

1 Disclosure and discovery in this action are likely to involve sensitive
2 financial or business information or proprietary information that has not been
3 disseminated to the public, is not readily discoverable by competitors, has been
4 the subject of reasonable efforts by the respective parties to maintain its secrecy,
5 and for which special protection from public disclosure and from use for any
6 purpose other than prosecuting this litigation is warranted. The parties therefore
7 agree to and petition the Court to enter this Stipulated Protective Order. The
8 parties acknowledge that this Order does not confer blanket protection on all
9 disclosures or responses to discovery and that its protection extends only to the
10 limited information that is entitled to confidential treatment.

11 1. “Documents” means documents, portions of documents, answers to
12 interrogatories, responses to requests for admission, depositions and other oral
13 testimony, transcripts, affidavits, expert reports, legal briefs or memoranda, and
14 information derived therefrom, and all material within the meaning of Federal
15 Rule of Civil Procedure 34(a) and Federal Rules of Evidence 1001, but shall be
16 limited to material produced or exchanged in this litigation.

17 2. The term “CONFIDENTIAL INFORMATION” means Documents that
18 any party in good faith believes contain confidential research, development or
19 commercial information subject to protection under Federal Rule of Civil
20 Procedure 26(c).

21 3. The term “ATTORNEYS’ EYES ONLY INFORMATION” means
22 Documents that any party in good faith believes contain “trade secrets” as
23 defined by the Uniform Trade Secrets Act or other sensitive proprietary
24 information subject to protection under Federal Rule of Civil Procedure 26(c).

25 4. The term “Trial Counsel” means the outside counsel on the signature
26 pages below and employees of or vendors providing litigation support services
27 to or of their respective law firms, who must sign an Exhibit A to this Protective
28 Order before being deemed “Trial Counsel” for purposes of this Protective

1 Order: (a) for The Wine Group, LLC, Paul W. Reidl of The Law Office of Paul
2 W. Reidl, and G. Kip Edwards ; (b) for L. and R. Wine Company Inc., and
3 Alaby, LLC, Frank J. Bonini Jr. and John F.A. Earley III of Harding, Earley,
4 Follmer & Frailey, P.C. and John W. Holcomb of Knobbe, Martens, Olson &
5 Bear, LLP. “In-house designees” are: John Sutton for The Wine Group, LLC;
6 Mark Baumann for Alaby, LLC; and Dr. Richard Carey for L. and R. Wine
7 Company, Inc. If any party seeks to substitute or add to any of the law firms
8 listed on the signature pages of this Protective Order or substitute the in-house
9 designee, it shall notify the opposing party(ies) of the intended substitution or
10 addition. Prior to disclosure of “CONFIDENTIAL INFORMATION” or
11 “ATTORNEYS’ EYES ONLY INFORMATION,” the substitute law firm(s),
12 in-house designee or additional law firm(s) shall acknowledge in writing that it
13 or he or she is familiar with and agrees to comply with all provisions of this
14 Protective Order.

15 5. The term “Independent Expert” for a party excludes (for purposes of a
16 receiving party disclosing its opponents’ material designated
17 “CONFIDENTIAL INFORMATION” or “ATTORNEYS’ EYES ONLY
18 INFORMATION”) individuals currently employed by any party to this
19 proceeding.

20 6. Each party may designate any Document it or a third party has
21 provided as “CONFIDENTIAL INFORMATION” in accordance with
22 Paragraphs 1, 2, 9, 10, 11 and 18 of this Protective Order.

23 7. Each party may designate any Document it or a third party has
24 provided as “ATTORNEYS’ EYES ONLY INFORMATION” in accordance
25 with Paragraphs 1, 3, 9, 10, 11 and 18 of this Protective Order.

