

1 GALEN T. SHIMODA (State Bar No. 226752)

attorney@shimodalaw.com

2 ERIKA R. C. SEMBRANO (State Bar No. 306635)

esembrano@shimodalaw.com

3 SHIMODA LAW CORP.

9401 East Stockton Blvd., Suite 200

4 Elk Grove, CA 95624

5 Tel: (916) 525-0716; Fax: (916) 760-3733

6 Attorneys for Plaintiff JAY SWANSON

on behalf of himself and similarly situated employees

7 MALCOLM A. HEINICKE (State Bar No. 194174)

malcolm.heinicke@mto.com

8 ROSEMARIE T. RING (State Bar No. 220769)

rosemarie.ring@mto.com

9 MUNGER, TOLLES & OLSON LLP

560 Mission Street, Twenty-Seventh Floor

10 San Francisco, CA 94105-2907

11 Tel: (415) 512-4000; Fax: (415) 512-4077

12 ELIZABETH R. AYRAL (State Bar No. 294694)

elizabeth.ayral@mto.com

13 MUNGER, TOLLES & OLSON LLP

350 South Grand Avenue, Fiftieth Floor

14 Los Angeles, California 90071-3426

15 Tel: (213) 683-9100; Fax: (213) 687-3702

16 Attorneys for Defendant, BEN BRIDGE-JEWELER, INC.

17 UNITED STATES DISTRICT COURT

18 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

19 JAY SWANSON, as an individual and on
20 behalf of all similarly situated employees,

21 Plaintiff,

22 vs.

23 BEN BRIDGE-JEWELER, INC., a
24 Washington Corporation; and DOES 1 to 100,
25 inclusive,

26 Defendants.

Case No. 2:17-cv-00039-MCE-CKD

STIPULATED PROTECTIVE ORDER

1 Plaintiff Jay Swanson (“Plaintiff”) and Defendant Ben Bridge-Jeweler, Inc. (“Defendant”)
2 (individually, each a “Party” and collectively, the “Parties”), anticipate that documents, testimony, or
3 information containing or reflecting confidential, proprietary, and/or commercially sensitive
4 information are likely to be disclosed or produced during the course of discovery in this case.
5 Accordingly, the Parties hereby stipulate to the following Protective Order.

6 **1. PURPOSE AND LIMITATIONS**

7 A Receiving Party may use Protected Material, as defined below, that is disclosed or
8 produced by another Party or by a non-party in connection with this case only for prosecuting,
9 defending, or attempting to settle this litigation *Jay Swanson v. Ben Bridge-Jeweler, Inc.* Such
10 Protected Material may be disclosed only to the categories of persons and under the conditions
11 described in this Protective Order.

12 The parties acknowledge that this Order does not confer blanket protections on all
13 disclosures or responses to discovery and that the protection it affords from public disclosure and
14 use extends only to the limited information or items that are entitled to confidential treatment
15 under the applicable legal principles. Similarly, nothing in this Protective Order shall bar the
16 discovery of information, testimony, or documents that are otherwise independently discoverable
17 under the Federal Rules of Civil Procedure simply because they were also disclosed in the context
18 of discussions and exchange of information contemplated by this Protective Order. The Parties
19 further acknowledge, as set forth in Section 12.3, below, that this Protective Order does not entitle
20 them to file confidential information under seal; Rule 141 of the Local Rules for the Eastern
21 District of California sets forth the procedures that must be followed and the standards that will be
22 applied when a Party seeks permission from the court to file material under seal.

23 **2. DEFINITIONS**

24 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
25 information or items under this Order.
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1 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
2 generated, stored or maintained) and tangible things that contain or reflect confidential, non-
3 public, proprietary, commercially sensitive and/or private information of an individual or entity.

4 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
5 well as their support staff).

