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8 UNITED STATES DISTRICT COURT  
 9 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

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11 INSIGHT GLASS, INC., a California  
 Corporation,  
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 Plaintiff,  
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 vs.  
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 PHILIPS PRODUCTS; PHILIPS  
 15 PRODUCTS, INC.; PHILIPS INDUSTRIES;  
 PHILIPS INDUSTRIES, INC.; TOMKINS,  
 16 PLC; TOMKINS CORPORATION;  
 TOMKINS INDUSTRIES, INC.; TOMKINS  
 17 ACQUISITION CORPORATION; DOES 1-  
 100, inclusive,  
 18  
 Defendants.  
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CASE NO. 2:09-CV-03370-JAM (EFB)

**STIPULATION AND PROTECTIVE  
 ORDER REGARDING CONFIDENTIAL  
 INFORMATION**

Trial Date: April 29, 2013

**STATEMENT OF REASONS FOR PROTECTIVE ORDER**

21 The discovery, pre-trial and trial phases of this action will involve the disclosure of private  
 22 and confidential business and/or financial information of Defendant Philips Products, Inc. and  
 23 other third parties. Accordingly, the Plaintiff Insight Glass, Inc. and Defendant Philips Products,  
 24 Inc. (collectively “the parties”), hereby stipulate that certain information and documents may be  
 25 released in discovery subject to an agreement as to how such information may be handled during  
 26 the course of this litigation and disclosed to others.

27 **1. Persons Bound**

28 The persons bound by this Stipulation and Protective Order Regarding Confidential



1 Information (the “Order”) are the parties to this action, their counsel of record in this action and  
2 other persons who agree to be bound by this Order and who have executed the Certificate of Non-  
3 Disclosure which is attached as Exhibit A hereto (the “Certificate”). Further, each person to  
4 whom disclosure of Confidential Information is made agrees to be subject to the jurisdiction of  
5 this Court for the purpose of proceedings relating to performance under, compliance with, or a  
6 violation of this Order.

7           **2.       Definitions**

8           (a)       A “Designating Party” means any person or entity (including a non-party) that  
9 designates information or documents as eligible for protection under this Protective Order.

10           (b)       “Confidential Information” is information produced by or on behalf of a  
11 Designating Party which constitutes private and confidential business and/or financial information  
12 as to which the Designating Party seeks protection from disclosure.

13           (c)       A “Confidential Document” means any document that contains Confidential  
14 Information as designated by a Designating Party.

15           (d)       "Privileged Material" means any discovery material that is privileged under the  
16 attorney-client or work product privileges, or under any other applicable privilege and any copies,  
17 abstracts, summaries, or information derived from such Privileged Material, and notes or other  
18 records regarding the contents of such Privileged Material.

19           (e)       A “Qualified Person” means:

20           (1)       A party to this action and/or a party’s insurance representative;

21           (2)       Counsel of record for the parties and the legal assistants and regularly employed  
22 office staff of counsel of record for the parties;

23           (3)       Professional vendors that provide litigation support services and their employees  
24 and subcontractors, who have executed a declaration in the form attached hereto as Exhibit A;

25           (4)       Any mediators, arbitrators or other neutrals retained jointly by the parties or  
26 appointed by the Court, provided the neutral is made of this Order and either agrees to execute a  
27 declaration in the form attached hereto as Exhibit A or otherwise enters into a confidentiality  
28 agreement that is acceptable to all parties to ensure that Confidential Information is not used or

1 disseminated for any purpose other than the mediation, arbitration or alternative dispute resolution  
2 process for which the neutral is retained;

3 (5) Persons retained by a party or its attorneys of record to assist in this action, such as  
4 independent accountants, expert witnesses, statisticians, economists, consultants, or other  
5 technical experts and/or consultants, who have executed a declaration in the form attached hereto  
6 as Exhibit A, which signed acknowledgment shall be retained by such party or its attorneys.

7 **3. Confidential Information**

8 (a) Confidential Documents must be designated as confidential at the time of  
9 production by the Designating Party by stamping the first page of any document or response to  
10 discovery which that party or non-party considers in good faith to contain Confidential  
11 Information with the designation “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER.”  
12 The failure of a party or non-party to designate information as Confidential Information at the time  
13 of production shall not constitute a waiver of the confidentiality of that information. If, at any  
14 time after the production of information, a party or non-party desires to designate some or all of  
15 that information as confidential, the parties hereto will meet and confer in good faith to discuss  
16 whether the information will be made confidential and subject to this order via stipulation, or  
17 whether the party or non-party seeking to designate the information as confidential must file a  
18 motion.