26 8. The designation of a Document as “CONFIDENTIAL” or
27 “ATTORNEYS’ EYES ONLY” shall be accomplished by placing the notation
28 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” on every page of each

1 Document so designated or by bulk designation for voluminous materials. For
2 confidential discovery materials produced in a non-paper medium (e.g.,
3 videotape, audio tape, computer disks, etc.), the notation “CONFIDENTIAL” or
4 “ATTORNEYS’ EYES ONLY” shall be affixed to the outside of the medium or
5 its container to give notice of the designation.

6 9. If the producing party elects to produce Documents for inspection
7 rather than produce copies of Documents, no marking need be made by the
8 producing party in advance of the initial inspection by the receiving party’s
9 Trial Counsel or Independent Expert. For Documents specified for copying by
10 the receiving party’s Trial Counsel or Independent Expert, the producing party
11 shall mark the copies of Documents that contain protected information with the
12 appropriate confidentiality marking at the time the copies are produced to the
13 receiving party’s Trial Counsel or Independent Expert. Any information
14 obtained by the receiving party’s Trial Counsel or Independent Expert from an
15 initial review of Documents, whether in written form or not, shall be maintained
16 as “ATTORNEYS’ EYES ONLY INFORMATION” until the Documents have
17 been designated, copied and delivered to the receiving party by the producing
18 party.

19 10. When a deposition taken on behalf of any party involves a disclosure
20 of “CONFIDENTIAL INFORMATION” and/or “ATTORNEYS’ EYES ONLY
21 INFORMATION” of any party:

22 (a) The deposition or portions thereof shall be designated as containing
23 “CONFIDENTIAL INFORMATION” and/or “ATTORNEYS’ EYES ONLY
24 INFORMATION” subject to the provisions of this Protective Order at the time
25 the deposition is taken whenever possible; however, any party shall have 20
26 days after receipt of the deposition transcript in which to designate in writing to
27 the other party(ies) those portions of the transcript the party in good faith
28 believes contain “CONFIDENTIAL INFORMATION” and/or “ATTORNEYS’

1 EYES ONLY INFORMATION,” and the right to make this designation shall be
2 waived unless made within the 20 day period, subject to the provisions of
3 Paragraph 14 of this Protective Order;

4 (b) The original of any deposition transcript that contains
5 “CONFIDENTIAL INFORMATION” and/or “ATTORNEYS’ EYES ONLY
6 INFORMATION” shall be designated by the Court Reporter with the applicable
7 legend, and shall be sealed, identified as being subject to this Protective Order
8 and not opened except by order of the Court or agreement of the parties. The
9 entirety of any original videotape that contains “CONFIDENTIAL
10 INFORMATION” and/or “ATTORNEYS’ EYES ONLY INFORMATION”
11 shall be treated in the same manner.

12 11. Subject to Paragraphs 14 and 23 of this Protective Order, Documents
13 designated as “CONFIDENTIAL INFORMATION” may be disclosed only to
14 Trial Counsel, In-house designees, Independent Experts retained for this
15 litigation, and employees who do not have competitive decision-making
16 responsibilities. Any person other than Trial Counsel (who by signing this
17 Protective Order agree to be bound by its terms) to whom “CONFIDENTIAL
18 INFORMATION” may be disclosed shall read this Protective Order in advance
19 of any disclosure and agree in writing to be bound by its terms in the form
20 attached as Exhibit A. “CONFIDENTIAL INFORMATION” shall not be used
21 for any purpose other than as is set forth in Paragraph 23 of this Protective
22 Order until that designation is removed either by agreement of Trial Counsel or
23 by order of the Court.

24 12. Subject to Paragraphs 14 and 23 of this Protective Order, Documents
25 designated as “ATTORNEYS’ EYES ONLY INFORMATION” may be
26 disclosed only to Trial Counsel and Independent Experts retained for this
27 litigation. Any person other than Trial Counsel (who by signing this Protective
28 Order agree to be bound by its terms) to whom “ATTORNEYS’ EYES

1 ONLY INFORMATION” may be disclosed shall read this Protective Order in
2 advance of any disclosure and agree in writing to be bound by its terms in the
3 form attached hereto as Exhibit A. “ATTORNEYS’ EYES ONLY
4 INFORMATION” shall not be used for any purpose other than set forth in
5 Paragraph 23 of this Protective Order until that designation is removed either by
6 agreement of Trial Counsel or by order of the Court. Regardless of whether
7 designated “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”, (i) the in-
8 house designees identified in Paragraph 4 shall be permitted to receive
9 information as to the amount of sales, dates of sales, and state in which sales
10 took place, and (ii) customer names and distributor names, and their respective
11 addresses, shall not be made available to the in-house designees.

12
13 12(a). Trial Counsel shall retain all signed Exhibit A agreements and at
14 the request of any other Trial Counsel at the conclusion of this action, including
15 the final termination of any appeals, shall (a) certify that all persons to whom
16 “CONFIDENTIAL INFORMATION” or “ATTORNEYS’ EYES ONLY
17 INFORMATION” has been made available have signed an Exhibit A agreement
18 and (b) make the Exhibit A agreements available for inspection by the
19 requesting Trial Counsel, who agrees to maintain as confidential the identities
20 the persons signing such Exhibit A agreements unless Trial Counsel believes it
21 is necessary to disclose the identity of any signatory to an Exhibit A agreement
22 in order to enforce the provisions of this Protective Order.

23 13. Nothing in this Protective Order shall bar or restrict any attorney from
24 rendering legal advice to the attorney’s party-client with respect to this action,
25 and in the course thereof, relying on an examination of “CONFIDENTIAL
26 INFORMATION” and/or “ATTORNEYS’ EYES ONLY INFORMATION”;
27 provided, however, that in rendering legal advice and in communicating with
28 the party-client, the attorney shall not disclose any “CONFIDENTIAL

1 INFORMATION” or “ATTORNEYS’ EYES ONLY INFORMATION” to
2 anyone not authorized to receive that information pursuant to this Protective
3 Order.

4 14. Any Document designated as “CONFIDENTIAL INFORMATION”
5 or “ATTORNEYS’ EYES ONLY INFORMATION” may be shown to any
6 person indicated on the face of the Document to be its originator, author, or
7 recipient.

8 15. Any party that submits to the Court any document designated
9 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” or any document
10 containing information from discovery materials bearing that designation shall
11 file the document under seal in accordance with the Eastern District of
12 California Civil Local Rule 39-141.

13 16. Nothing in this Protective Order, or the taking of any action in
14 accordance with the provisions of this Protective Order, or the failure to object
15 thereto, shall be construed as a waiver or admission of any claim or defense of
16 this action. The failure to designate a Document as “CONFIDENTIAL
17 INFORMATION” or “ATTORNEY’S EYES ONLY INFORMATION” in
18 accordance with this Order and the failure to object to a designation at a given
19 time shall not preclude the filing of a motion at a later date, for good cause
20 shown, seeking to impose such designation or challenging the propriety thereof.
21 The entry of this Protective Order shall not be construed as a waiver of any right
22 to object to the furnishing of Documents in response to discovery or to object to
23 a requested inspection of Documents, and, except as expressly provided, shall
24 not relieve any party of the obligation of producing Documents in discovery.
25 This Protective Order shall not limit what the producing party may do with its
26 own Documents or information.

27 17. If anyone violates or threatens to violate the terms of this Protective
28 Order, the aggrieved party may apply to the Court for injunctive relief to

1 prevent a violation of this Protective Order. The parties agree that there is no
2 adequate legal remedy for a violation or threatened violation of this Protective
3 Order. The parties and any other person subject to the terms of this Protective
4 Order further agree that the Court shall retain jurisdiction to enforce this
5 Protective Order. Any person who moves to enforce this Protective Order and
6 prevails shall be entitled to the costs and reasonable attorneys' fees incurred in
7 doing so.

8 18. If any party disagrees at any stage of these proceedings with the
9 designation of any Document as "CONFIDENTIAL INFORMATION" and/or
10 "ATTORNEYS' EYES ONLY INFORMATION," the parties shall try first to
11 resolve their dispute in good faith. If the dispute cannot be resolved, the party
12 objecting to such designation shall seek appropriate relief from the Court. Until
13 such time as the issue is resolved by the Court, any Document in issue shall be
14 treated according to its designation as "CONFIDENTIAL INFORMATION" or
15 "ATTORNEYS' EYES ONLY INFORMATION." The party seeking to
16 maintain the Document's confidentiality bears the burden of demonstrating that
17 it is entitled to protection under Federal Rule of Civil Procedure 26(c).

18 19. Upon final judgment, including after any appeals, or a dismissal of
19 this action, all Documents and copies that have been designated as
20 "CONFIDENTIAL INFORMATION" and/or "ATTORNEYS' EYES ONLY
21 INFORMATION" shall be returned to the respective party by which they were
22 produced, or shredded and disposed of no later than 30 days after the entry of
23 final judgment or dismissal. If Documents are shredded, the shredding party
24 shall certify in writing to the producing party that the Documents have been
25 shredded and disposed of.

26 20. The termination of this action shall not relieve any person to whom
27 "CONFIDENTIAL INFORMATION" and/or "ATTORNEYS' EYES ONLY
28

1 INFORMATION” has been disclosed from the obligation of maintaining the
2 confidentiality of information protected by this Protective Order.

3 21. The parties may by written stipulation provide for exceptions to this
4 Protective Order and any party may seek an order of the Court modifying or
5 interpreting this Protective Order.

6 22. Nothing in this Protective Order shall preclude any party from seeking
7 additional protection with respect to the confidentiality or relief from this
8 Protective Order regarding Documents designated as “CONFIDENTIAL
9 INFORMATION” and/or “ATTORNEYS’ EYES ONLY INFORMATION.”

10 23. “CONFIDENTIAL INFORMATION” and “ATTORNEYS’ EYES
11 ONLY INFORMATION” subject to this Protective Order shall be used by the
12 party to which it is produced solely for purposes of this litigation. Each person
13 to whom “CONFIDENTIAL INFORMATION” and/or “ATTORNEYS’ EYES
14 ONLY INFORMATION” is disclosed is hereby enjoined from using that
15 information for any other purpose or for any other case, proceeding, or dispute.
16 Further, no person receiving or reviewing “CONFIDENTIAL
17 INFORMATION” and/or “ATTORNEYS’ EYES ONLY INFORMATION”
18 shall disclose it or its contents to any person other than as provided in this
19 Protective Order. Nothing in this Protective Order shall be deemed to restrict a
20 party’s ability to use its own Documents, or Documents obtained outside this
21 litigation, for any purpose.

22 24. Subject to the rules of evidence, a Document designated
23 “CONFIDENTIAL INFORMATION” and/or “ATTORNEYS’ EYES ONLY
24 INFORMATION” may be offered in evidence at any hearing or trial of this case
25 upon at least one day’s written notice (provided by email or next day delivery
26 service) of the intention to do so or, if that is not possible, on shorter notice as
27 the circumstances permit. Any party may move the Court orally or in writing for
28 an order that the evidence be received in camera at the hearing or under other

1 conditions to prevent disclosure. The Court then will determine whether the
2 proffered evidence should be treated as confidential and, if so, what protections
3 shall be afforded to any such Document at the hearing.

4 25. If any party or other person authorized under this Protective Order to
5 receive Documents designated as “CONFIDENTIAL INFORMATION” and/or
6 “ATTORNEYS’ EYES ONLY INFORMATION” receives a subpoena from a
7 nonparty to this Protective Order seeking production or other disclosure of that
8 information, that party or person shall refuse to produce any such Documents
9 and shall immediately give written notice (by e-mail and next day delivery
10 service) to counsel for the party who produced those Documents identifying the
11 Documents requested and enclosing a copy of the subpoena. If the party that
12 produced the Documents objects to disclosure, that party shall communicate its
13 objection in writing to the party that propounded the subpoena and file an
14 appropriate motion with the Court within five days of the date it received notice
15 of the subpoena. If such a motion is filed, the party who received the subpoena
16 shall not produce the Documents in issue until the matter is decided by the
17 Court. Absent a timely objection and the filing of a timely and appropriate
18 motion, the party who receives the subpoena may comply in full with its terms.

19 26. In the event of any inadvertent disclosure of any information
20 protected by a privilege or as work product, the party making such inadvertent
21 disclosure, immediately after learning of such disclosure, shall notify (by e-mail
22 and next day delivery service) the party to whom the disclosure was made; the
23 party to whom the inadvertent disclosure was made shall then promptly return
24 such information and all copies. If any party receives any Document from
25 another party that on its face is subject to the attorney-client privilege, attorney
26 work product doctrine or other privilege, that party shall promptly return the
27 Document and all copies to the party that produced the Document.

28

1 27. This Protective Order may be executed in counterparts and by
2 facsimile or "pdf" file, with all counterpart and facsimile signatures deemed to
3 be one document.

4 SO STIPULATED:

5 Agreed to this 26th day of May 2011.

6 HARDING, EARLEY, FOLLMER & FRAILEY, PC

7
8 Dated: May 26, 2011

By: /s/ Frank J. Bonini, Jr.
John F.A. Earley III, Admitted *Pro Hac Vice*
Frank J. Bonini, Jr., Admitted *Pro Hac Vice*

9
10 KNOBBE, MARTENS, OLSON & BEAR, LLP

11 Dated: May 26, 2011

By: /s/ John W. Holcomb
John W. Holcomb (Bar No. 172121)

12 *Attorneys for Defendant/Counterclaimant L. AND R.*
13 *WINE COMPANY, INC and Defendant ALABY, LLC*

14 LAW OFFICE OF PAUL W. REIDL

15 Dated: May 26, 2011

By: /s/ Paul W. Reidl
Paul W. Reidl

16
17 Dated: May 26, 2011

By: /s/ G. Kip Edwards
G. Kip Edwards

18 *Attorneys for Plaintiff/Counterdefendant*
19 *THE WINE GROUP, INC.*

20
21 **IT IS SO ORDERED.**

22 Date: June 1, 2011

23
24
25 
26 MORRISON C. ENGLAND, JR.
27 UNITED STATES DISTRICT JUDGE
28

EXHIBIT A

1
2 The undersigned (a) has been provided with and read the Stipulation and
3 Protective Order Governing Confidentiality in The Wine Group, LLC v. L. and
4 R. Wine Company, Inc. and Alaby, LLC, Case No. 2:10-cv-02204-MCE-KJN, in
5 the United States District Court for the Eastern District of California, entered on
6 _____, (b) fully understands and agrees to be bound by the terms of
7 the Protective Order, (c) will use any "CONFIDENTIAL INFORMATION" and
8 "ATTORNEYS' EYES ONLY INFORMATION" provided in this case
9 consistent with the terms of the Protective Order, (d) will not disclose or
10 otherwise disseminate that information in any manner inconsistent with the terms
11 of the Protective Order, (e) understands that violation of the terms of the
12 Protective Order may result in being held in contempt of Court and subject to
13 sanctions, (f) agrees to the jurisdiction of the Court to enforce the terms of the
14 Protective Order and (g) understands that the obligation to continue to obey the
15 terms of the Protective Order will continue following the termination of the
16 litigation.

17
18 I declare under penalty of perjury that I have read and understand and
19 agree to these terms.

20
21 Signature: _____

22
23 Print Name: _____

24
25 Date: _____