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12 [Additional Attorneys Listed on Signature Page]

13 UNITED STATES DISTRICT COURT
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

16 ROBERT JACOBSEN, an individual,)
 17)
 Plaintiff,)
 18)
 v.)
 19)
 MATTHEW KATZER, an individual, and)
 20 KAMIND ASSOCIATES, INC., an Oregon)
 21 corporation dba KAM Industries,)
 22 Defendants.)

No. C06-1905-JSW-JL

STIPULATED PROTECTIVE ORDER

Courtroom: F, 15th Floor
 Judge: Hon. James Larson

23
 24 1. PURPOSES AND LIMITATIONS

25 Disclosure and discovery activity in this action are likely to involve production of
 26 confidential, proprietary, or private information for which special protection from public disclosure
 27 and from use for any purpose other than prosecuting this litigation would be warranted.
 28

1 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
2 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
3 all disclosures or responses to discovery and that the protection it affords extends only to the
4 limited information or items that are entitled under the applicable legal principles to treatment as
5 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated
6 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule
7 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied
8 when a party seeks permission from the court to file material under seal.

9
10 2. DEFINITIONS

11 2.1 Party: any party to this action, including all of its officers, directors, and employees.

12 2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or
13 manner generated, stored, or maintained (including, among other things, testimony, transcripts, or
14 tangible things) that are produced or generated in disclosures or responses to discovery in this
15 matter.

16 2.3 “Confidential” Information or Items: information (regardless of how generated, stored
17 or maintained) or tangible things that qualify for protection under standards developed under
18 F.R.Civ.P. 26(c).

19 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely
20 sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would
21 create a substantial risk of serious injury that could not be avoided by less restrictive means.

22 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
23 Producing Party.

24 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in
25 this action.

26 2.7. Designating Party: a Party or non-party that designates information or items that it
27 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential —
28 Attorneys’ Eyes Only.”

1 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
2 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

3 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to
4 represent or advise a Party in this action.

5 2.10 House Counsel: attorneys who are employees of a Party.

6 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
7 support staffs).

8 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the
9 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
10 consultant in this action and who is not a competitor of a party or a past or a current employee of a
11 Party or of a competitor of a Party and who, at the time of retention, is not anticipated to become a
12 competitor of a party or an employee of a Party or an employee of a competitor of a Party. This
13 definition includes a professional jury or trial consultant retained in connection with this litigation.
14 Experts designed to view Protected Material shall be limited to ten (10) per party.

15 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
16 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,
17 retrieving data in any form or medium; etc.) and their employees and subcontractors.

18
19 3. SCOPE

20 The protections conferred by this Stipulation and Order cover not only Protected Material
21 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
22 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
23 parties or counsel to or in court or in other settings that might reveal Protected Material.

24
25 4. DURATION

26 Even after the termination of this litigation, the confidentiality obligations imposed by this
27 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
28 otherwise directs.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
3 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. A
5 Designating Party must take care to designate for protection only those parts of material,
6 documents, items, or oral or written communications that qualify – so that other portions of the
7 material, documents, items, or communications for which protection is not warranted are not swept
8 unjustifiably within the ambit of this Order.

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

13 If it comes to a Party’s or a non-party’s attention that information or items that it designated
14 for protection do not qualify for protection at all, or do not qualify for the level of protection
15 initially asserted, that Party or non-party must promptly notify all other parties that it is
16 withdrawing the mistaken designation.

