorney work product, the producing party may give written notice to the receiving
24 party that the document or thing is subject to a claim of attorney-client privilege or
25 attorney work product, the producing party may give written notice to the receiving
26 party that the document or thing is subject to a claim of attorney-client privilege or
27 attorney work product and request that the document or thing be returned to the
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1 producing party. The receiving party shall return to the producing party such document
2 or thing. Return of the document or thing shall not constitute an admission or
3 concession, or permit any inference, that the returned document or thing is, in fact,
4 properly subject to a claim of attorney-client privilege or attorney work product, nor
5 shall it foreclose any party from moving the Court pursuant to Fed. R. Civ. P. 26(b)(5)
6 and Fed. R. Evid. 502 for an Order that such document or thing has been improperly
7 designated or should be produced.
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10 29. Any third party producing Materials, documents or things or giving
11 testimony in this action pursuant to a subpoena, notice or request may designate said
12 documents, things, or testimony as CONFIDENTIAL or CONFIDENTIAL–
13 ATTORNEYS EYES ONLY. The parties agree that they will treat CONFIDENTIAL
14 or CONFIDENTIAL – ATTORNEYS EYES ONLY produced by third parties
15 according to the terms of this Order.
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18 30. Transmission by email or some other currently utilized method of
19 transmission is acceptable for all notification purposes within this Order.
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21 31. This Order is without prejudice to the right of any party, person or entity to
22 seek a modification of this Order at any time either through stipulation or Order of the
23 Court.
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25 32. The Court may modify the terms and conditions of this Order for good
26 cause, or in the interest of justice, or on its own order at any time in these proceedings.
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1 The parties prefer that the Court provide them with notice of the Court's intent to
2 modify the Order and the content of those modifications, prior to entry of such an order.
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1 Dated: October 4, 2019

2 Respectfully submitted,

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7 *Attorneys for Defendant and Counter-Plaintiff*
8 *BRIGHT PATH LIGHTING, INC., a California Corporation*
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1 **Exhibit A**

2 DISCLOSURE AGREEMENT
3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of _____ [print
5 or type full address], declare under penalty of perjury that I have read in its entirety and understand the
6 Protective Order that was issued by the United States District Court for the Eastern District of
7 California on [date] in **Case No. 1:19-cv-00535-BAM** captioned as *AfterGlow, LLC., Plaintiff v.*
8 *Bright Path Lighting, Inc., Defendant.* I agree to comply with and to be bound by all the terms of
9 this Stipulated Protective Order and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
11 disclose in any manner any information or item that is subject to this Stipulated Protective Order to
12 any person or entity except in strict compliance with the provisions of this Order.
13

14 To the extent I have been given access to Confidential Information, I will not in any way
15 disclose, discuss, or exhibit such information except to those persons whom I know (a) are authorized
16 under the Order to have access to such information, and (b) have executed a Disclosure Agreement. I
17 will return, on request, all Materials containing Confidential Information, copies thereof and notes that
18 I have prepared relating thereto, to Counsel for the party with whom I am associated.
19

20 I further agree to submit to the jurisdiction of the United States District Court for the Eastern
21 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if
22 such enforcement proceedings occur after termination of this action.
23

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____
28

Exhibit B

LIST OF DESIGNATED PARTY EXECUTIVES OR TECHNICAL PERSONELL WHO CAN
REVIEW "CONFIDENTIAL" MATERIAL FROM THE OTHER PARTY

PLAINTIFF – AFTERGLOW

1. Richard Martin

DEFENDANT – BRIGHTPATH

1. Kach Hovanessian
2. Laura Davis
3. Cindi Hernandez.

ORDER

The Court adopts the stipulated protective order submitted by the parties. The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents subject to this protective order to be filed under seal must be accompanied by a written request which complies with Local Rule 141 prior to sealing. The party making a request to file documents under seal shall be required to show good cause for documents attached to a non-dispositive motion or compelling reasons for documents attached to a dispositive motion. *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-78 (9th Cir. 2009). Within five (5) days of any approved document filed under seal, the party shall file a redacted copy of the sealed document. The redactions shall be narrowly tailored to protect only the information that is confidential or was deemed confidential. Additionally, the parties shall consider resolving any dispute arising under this protective order according to the Court's informal discovery dispute procedures.

IT IS SO ORDERED.

Dated: October 4, 2019

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE