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17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**

19 MEE YONG LIM, individually and on
 20 behalf of others similarly situated,

CASE NO. CV-12-00601 JW

21 Plaintiffs,

CLASS ACTION

22 v.

[Hon. James Ware]

23 ZEP INC.,

**[PROPOSED] STIPULATED
 PROTECTIVE ORDER**

24 Defendant.

1 To expedite the flow of discovery material, facilitate the prompt resolution of
2 disputes over the confidentiality of information, adequately protect material entitled to
3 be kept confidential, and ensure that protection is afforded only to material so entitled,
4 Plaintiff Mee Yong Lim (“Plaintiff”) and Defendant Zep Inc. (“Defendant”)
5 (collectively referred to herein as “the Parties”) by and through their respective
6 counsel, hereby stipulate as follows:

7 **1. PURPOSES AND LIMITATIONS**

8 Disclosure and discovery activity in this action are likely to involve production
9 of confidential, proprietary, or private information for which special protection from
10 public disclosure and from use for any purpose other than prosecuting this litigation
11 may be warranted. Accordingly, the parties hereby stipulate to and petition the court
12 to enter the following Stipulated Protective Order. The parties acknowledge that this
13 Order does not confer blanket protections on all disclosures or responses to discovery
14 and that the protection it affords from public disclosure and use extends only to the
15 limited information or items that are entitled to confidential treatment under the
16 applicable legal principles. The Parties further acknowledge, as set forth in Section 12,
17 below, that this Stipulated Protective Order does not entitle them to file confidential
18 information under seal; Civil Local Rule 79-5 and General Order 62 set forth the
19 procedures that must be followed and the standards that will be applied when a party
20 seeks permission from the Court to file material under seal.

21 **2. DEFINITIONS**

22 2.1 Party. Any party to this action, including, for corporate entities, all
23 officers, directors, employees, consultants, retained experts, and in-house counsel (and
24 their support staff).

25 2.2 Disclosure or Discovery Material. All items or information, regardless of
26 the medium or manner generated, stored or maintained (including but not limited to
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1 testimony, transcripts, electronically stored information, and tangible things) that are
2 produced or generated in disclosures or responses to discovery in this matter.

3 2.3 CONFIDENTIAL Information or Items. Information (regardless of how
4 generated, stored or maintained) and/or tangible things:

5 (a) that is a “trade secret” as that term is defined in 18 U.S.C. § 1839 and/or
6 Cal. Civ. Code §3426.1;

7 (b) Confidential and proprietary business and/or financial information;

8 (c) Information alleged in good faith by a Party to be subject to protection
9 under the Federal Rules of Evidence, applicable California law and/or Federal law,
10 and/or information that is confidential, of commercial value, and falling into one or
11 more of the following categories:

12 (i) Financial details regarding Defendant’s internal business
13 operations which have never been publicly disclosed, including, but not limited to
14 accounting records, pricing records, and sales records, analyses, and reports;

15 (ii) Sensitive proprietary competitive business information of
16 Defendant’s, which has never been publicly disclosed, including, but not limited to
17 customer information, product ingredient information, product research and
18 development information, market research and analyses, marketing and advertising
19 information and confidential third-party agreements; and

20 (iii) Information that is protected against disclosure by a written
21 confidential information agreement between a third party and Plaintiff or Defendant.

22 2.4 HIGHLY CONFIDENTIAL – Attorneys’ Eyes Only Information.

23 Information (regardless of how generated, stored or maintained) and/or tangible things
24 that are extremely sensitive “CONFIDENTIAL Information or Items” disclosure of
25 which to another Party or non-party would create a substantial risk of serious injury
26 that could not be avoided by less restrictive means.

1 2.5 Designating Party. A Party or non-party that designates information or
2 items produced in any Disclosure or Discovery Material as “CONFIDENTIAL” or
3 “HIGHLY CONFIDENTIAL – Attorneys’ Eyes Only.”

4 2.6 Receiving Party. A Party that receives any Disclosure or Discovery
5 Material from a Designating Party.

6 2.7 Protected Material. Any Disclosure or Discovery Material that is
7 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – Attorneys’ Eyes
8 Only.”

9 2.8 Outside Counsel. Attorneys who are not employees of a Party but who
10 are retained to represent or advise a Party in this action (and their support staff).

11 2.9 In-House Counsel. Attorneys who are employees of a Party (and their
12 support staff).

13 2.10 Counsel (without qualifier): Outside Counsel and In-House Counsel (as
14 well as their support staffs).

15 2.9 Expert. A person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
17 expert witness or consultant in this action. This definition includes a professional jury
18 or trial consultant retained in connection with this litigation.

19 2.10 Professional Vendors. Persons or entities that provide litigation support
20 services (e.g., photocopying; videotaping; translating; preparing exhibits or
21 demonstrations; and/or organizing, storing, retrieving and processing data in any form
22 or medium) and their employees and subcontractors.

23 **3. SCOPE**

24 The protections conferred by this Protective Order cover not only Protected
25 Material (as defined above), but also any information copied or extracted therefrom,
26 as well as copies, excerpts, summaries, or compilations thereof, plus testimony,
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1 conversations, or presentations by parties or counsel to or in court or in other settings
2 that would reveal Protected Material.

3 **4. DURATION**

4 Even after the termination of this litigation, the confidentiality obligations
5 imposed by this Protective Order shall remain in effect until a Designating Party
6 agrees otherwise in writing or a Court order otherwise directs.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.

9 Each Party or non-party that designates information or items for protection under this
10 Protective Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. A Designating Party must designate for
12 protection only those parts of Disclosure or Discovery Material, so that other portions
13 of Disclosure or Discovery Material for which protection is not warranted are not
14 swept unjustifiably within the ambit of this Protective Order.

15 If it comes to a Designating Party's attention that Disclosure or Discovery
16 Material that that Party designated for protection does not qualify for protection at all,
17 or does not qualify for the level of protection initially asserted, that Designating Party
18 must promptly notify all other Parties that it is withdrawing the improper designation.
19 The Designating Party shall then provide within 7 days to the Receiving Party a set of
20 documents that bear the proper designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in
22 this Protective Order (see, e.g., second paragraph of section 5.2(a) below), or as
23 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
24 protection under this Protective Order must be clearly so designated before the
25 material is disclosed or produced.

26 Designation in conformity with this Protective Order requires:
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1 (a) For Disclosure or Discovery Material in documentary form (e.g., paper or
2 electronic documents, but excluding transcripts of depositions or other pretrial or trial
3 proceedings), that the Designating Party affix the legend “CONFIDENTIAL” or
4 “HIGHLY CONFIDENTIAL – Attorneys’ Eyes Only” on each page that contains
5 Protected Material. If only a portion or portions of the material on a page qualifies for
6 protection, the Designating Party also must clearly identify the protected portion(s)
7 (e.g., by making appropriate markings in the margins) and must specify for each
8 portion, the level of protection being asserted (either “CONFIDENTIAL” or
9 “HIGHLY CONFIDENTIAL – Attorneys’ Eyes Only”).

10 A Party or non-party that makes original Disclosure or Discovery Material
11 available for inspection need not designate them for protection until after the
12 inspecting Party has indicated which Disclosure or Discovery Material it seeks to have
13 copied and produced. During the inspection and before the designation, all of the
14 Disclosure or Discovery Material made available for inspection shall be deemed
15 “HIGHLY CONFIDENTIAL – Attorneys’ Eyes Only.” After the inspecting Party has
16 identified the Disclosure or Discovery Material it seeks to have copied and produced,
17 the Designating Party must determine which documents, or portions thereof, qualify
18 for protection under this Protective Order. Prior to producing the specified Disclosure
19 or Discovery Material, the Designating Party must affix the appropriate legend (either
20 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – Attorneys’ Eyes Only”) on
21 each page as set forth above.

22 (b) For Disclosure or Discovery Material in the form of testimony given in
23 deposition or in other pretrial or trial proceedings, that the Designating Party identify
24 on the record, before the close of the deposition, hearing, or other proceeding, all
25 protected testimony, and further specify any portions of the testimony that qualify as
26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – Attorneys’ Eyes Only.”
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1 Any party may also designate testimony that is entitled to protection by
2 notifying all Parties in writing within twenty (20) days of receipt of the transcript, of
3 the specific pages and lines of the transcript that should be treated as
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – Attorneys’ Eyes Only”
5 thereafter. Each Party shall attach a copy of such written notice or notices to the face
6 of the transcript and each copy thereof in its possession, custody or control.

7 (c) For Disclosure or Discovery Material produced in some form other than
8 documentary or testimony form, and for any other items, that the Designating Party
9 affix in a prominent place on the exterior of the container or containers in which the
10 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL – Attorneys’ Eyes Only.” If only a portion or portions of the
12 information or item warrant protection, the Designating Party, to the extent
13 practicable, shall identify the protected portion(s) and affix the appropriate legend
14 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – Attorneys’ Eyes
15 Only”).

16 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate
17 qualified information or items does not, standing alone, waive the Designating Party’s
18 right to secure protection under this Protective Order for such material. If any
19 Disclosure or Discovery Material is appropriately designated as “CONFIDENTIAL”
20 or “HIGHLY CONFIDENTIAL – Attorneys’ Eyes Only” after the material was
21 initially produced, the Receiving Party, on notification of the designation, must make
22 reasonable efforts to assure that the material is treated in accordance with the
23 provisions of this Protective Order. The Designating Party shall provide within 7 days
24 to the Receiving Party a new set of documents that bear the proper
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” designation that shall then
26 replace the document that bore the improper designation.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

16 6.3 Judicial Intervention. A Party that elects to press a challenge to a
17 confidentiality designation may file and serve a motion under the applicable Federal
18 and Local Rules that identifies the challenged Disclosure or Discovery Material and
19 sets forth in detail the basis for the challenge. Each such motion must be accompanied
20 by a competent declaration affirming that the movant has complied with the meet and
21 confer requirements imposed in the preceding paragraph, consistent with the
22 applicable Federal and Local Rules.

23 The burden of persuasion in any such challenge proceeding shall be on the
24 Designating Party. Until the Court rules on the challenge, all parties shall continue to
25 afford the Disclosure or Discovery Material in question the level of protection to
26 which it is designated by the Designating Party.

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

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a non-party in connection with this case
4 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
5 Material may be disclosed only to the categories of persons and under the conditions
6 described in this Protective Order. When the litigation has been terminated, a
7 Receiving Party must comply with the provisions of Section 13, below.

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

11 7.2 Disclosure of CONFIDENTIAL Information or Items. Unless otherwise
12 ordered by the Court, or permitted in writing by the Designating Party, a Receiving
13 Party may disclose any information or item designated “CONFIDENTIAL” only to
14 the following:

- 15 (a) Counsel to whom disclosure is reasonably necessary for this litigation;
- 16 (b) Experts (as defined in this Protective Order) of the Receiving Party to
17 whom disclosure is reasonably necessary for this litigation and who have signed the
18 “Agreement to Be Bound by Protective Order” (attached as Exhibit A);
- 19 (c) the Court and its personnel;
- 20 (d) Court reporters and their staff and Professional Vendors to whom
21 disclosure is reasonably necessary for this litigation who have signed the “Agreement
22 to Be Bound by Protective Order” (attached as Exhibit A);
- 23 (e) During their depositions, witnesses in the action to whom disclosure is
24 reasonably necessary and who have signed the “Acknowledgment and Agreement to
25 Be Bound” (Exhibit A). Pages of transcribed deposition testimony or exhibits to
26 depositions that contain Protected Material must be separately bound by the court

1 reporter and may not be disclosed to anyone except as permitted under this Stipulated
2 Protective Order and

3 (f) the author or custodian of the Protected Material.