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

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (apart from transcripts of depositions or other
23 pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
24 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top of each page that
25 contains protected material. If only a portion or portions of the material on a page qualifies for
26 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
27 appropriate markings in the margins) and must specify, for each portion, the level of protection
28 being asserted (either CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

1 ONLY”).

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

15 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party
16 or non-party offering or sponsoring the testimony identify on the record, before the close of the
17 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions
18 of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
19 When it is impractical to identify separately each portion of testimony that is entitled to protection,
20 and when it appears that substantial portions of the testimony may qualify for protection, the Party
21 or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the
22 deposition or proceeding is concluded) a right to have up to 20 days to identify the specific
23 portions of the testimony as to which protection is sought and to specify the level of protection
24 being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
25 ONLY”). Only those portions of the testimony that are appropriately designated for protection
26 within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

27 Transcript pages containing Protected Material must be separately bound by the court
28 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or nonparty offering
2 or sponsoring the witness or presenting the testimony.

3 (c) for information produced in some form other than documentary, and for any other
4 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
5 or containers in which the information or item is stored the legend “CONFIDENTIAL” or
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information
7 or item warrant protection, the Producing Party, to the extent practicable, shall identify the
8 protected portions, specifying whether they qualify as “Confidential” or as “Highly Confidential –
9 Attorneys’ Eyes Only.”

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
11 qualified information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”
12 does not, standing alone, waive the Designating Party’s right to secure protection under this Order
13 for such material. If material is appropriately designated as “Confidential” or “Highly Confidential
14 – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party, on timely
15 notification of the designation, must make reasonable efforts to assure that the material is treated in
16 accordance with the provisions of this Order.

17
18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
20 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
21 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
22 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
23 after the original designation is disclosed.

24 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s
25 confidentiality designation must do so in good faith and must begin the process by conferring
26 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel
27 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief
28 that the confidentiality designation was not proper and must give the Designating Party an

1 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
2 designation is offered, to explain the basis for the chosen designation. A challenging Party may
3 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
4 process first.

5 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
6 designation after considering the justification offered by the Designating Party may file and serve a
7 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
8 identifies the challenged material and sets forth in detail the basis for the challenge. Each such
9 motion must be accompanied by a competent declaration that affirms that the movant has complied
10 with the meet and confer requirements imposed in the preceding paragraph and that sets forth with
11 specificity the justification for the confidentiality designation that was given by the Designating
12 Party in the meet and confer dialogue.

13 The burden of persuasion in any such challenge proceeding shall be on the Designating
14 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
15 question the level of protection to which it is entitled under the Producing Party's designation.

16
17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
19 produced by another Party or by a non-party in connection with this case only for prosecuting,
20 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
21 the categories of persons and under the conditions described in this Order. When the litigation has
22 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
23 DISPOSITION).

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

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
27 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
28 information or item designated CONFIDENTIAL only to:

1 (a) the Receiving Party’s Outside Counsel of record in this action, as well as employees and
2 those working under the direction of said Counsel to whom it is reasonably necessary to disclose
3 the information for this litigation and who have signed the “Agreement to Be Bound by Protective
4 Order” that is attached hereto as Exhibit A;

5 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
6 to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement
7 to Be Bound by Protective Order” (Exhibit A);

8 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
9 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
10 Protective Order” (Exhibit A);

11 (d) the Court and its personnel, including any mediator or arbitrator approved by the
12 parties;

13 (e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably
14 necessary for this litigation and who have signed the “Agreement to Be Bound by Protective
15 Order” (Exhibit A);

16 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
17 necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A).
18 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
19 must be separately bound by the court reporter and may not be disclosed to anyone except as
20 permitted under this Stipulated Protective Order.

21 (g) the author of the document or the original source of the information.

22
23 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
24 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
25 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

27 (a) the Receiving Party’s Outside Counsel of record in this action, as well as employees or
28 those working under the direction of said Counsel to whom it is reasonably necessary to disclose

1 the information for this litigation and who have signed the “Agreement to Be Bound by Protective
2 Order” that is attached hereto as Exhibit A;

3 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for
4 this litigation, and (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit
5 A);

6 (c) the Court and its personnel;

7 (d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably
8 necessary for this litigation and who have signed the “Agreement to Be Bound by Protective
9 Order” (Exhibit A); and

10 (e) the author of the document or the original source of the information.