19 (b) To the extent derivative materials quote, summarize or contain Confidential  
20 Information, such as interrogatory answers, responses to requests for admission, deposition  
21 transcripts and exhibits, pleadings, motions, reports of consultants, expert witness disclosures,  
22 affidavits and briefs, the derivative materials shall be marked and treated as Confidential  
23 Information in accordance with this Protective Order. Each party or person who prepares and/or  
24 disseminates derivative materials shall bear primary responsibility for either identifying and  
25 designating the Confidential Information. Any failure to follow this process for handling  
26 derivative materials containing Confidential Information shall constitute a breach of this  
27 Protective Order. To the extent feasible, derivative materials containing Confidential Information  
28 shall be bound or maintained separately from all other information.

1 (c) Confidential Information in a deposition may be designated as such on the record  
2 or at or before the time changes to the deposition transcript are due to be submitted to the court  
3 reporter. The court reporter shall assure that the portion of each deposition transcript containing  
4 Confidential Information shall be separately bound and shall bear the legend “Subject to  
5 Confidentiality Order Case No. 2:09-CV-03370-JAM.” If there are additional costs for preparing  
6 the separate binding, those costs shall be borne by the Designating Party.

7 **4. Protection For Confidential Information**

8 (a) Confidential Information shall be disclosed only as provided in this order and only  
9 to (i) Qualified Persons, as set forth in Paragraph 2(e); and (ii) deponents, as set forth in Paragraph  
10 4(c).

11 (b) Prior to the disclosure of Confidential Information to any Qualified Person  
12 described in Paragraphs 2(e)(3), 2(e)(4) and 2(e)(5), each person seeking to disclose Confidential  
13 Information shall present this Order to the proposed recipient and shall ensure that the proposed  
14 recipient reads this Order and that such person executes a copy of Exhibit A hereto, certifying that  
15 such person has read this Order and agrees to be bound by its terms and the terms of Exhibit A.  
16 Before Confidential Information may be disclosed to any person described in Paragraph 2(e)(3),  
17 2(e)(4) and 2(e)(5) the disclosing party shall take reasonable steps to ensure that the person  
18 receiving the Confidential Information will abide by the terms of this Order.

19 (c) Counsel may, during a deposition in this case and on the record of such deposition,  
20 show document(s) designated as Confidential Information to deponents: (i) if the deponent  
21 appears on the face of the document as an author or recipient of the document; or, (ii) if the  
22 deponent has knowledge of or is reasonably believed to have knowledge of or information relating  
23 to the document. Any disclosure or consent to disclosure during a deposition pursuant to this  
24 Paragraph 4(c) shall not be deemed a waiver of confidentiality as to the document at issue.

25 (d) Disclosure of Confidential Information shall be made only to persons identified in  
26 Paragraphs 2(e) and 4(c) and only in the manner specified in this Order and only as necessary for  
27 the purposes of this action. Only so many copies of documents embodying Confidential  
28 Information as are necessary for use in this action shall be made.

1 (e) Filing of Confidential Documents with the Court. ~~Confidential Documents filed~~  
2 ~~with the Court in connection with discovery motions or proceedings shall be filed under seal, in an~~  
3 ~~envelope bearing the legend “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER,” and~~  
4 ~~shall remain sealed while in the office of the clerk so long as they retain their status as~~  
5 ~~Confidential Documents.~~ Any party seeking to file Confidential Documents in connection with  
6 discovery motions or proceedings shall comply with the sealing provisions set forth in Eastern  
7 District of California Local Rule 141. A party intending to introduce Confidential Information to  
8 be used at trial or in proceedings other than discovery motions or proceedings must give the  
9 Designating Party reasonable written notice (at least 24 hours) of the intent to file the documents  
10 and an opportunity to meet and confer in good faith with the Designating Party so that the  
11 Designating Party Can bring a motion for an order sealing the records.

12 (f) Use of Confidential Documents or Information at Trial. Nothing in this Protective  
13 Order shall prevent or limit the ability of a party from making use of Confidential Documents or  
14 Information at trial. The Designating Party may, however, move the Court for an order that  
15 evidence be received under conditions that prevent unnecessary disclosure. In such cases, the  
16 Court will then determine whether the document(s) or information should continue to be treated as  
17 Confidential and, if so, the scope of the protection, if any, that may be afforded to such  
18 information at trial.

19 (g) Each and every recipient of any Confidential Information shall maintain the same  
20 in a secure and safe area, and the recipient shall exercise the same standard of due and proper care  
21 with respect to the storage, custody, use and dissemination of all such Confidential Information as  
22 is exercised by a reasonably prudent person in like circumstances.

23 **5. Other Provisions**

24 (a) This Order shall not preclude the parties from exercising any rights or raising any  
25 objections otherwise available to them, including the right to contest the categorization of a  
26 document marked as Confidential or Privileged Material. Any party who does not believe a  
27 document marked as Confidential or Privileged Material should be so considered, may apply to  
28 the Court by a properly noticed motion for a determination of the propriety of categorizing the

1 document as Confidential or Privileged Material, subject only to the limitation that until the Court  
2 rules on the motion, the document will continue to be treated as Confidential or Privileged  
3 Material and will be subject to the conditions set out in this Stipulation. Further, any party may  
4 apply to the Court for modifications or amendment to this order.

5 (b) Confidential Information shall be used solely for the purpose of prosecuting or  
6 defending this action (i.e., United States District Court Case No. 2:09-CV-03370-JAM). Upon  
7 termination of this action, the persons subject to this Order agree to return all Confidential  
8 Information and copies of Confidential Information produced by the producing parties. Further,  
9 the parties agree that at the conclusion of this action, they will serve on any party producing  
10 Confidential Information, copies of the executed Certificates of Non-Disclosure (Exhibit A)  
11 prepared by persons who received Confidential Information pursuant to Paragraph 4(b).

12 (c) The obligations of persons subject to this Order survive the termination of this  
13 lawsuit.

14 (d) Violation by any person of any term of this Order shall be punishable as a contempt  
15 of court.

16 (e) Pre-Motion Conference. Before making any motion related to the provisions of  
17 this Protective Order, counsel contemplating such a motion shall confer in good faith with  
18 opposing counsel in an effort to resolve the subject of the motion on a stipulated basis, subject to  
19 Court approval as may be necessary. In the event of any dispute the parties shall proceed with all  
20 due haste to have the matter decided expeditiously.

21 (f) This Order may only be modified by further Order of the Court.

22 (g) Nothing contained in this Protective Order, and no action taken pursuant to it, shall  
23 prejudice the right of any party to contest the alleged relevancy, admissibility or discoverability of  
24 any evidence, or its use at trial or in any other proceeding in this action. Any remedies or  
25 penalties for violating any provision of this Protective Order shall be cumulative in nature, and  
26 nothing in this Protective Order shall be deemed to restrict or prevent any person or government  
27 agency from pursuing other relief or penalties.

28 (h) After termination of this action, the Court shall retain jurisdiction to issue any

1 further orders to enforce the Protective Order and preserve the confidentiality of all Confidential  
2 Information. Termination of the proceedings herein shall not relieve any person from the  
3 obligations of this Protective Order, unless the Court orders otherwise.

4 (i) Producing Party may freely disclose the Confidential Information in any manner it  
5 chooses without relieving the obligations imposed by this Protective Order upon others.

6 (j) This Protective Order may be executed in counterparts and as executed, shall  
7 constitute one Protective Order binding on all the parties hereto, even if all the parties are not  
8 signatories to the original or the same counterparts. A facsimile or scanned signature shall be as  
9 valid as an original signature.

10 IT IS SO STIPULATED.

11 DATED: June 6 2012

LEWIS BRISBOIS BISGAARD & SMITH LLP

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By:

/s/ Heidi Adams

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Heidi Adams

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Attorneys for Defendant

PHILIPS PRODUCTS, INC.

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DATED: June 6 2012

MCCARTHY & MCCARTHY LLP

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By:

/s/ Jan Fredrick Trudeau

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Jan Fredrick Trudeau

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Attorneys for Plaintiff INSIGHT GLASS, INC.

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**ORDER**

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IT IS SO ORDERED.<sup>1</sup>

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DATED: June 8, 2012.



EDMUND F. BRENNAN

UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> In light of the parties' stipulation, the motion to approve this stipulated protective order, Dckt. No. 24, is denied as unnecessary and the July 11, 2012 hearing thereon is vacated.

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