4 7.3 Disclosure of “Highly Confidential – Attorneys’ Eyes Only” Information
5 or Items. Unless otherwise ordered by the Court or permitted in writing by the
6 Designating Party, a Receiving Party may disclose Discovery Material designated
7 “Highly Confidential – Attorneys’ Eyes Only” only to the following:

8 (a) Outside Counsel of record in this action, as well as its employees to
9 whom it is reasonably necessary to disclose the information for this litigation;

10 (b) In-House Counsel to whom disclosure is reasonably necessary for this
11 litigation and who sign the “Agreement to Be Bound by Protective Order” (attached as
12 Exhibit A);

13 (c) Experts (as defined in this Protective Order) of the Receiving Party to
14 whom disclosure is reasonably necessary for this litigation and who have signed the
15 “Agreement to Be Bound by Protective Order” (attached as Exhibit A);

16 (d) The Court and its personnel;

17 (e) Court reporters and their staff and Professional Vendors to whom
18 disclosure is reasonably necessary for this litigation and who have signed the
19 “Agreement to Be Bound by Protective Order” (attached as Exhibit A);

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

26 (g) The author or custodian of the Protected Material.

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 If a Receiving Party is served with a subpoena or a Court order issued in other
4 litigation that compels disclosure of any information or items designated in this action
5 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – Attorneys’ Eyes Only” the
6 Receiving Party must:

7 (a) promptly notify in writing the Designating Party, and in no event no
8 more than five (5) court days after receiving the subpoena or Court order. Such
9 notification must include a copy of the subpoena or Court order;

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

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

16 The Receiving Party served with the subpoena or Court order shall not produce
17 any information designated in this action as “CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL – Attorneys’ Eyes Only” before a determination by the court from
19 which the subpoena or order issued, unless the Party has obtained the Designating
20 Party’s permission. The Designating Party shall bear the burden and expense of
21 seeking protection in that court of its Protected Material – and nothing in these
22 provisions should be construed as authorizing or encouraging a Receiving Party in this
23 action to disobey a lawful directive from another court.

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

26 (a) The terms of this Order are applicable to information produced by a non-
27 party in this action and designated as “CONFIDENTIAL” or “HIGHLY
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1 CONFIDENTIAL – Attorneys’ Eyes Only.” Such information produced by non-
2 parties in connection with this litigation is protected by the remedies and relief
3 provided by this Protective Order. Nothing in these provisions should be construed as
4 prohibiting a non-party from seeking additional protections.

5 (b) In the event that a Party is required, by a valid discovery request, to
6 produce a non-party’s confidential information in its possession, and the Party is
7 subject to an agreement with the non-party not to produce the non-party’s confidential
8 information, then the Party shall:

9 (1) promptly notify in writing the Requesting Party and the non-party
10 that some or all of the information requested is subject to a confidentiality agreement
11 with a non-party;

12 (2) promptly provide the non-party with a copy of the Protective Order
13 in this litigation, the relevant discovery request(s), and a reasonably specific
14 description of the information requested; and

15 (3) make the information requested available for inspection by the
16 non-party.

17 (c) If the non-party fails to object or seek a protective order from this Court
18 within 14 days of receiving the notice and accompanying information, the Receiving
19 Party may produce the non-party’s confidential information responsive to the
20 discovery request. If the non-party timely seeks a protective order, the Receiving Party
21 shall not produce any information in its possession or control that is subject to the
22 confidentiality agreement with the non-party before a determination by the Court.¹
23 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
24 of seeking protection in this court of its Protected Material.

25 _____
26 ¹ The purpose of this provision is to alert the interested parties to the existence of
27 confidentiality rights of a non-party and to afford the non-party an opportunity to
28 protect its confidentiality interests in this Court.

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

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

10 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
11 **PROTECTED MATERIAL**

12 Inadvertent production of any document or information that a Party later claims
13 should not have been produced because of privilege, including but not limited to
14 attorney-client or work product privilege (“Inadvertently Produced Privileged
15 Document”), will not be deemed to waive any privilege. A Party may request the
16 return of any Inadvertently Produced Privileged Document. A request for the return
17 of an Inadvertently Produced Privileged Document shall identify the document
18 inadvertently produced and the basis for withholding such document from production.
19 Without disclosing any privileged or protected material, the basis shall provide
20 enough information to allow the Receiving Party to evaluate the claim of privilege,
21 which at a minimum includes the author(s) and recipient(s); whether any of the
22 author(s) or recipient(s) are attorneys, and, if so, identify that person(s) as counsel and
23 by name; the date of the document; and a general description of the document. If a
24 Party requests the return, pursuant to this paragraph, of any Inadvertently Produced
25 Privileged Document then in the custody of another Party, the possessing Party shall
26 within three (3) days return to the requesting Party the Inadvertently Produced
27 Privileged Document and all copies thereof and shall not make use of such documents

1 or information in this litigation or otherwise. The Party returning such material may
2 then move the Court for an order compelling production or information, but said Party
3 shall not assert as a grounds for entering such an order the fact or circumstances of the
4 inadvertent production.

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6 **12. FILING PROTECTED MATERIAL**

7 Without written permission from the Designating Party or a Court order secured
8 after appropriate notice to all interested persons, a Party may not file in the public
9 record in this action any Protected Material. A Party that seeks to file under seal any
10 Protected Material must comply with Civil Local Rule 79-5 and General Order 62.
11 Protected Material may only be filed under seal pursuant to a Court order authorizing
12 the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule
13 79-5 and General Order 62, a sealing order will issue only upon a request establishing
14 that the Protected Material at issue is privileged, protectable as a trade secret, or
15 otherwise entitled to protection under the law. If a Party's request to file Protected
16 Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is
17 denied by the Court, then a Party may file the information in the public record
18 pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the Court.

19 **13. MISCELLANEOUS**

20 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the Court in the future.

22 13.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order no Party waives any right it otherwise would have to object to
24 disclosing or producing any information or item on any ground not addressed in this
25 Protective Order. Similarly, no Party waives any right to object on any ground to use
26 in evidence of any of the material covered by this Protective Order.

1 **14. FINAL DISPOSITION**

2 Unless otherwise ordered or agreed in writing by the Designating Party, after
3 final termination of this litigation, including any appeals, if a Designating Party
4 requests in writing the return or destruction of any or all of its Protected Material to
5 the Receiving Party, within thirty (30) days of such a request, the Receiving Party
6 must submit a written certification, under penalty of perjury, to the Designating Party
7 that all Protected Material was returned or destroyed, including any copies, abstracts,
8 compilations, summaries or other forms of reproducing or capturing of the Protected
9 Material. Notwithstanding this provision, Outside Counsel may retain an archival set
10 of copies of Protected Material. Any such archival copies that contain or constitute
11 Protected Material remain subject to this Protective Order as set forth in Section 4,
12 above.

13
14 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

15
16 DATED: August 6, 2012

HUNTON & WILLIAMS LLP

17
18 By: /s/ Belynda B. Reck
19 Belynda Reck
20 Attorney for Defendant
21 ZEP INC.
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1 DATED: August 6, 2012

REESE RICHMAN LLP

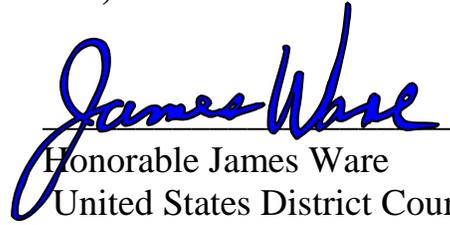
2
3 By: /s/ Michael R. Reese

4 Michael R. Reese
5 Attorney for Plaintiff Mee Yong Lim
and Proposed Class

6 *Filer attests that concurrence in the filing has been obtained from Mr. Reese.
7

8 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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10 DATED: August 7, 2012

11 
12 Honorable James Ware
13 United States District Court Chief Judge
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Exhibit A

Agreement to be Bound By Protective Order

I, _____, do solemnly swear that I am fully familiar with the terms of the Protective Order entered in Lim v. Zep Inc., N.D. Cal. Case No. 12-CV-00601 (JW), and hereby agree to comply with and be bound by the terms and conditions of the Protective Order unless and until modified by further order of the Parties or this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Protective Order.

Signature: _____

Printed Name: _____

Dated: _____