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 7 MONSTER CABLE PRODUCTS, INC.

8  
 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11	MONSTER CABLE PRODUCTS, INC., a	)	Case No: 3:08-cv-04792-MMC
12	California Corporation,	)	
13	Plaintiff,	)	<b>STIPULATED PROTECTIVE ORDER</b>
14	vs.	)	
15	AVALANCHE CORPORATION, a Florida	)	
16	corporation,	)	
17	Defendant.	)	
18	_____		)
19	AVALANCHE CORPORATION, a Florida	)	
20	corporation,	)	
21	Counter-Claimant,	)	
22	vs.	)	
23	MONSTER CABLE PRODUCTS, INC., a	)	
24	California Corporation,	)	
25	Counter-Defendant.	)	
26	_____		)
27		)	
28		)	

1           1.     PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation would be  
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
6 following Stipulated Protective Order. The parties acknowledge that this Order does not confer  
7 blanket protections on all disclosures or responses to discovery and that the protection it affords  
8 extends only to the limited information or items that are entitled under the applicable legal  
9 principles to treatment as confidential. The parties further acknowledge, as set forth in Section  
10 10, below, that this Stipulated Protective Order creates no entitlement to file confidential  
11 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed  
12 and reflects the standards that will be applied when a party seeks permission from the court to  
13 file material under seal.  
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16           2.     DEFINITIONS

17           2.1     Party: any party to this action, including all of its officers, directors,  
18 employees, consultants, retained experts, and outside counsel (and their support staff).

19           2.2     Disclosure or Discovery Material: all items or information, regardless of  
20 the medium or manner generated, stored, or maintained (including, among other things,  
21 testimony, transcripts, or tangible things) that are produced or generated in disclosures or  
22 responses to discovery in this matter.  
23

24           2.3     “Confidential” Information or Items: information (regardless of how  
25 generated, stored or maintained) or tangible things that qualify for protection under standards  
26 developed under F.R.Civ.P. 26(c).  
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1           2.4    “Highly Confidential – Attorneys’ Eyes Only” Information or Items:  
2 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or  
3 nonparty would create a substantial risk of serious injury that could not be avoided by less  
4 restrictive means.

5           2.5    Receiving Party: a Party that receives Disclosure or Discovery Material  
6 from a Producing Party.

7           2.6    Producing Party: a Party or non-party that produces Disclosure or  
8 Discovery Material in this action.

9           2.7.    Designating Party: a Party or non-party that designates information or  
10 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly  
11 Confidential — Attorneys’ Eyes Only.”  
12

13           2.8    Protected Material: any Disclosure or Discovery Material that is  
14 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”  
15

16           2.9.    Outside Counsel: attorneys who are not employees of a Party but who are  
17 retained to represent or advise a Party in this action.

18           2.10   House Counsel: attorneys who are employees of a Party.

19           2.11   Counsel (without qualifier): Outside Counsel and House Counsel (as well  
20 as their support staffs).  
21

22           2.12   Expert: a person with specialized knowledge or experience in a matter  
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
24 witness or as a consultant in this action and who is not a past or a current employee of a Party or  
25 of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an  
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1 employee of a Party or a competitor of a Party's. This definition includes a professional jury or  
2 trial consultant retained in connection with this litigation.

3           2.13 Professional Vendors: persons or entities that provide litigation support  
4 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
5 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
6 subcontractors.  
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8           3.     SCOPE

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

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

18           5.     DESIGNATING PROTECTED MATERIAL

19           5.1    Exercise of Restraint and Care in Designating Material for Protection.

20 Each Party or non-party that designates information or items for protection under this Order must  
21 take care to limit any such designation to specific material that qualifies under the appropriate  
22 standards. A Designating Party must take care to designate for protection only those parts of  
23 material, documents, items, or oral or written communications that qualify – so that other  
24 portions of the material, documents, items, or communications for which protection is not  
25 warranted are not swept unjustifiably within the ambit of this Order.  
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1 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
2 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to  
3 unnecessarily encumber or retard the case development process, or to impose unnecessary  
4 expenses and burdens on other parties), expose the Designating Party to sanctions.

5  
6 If it comes to a Party's or a non-party's attention that information or items that it  
7 designated for protection do not qualify for protection at all, or do not qualify for the level of  
8 protection initially asserted, that Party or non-party must promptly notify all other parties that it  
9 is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
11 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or  
12 ordered, material that qualifies for protection under this Order must be clearly so designated  
13 before the material is disclosed or produced.

14  
15 Designation in conformity with this Order requires:

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

24  
25 A Party or non-party that makes original documents or materials available  
26 for inspection need not designate them for protection until after the inspecting Party has  
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1 indicated which material it would like copied and produced. During the inspection and before the  
2 designation, all of the material made available for inspection shall be deemed “HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the  
4 documents it wants copied and produced, the Producing Party must determine which documents,  
5 or portions thereof, qualify for protection under this Order, then, before producing the specified  
6 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or  
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that  
8 contains Protected Material. If only a portion or portions of the material on a page qualifies for  
9 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by  
10 making appropriate markings in the margins) and must specify, for each portion, the level of  
11 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
12 ATTORNEYS’ EYES ONLY”).  
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15 (b) for testimony given in deposition or in other pretrial or trial  
16 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the  
17 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,  
18 and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –  
19 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of  
20 testimony that is entitled to protection, and when it appears that substantial portions of the  
21 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the  
22 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to  
23 have up to 20 days to identify the specific portions of the testimony as to which protection is  
24 sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY  
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that  
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1 are appropriately designated for protection within the 20 days shall be covered by the provisions  
2 of this Stipulated Protective Order.

3 Transcript pages containing Protected Material must be separately bound  
4 by the court reporter, who must affix to the top of each such page the legend  
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as  
6 instructed by the Party or nonparty offering or sponsoring the witness or presenting the  
7 testimony.  
8

9 (c) for information produced in some form other than documentary, and  
10 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of  
11 the container or containers in which the information or item is stored the legend  
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only  
13 portions of the information or item warrant protection, the Producing Party, to the extent  
14 practicable, shall identify the protected portions, specifying whether they qualify as  
15 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”  
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17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
18 failure to designate qualified information or items as “Confidential” or “Highly Confidential –  
19 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure  
20 protection under this Order for such material. If material is appropriately designated as  
21 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially  
22 produced, the Receiving Party, on timely notification of the designation, must make reasonable  
23 efforts to assure that the material is treated in accordance with the provisions of this Order.  
24

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

5  
6 6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
7 Designating Party's confidentiality designation must do so in good faith and must begin the  
8 process by conferring directly (in voice to voice dialogue; other forms of communication are not  
9 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must  
10 explain the basis for its belief that the confidentiality designation was not proper and must give  
11 the Designating Party an opportunity to review the designated material, to reconsider the  
12 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
13 designation. A challenging Party may proceed to the next stage of the challenge process only if it  
14 has engaged in this meet and confer process first.

15  
16 6.3 Judicial Intervention. A Party that elects to press a challenge to a  
17 confidentiality designation after considering the justification offered by the Designating Party  
18 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule  
19 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the  
20 challenge. Each such motion must be accompanied by a competent declaration that affirms that  
21 the movant has complied with the meet and confer requirements imposed in the preceding  
22 paragraph and that sets forth with specificity the justification for the confidentiality designation  
23 that was given by the Designating Party in the meet and confer dialogue.

24  
25 The burden of persuasion in any such challenge proceeding shall be on the  
26 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the  
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1 material in question the level of protection to which it is entitled under the Producing Party's  
2 designation.

3           7.       ACCESS TO AND USE OF PROTECTED MATERIAL

4                   7.1       Basic Principles. A Receiving Party may use Protected Material that is  
5 disclosed or produced by another Party or by a non-party in connection with this case only for  
6 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
7 disclosed only to the categories of persons and under the conditions described in this Order.

8  
9 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
10 section 11, below (FINAL DISPOSITION).

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

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15                   7.2       Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
16 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
17 disclose any information or item designated CONFIDENTIAL only to:

18                               (a) the Receiving Party's Outside Counsel of record in this action, as well  
19 as employees of said Counsel to whom it is reasonably necessary to disclose the information for  
20 this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is  
21 attached hereto as Exhibit A;

22                               (b) the officers, directors, and employees (including House Counsel) of the  
23 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
24 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);  
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1 (c) experts (as defined in this Order) of the Receiving Party to whom  
2 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be  
3 Bound by Protective Order” (Exhibit A);

4 (d) the Court and its personnel;

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

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

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

14 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
15 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by  
16 the Designating Party, a Receiving Party may disclose any information or item designated  
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

1 (b) House Counsel of a Receiving Party to whom disclosure is reasonably  
2 necessary for this litigation, and who has signed the “Agreement to Be Bound by Protective  
3 Order” (Exhibit A);

4 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably  
5 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective  
6 Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have  
7 been followed;

8 (d) the Court and its personnel;

9 (e) court reporters, their staffs, and professional vendors to whom disclosure is  
10 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by  
11 Protective Order” (Exhibit A); and  
12

13 (f) the author of the document or the original source of the information.  
14

15 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –  
16 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

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

4 (b) A Party that makes a request and provides the information specified in  
5 the preceding paragraph may disclose the subject Protected Material to the identified Expert  
6 unless, within seven court days of delivering the request, the Party receives a written objection  
7 from the Designating Party. Any such objection must set forth in detail the grounds on which it is  
8 based.  
9

10 (c) A Party that receives a timely written objection must meet and confer  
11 with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
12 agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert  
13 may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule  
14 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe  
15 the circumstances with specificity, set forth in detail the reasons for which the disclosure to the  
16 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and  
17 suggest any additional means that might be used to reduce that risk. In addition, any such motion  
18 must be accompanied by a competent declaration in which the movant describes the parties'  
19 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
20 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to  
21 approve the disclosure.  
22

23 In any such proceeding the Party opposing disclosure to the Expert shall  
24 bear the burden of proving that the risk of harm that the disclosure would entail (under the  
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1 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to  
2 its Expert.

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
4 OTHER LITIGATION.

5 If a Receiving Party is served with a subpoena or an order issued in other  
6 litigation that would compel disclosure of any information or items designated in this action as  
7 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the  
8 Receiving Party must so notify the Designating Party, in writing (by fax, if possible)  
9 immediately and in no event more than three court days after receiving the subpoena or order.  
10 Such notification must include a copy of the subpoena or court order.  
11

12 The Receiving Party also must immediately inform in writing the Party who  
13 caused the subpoena or order to issue in the other litigation that some or all the material covered  
14 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party  
15 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action  
16 that caused the subpoena or order to issue.  
17

18 The purpose of imposing these duties is to alert the interested parties to the  
19 existence of this Protective Order and to afford the Designating Party in this case an opportunity  
20 to try to protect its confidentiality interests in the court from which the subpoena or order issued.  
21 The Designating Party shall bear the burdens and the expenses of seeking protection in that court  
22 of its confidential material – and nothing in these provisions should be construed as authorizing  
23 or encouraging a Receiving Party in this action to disobey a lawful directive from another court.  
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25 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL  
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1           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
2 Protected Material to any person or in any circumstance not authorized under this Stipulated  
3 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating  
4 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected  
5 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all  
6 the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment  
7 and Agreement to Be Bound” that is attached hereto as Exhibit A.  
8

9           10.   FILING PROTECTED MATERIAL. Without written permission from the  
10 Designating Party or a court order secured after appropriate notice to all interested persons, a  
11 Party may not file in the public record in this action any Protected Material. A Party that seeks to  
12 file under seal any Protected Material must comply with Civil Local Rule 79-5.  
13

14           11.   FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the  
15 Producing Party, within sixty days after the final termination of this action, each Receiving Party  
16 must return all Protected Material to the Producing Party. As used in this subdivision, “all  
17 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of  
18 reproducing or capturing any of the Protected Material. With permission in writing from the  
19 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead  
20 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must  
21 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
22 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all  
23 the Protected Material that was returned or destroyed and that affirms that the Receiving Party  
24 has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or  
25 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
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1 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,  
2 correspondence or attorney work product, even if such materials contain Protected Material. Any  
3 such archival copies that contain or constitute Protected Material remain subject to this  
4 Protective Order as set forth in Section 4 (DURATION), above.

5  
6 12. MISCELLANEOUS

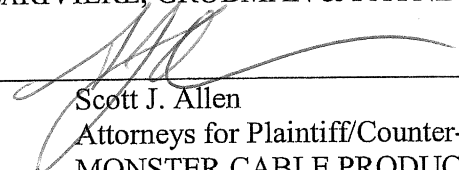
7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
8 seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
10 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
11 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
12 no Party waives any right to object on any ground to use in evidence of any of the material  
13 covered by this Protective Order.  
14

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

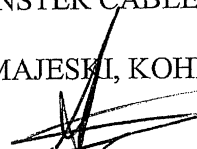
16 LARIVIERE, GRUBMAN & PAYNE LLP

17 DATED: 3/27/09

  
\_\_\_\_\_  
Scott J. Allen  
Attorneys for Plaintiff/Counter-defendant  
MONSTER CABLE PRODUCTS, INC.

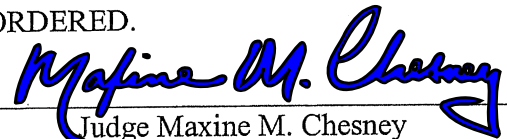
20 ROPERS, MAJESKI, KOHN & BENTLEY

21 DATED: March 24, 2009

  
\_\_\_\_\_  
Todd A. Roberts  
Timothy L. Skelton  
Attorneys for Defendant/Counterclaimant  
AVALANCHE CORPORATION

24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25 DATED: March 31, 2009

  
\_\_\_\_\_  
Judge Maxine M. Chesney  
United States District Judge