6 2.4 Designating Party: a Party or Non-Party that designates information or items that it
7 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

8 2.5 Disclosure or Discovery Material: all items or information, regardless of the
9 medium or manner in which it is generated, stored, or maintained (including, among other things,
10 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
11 responses to discovery in this matter.

12 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
13 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
14 consultant in this action.

15 2.7 House Counsel: attorneys who are employees of a party to this action. House
16 Counsel does not include Outside Counsel of Record or any other outside counsel.

17 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
18 entity not named as a Party to this action.

19 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
20 action but are retained to represent or advise a party to this action and have appeared in this action
21 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

22 2.10 Party: any party to this action, including all of its officers, directors, employees,
23 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

24 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
25 Material in this action.

26 2.12 Professional Vendors: persons or entities that provide litigation support services
27 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
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1 organizing, storing, or retrieving data in any form or medium) and their employees and
2 subcontractors.

3 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
4 “CONFIDENTIAL.”

5 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
6 Producing Party.

7 **3. SCOPE**

8 The protections conferred by this Stipulation and Order cover not only Protected Material
9 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
10 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
11 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
12 However, the protections conferred by this Stipulation and Order do not cover the following
13 information: (a) any information that is in the public domain at the time of disclosure to a
14 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
15 result of publication not involving a violation of this Order, including becoming part of the public
16 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
17 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
18 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
19 use of Protected Material at trial shall be governed by a separate agreement or order.

20 **4. DURATION**

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

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1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
3 or Non-Party that designates information or items for protection under this Order must take care to
4 limit any such designation to specific material that qualifies under the appropriate standards. The
5 Designating Party must designate for protection only those parts of material, documents, items, or
6 oral or written communications that qualify – so that other portions of the material, documents,
7 items, or communications for which protection is not warranted are not swept unjustifiably within
8 the ambit of this Order.

9 a. Mass, indiscriminate, or routinized designations are prohibited. Designations that
10 are shown to be clearly unjustified or that have been made for an improper purpose
11 (e.g., to unnecessarily encumber or hinder the case development process or to
12 impose unnecessary expenses and burdens on other parties) expose the Designating
13 Party to sanctions.

14 b. If it comes to a Designating Party’s attention that information or items that it
15 designated for protection do not qualify for protection, that Designating Party must
16 promptly notify all other Parties that it is withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
18 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
19 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
20 designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

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

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

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

14 (c) for information produced in some form other than documentary and for any
15 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
16 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”
17 If only a portion or portions of the information or item warrant protection, the Producing Party, to
18 the extent practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
20 designate qualified information or items does not, standing alone, waive the Designating Party’s
21 right to secure protection under this Order for such material. Upon timely correction of a
22 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
23 in accordance with the provisions of this Order.

24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
26 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
27 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
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1 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
2 challenge a confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
5 process by providing written notice of each designation it is challenging and describing the basis
6 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
7 notice must recite that the challenge to confidentiality is being made in accordance with this
8 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
9 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
10 forms of communication are not sufficient) within 14 days of the date of service of notice. In
11 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
12 designation was not proper and must give the Designating Party an opportunity to review the
13 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
14 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of
15 the challenge process only if it has engaged in this meet and confer process first or establishes that
16 the Designating Party is unwilling to participate in the meet and confer process in a timely
17 manner.

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
19 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
20 Rule 230 of the Local Rules for the Eastern District of California (and in compliance with Local
21 Rule 141, if applicable) within 21 days of the initial notice of challenge or within 14 days of the
22 parties agreeing that the meet and confer process will not resolve their dispute, whichever is
23 earlier. Each such motion must be accompanied by a competent declaration affirming that the
24 movant has complied with the meet and confer requirements imposed in the preceding paragraph.
25 Failure by the Designating Party to make such a motion including the required declaration within
26 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for
27 each challenged designation. In addition, the Challenging Party may file a motion challenging a
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1 confidentiality designation at any time if there is good cause for doing so, including a challenge to
2 the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
3 this provision must be accompanied by a competent declaration affirming that the movant has
4 complied with the meet and confer requirements imposed by the preceding paragraph.

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

12 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

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

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

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
22 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
23 information or item designated "CONFIDENTIAL" only to:

24 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
25 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
26 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
27 Bound" that is attached hereto as Exhibit A;

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

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

7 (d) the court and its personnel;

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

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

17 (g) 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 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
20 **OTHER LITIGATION**

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

24 (a) promptly notify in writing the Designating Party. Such notification shall
25 include a copy of the subpoena or court order;

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

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

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

12 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
13 THIS LITIGATION**

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

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

22 (1) promptly notify in writing the Requesting Party and the Non-Party that
23 some or all of the information requested is subject to a confidentiality agreement with a Non-
24 Party;

25 (2) promptly provide the Non-Party with a copy of the Stipulated
26 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
27 description of the information requested; and
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1 (3) make the information requested available for inspection by the Non-
2 Party.

3 (c) If the Non-Party fails to object or seek a protective order from this court within
4 14 days of receiving the notice and accompanying information, the Receiving Party may produce
5 the Non-Party's confidential information responsive to the discovery request. If the Non-Party
6 timely seeks a protective order, the Receiving Party shall not produce any information in its
7 possession or control that is subject to the confidentiality agreement with the Non-Party before a
8 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
9 burden and expense of seeking protection in this court of its Protected Material.

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13 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
15 Material to any person or in any circumstance not authorized under this Stipulated Protective
16 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
17 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
18 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
19 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
20 Agreement to Be Bound" that is attached hereto as Exhibit A.

21 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
22 PROTECTED MATERIAL**

23 When a Producing Party gives notice to Receiving Parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
26 provision is not intended to modify whatever procedure may be established in an e-discovery order
27 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
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1 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
2 communication or information covered by the attorney-client privilege or work product protection,
3 the parties may incorporate their agreement in the stipulated protective order submitted to the
4 court.

5 **12. MISCELLANEOUS**

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
7 seek its modification by the court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
9 Order no Party waives any right it otherwise would have to object to disclosing or producing any
10 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
11 Party waives any right to object on any ground to use in evidence of any of the material covered
12 by this Protective Order.

13 12.3 Filing Protected Material. Without written permission from the Designating Party
14 or a court order secured after appropriate notice to all interested persons, a Party may not file in
15 the public record in this action any Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Rule 141 of the Local Rules for the Eastern District of
17 California. Protected Material may only be filed under seal pursuant to a court order authorizing
18 the sealing of the specific Protected Material at issue.

19 **13. FINAL DISPOSITION**

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

8 This Order shall have an effective date of August 21, 2017.

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11 **STIPULATED AND AGREED TO:**

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13 DATED: August 21, 2017

SHIMODA LAW CORP

14

By: /s/ Galen T. Shimoda
GALEN T. SHIMODA
Attorneys for Plaintiff JAY SWANSON,
on behalf of himself and similarly situated employees

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18 DATED: August 21, 2017

MUNGER, TOLLES & OLSON LLP

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By: /s/ Malcolm A. Heinicke
MALCOLM A. HEINICKE
Attorneys for Defendant,
BEN BRIDGE-JEWELER, INC.

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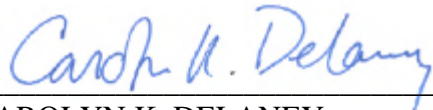
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SO ORDERED.

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Dated: August 24, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I have read
in its entirety and understand the Stipulated Protective Order that was issued by the Eastern
District of California on _____, 2017 in the case of *Jay Swanson v. Ben Bridge-
Jeweler, Inc.*, Case No. 2:17-cv-00039-MCE-CKD. I agree to comply with and to be bound by all
the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the provisions
of this Order.

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

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as my agent for
service of process in connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date: _____
City and State where sworn and signed: _____
Printed Name: _____

Signature: _____