11
12 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

14 (a) Unless otherwise ordered by the court or agreed in writing by the Designating Party, a
15 Party that seeks to disclose to an “Expert” (as defined in this Order) any information or item that
16 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” first must
17 make a written request to the Designating Party that (1) identifies the specific HIGHLY
18 CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the Expert,
19 (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
20 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
21 identifies each person or entity from whom the Expert has received compensation for work in his
22 or her areas of expertise or to whom the expert has provided professional services at any time
23 during the preceding five years, and (6) identifies (by name and number of the case, filing date, and
24 location of court) any litigation in connection with which the Expert has provided any professional
25 services during the preceding five years.

26 (b) A Party that makes a request and provides the information specified in the preceding
27 paragraph may disclose the subject Protected Material to the identified Expert unless, within seven
28 court days of delivering the request, the Party receives a written objection from the Designating

1 Party. Any such objection must set forth in detail the grounds on which it is based.

2 (c) A Party that receives a timely written objection must meet and confer with the
3 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
4 agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert may
5 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
6 applicable) seeking permission from the court to do so. Any such motion must describe the
7 circumstances with specificity, set forth in detail the reasons for which the disclosure to the Expert
8 is reasonably necessary, assess the risk of harm that the disclosure would entail and suggest any
9 additional means that might be used to reduce that risk. In addition, any such motion must be
10 accompanied by a competent declaration in which the movant describes the parties' efforts to
11 resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions)
12 and sets forth the reasons advanced by the Designating Party for its refusal to approve the
13 disclosure. In any such proceeding the Party opposing disclosure to the Expert shall bear the
14 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
15 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

16
17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
18 LITIGATION.

19 If a Receiving Party is served with a subpoena or an order issued in other litigation that
20 would compel disclosure of any information or items designated in this action as
21 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
22 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
23 and in no event more than three court days after receiving the subpoena or order. Such notification
24 must include a copy of the subpoena or court order.

25 The Receiving Party also must immediately inform in writing the Party who caused the
26 subpoena or order to issue in the other litigation that some or all the material covered by the
27 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
28 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that

1 caused the subpoena or order to issue.

2 The purpose of imposing these duties is to alert the interested parties to the existence of this
3 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
4 confidentiality interests in the court from which the subpoena or order issued. The Designating
5 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
6 material – and nothing in these provisions should be construed as authorizing or encouraging a
7 Receiving Party in this action to disobey a lawful directive from another court.

8
9 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

17
18 10. FILING PROTECTED MATERIAL. Without written permission from the Designating
19 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
20 in the public record in this action any Protected Material. A Party that seeks to file under seal any
21 Protected Material must comply with Civil Local Rule 79-5.

22
23 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the Producing
24 Party, within sixty days after the final termination of this action, each Receiving Party must return
25 all Protected Material to the Producing Party. As used in this subdivision, “all Protected Material”
26 includes all copies, abstracts, compilations, summaries or any other form of reproducing or
27 capturing any of the Protected Material. With permission in writing from the Designating Party, the
28 Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether

1 the Protected Material is returned or destroyed, the Receiving Party must submit a written
2 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
3 by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material
4 that was returned or destroyed and that affirms that the Receiving Party has not retained any
5 copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the
6 Protected Material.

7 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
8 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
9 even if such materials contain Protected Material. Any such archival copies that contain or
10 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
11 (DURATION), above.

12
13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
15 its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
17 no Party waives any right it otherwise would have to object to disclosing or producing any
18 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
19 Party waives any right to object on any ground to use in evidence of any of the material covered by
20 this Protective Order.

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: May 28, 2009

/s/

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DATED: 5/27/09



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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: May 29, 2009



James Larson

United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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 United States District Court for the Northern District of California on _____, 2009 in the case of Jacobsen v. Katzer, No. C06-1905-JSW-JL. 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 the Northern 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 California 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: _____

[printed name]

Signature: _____

[signature]