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8 **UNITED STATES DISTRICT COURT**  
 9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 BEAUTY WEAPONS, LLC, SABRINA  
 12 DENEBEIM, and VERONICA BRYAN,  
 13 Plaintiffs,  
 14 v.  
 15 JOHN GENNARO and DOES 1 TO 20,  
 16 Defendant.

CASE NO. CV12-05383 MMC

**STIPULATED PROTECTIVE ORDER  
 FOR LITIGATION INVOLVING  
 PATENTS, HIGHLY SENSITIVE  
 CONFIDENTIAL INFORMATION  
 AND/OR TRADE SECRETS**

21 1. PURPOSES AND LIMITATIONS

22 Disclosure and discovery activity in this action are likely to involve production of  
 23 confidential, proprietary, or private information for which special protection from public  
 24 disclosure and from use for any purpose other than prosecuting this litigation may be  
 25 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
 26 following Stipulated Protective Order. The parties acknowledge that this Order does not  
 27 confer blanket protections on all disclosures or responses to discovery and that the  
 28 protection it affords from public disclosure and use extends only to the limited information

1 or items that are entitled to confidential treatment under the applicable legal principles. The  
2 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated  
3 Protective Order does not entitle them to file confidential information under seal; Civil  
4 Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and  
5 the standards that will be applied when a party seeks permission from the court to file  
6 material under seal.

7 2. DEFINITIONS

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
9 information or items under this Order.

10 2.2 “CONFIDENTIAL” Information or Items: information (regardless of  
11 how it is generated, stored or maintained) or tangible things that qualify for protection  
12 under Federal Rule of Civil Procedure 26(c).

13 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
14 (as well as their support staff).

15 2.4 Designating Party: a Party or Non-Party that designates information or  
16 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

18 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
19 medium or manner in which it is generated, stored, or maintained (including, among other  
20 things, testimony, transcripts, and tangible things), that are produced or generated in  
21 disclosures or responses to discovery in this matter.

22 2.6 Expert: a person with specialized knowledge or experience in a matter  
23 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an  
24 expert witness or as a consultant in this action, (2) is not a past or current employee of a  
25 Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to  
26 become an employee of a Party or of a Party’s competitor.

27 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
28 Information or Items: extremely sensitive “Confidential Information or Items,” disclosure

1 of which to another Party or Non-Party would create a substantial risk of serious harm  
2 that could not be avoided by less restrictive means.

3 2.8 House Counsel: attorneys who are employees of a party to this action.

4 House Counsel does not include Outside Counsel of Record or any other outside counsel.

5 2.9 Non-Party: any natural person, partnership, corporation, association, or  
6 other legal entity not named as a Party to this action.

7 2.10 Outside Counsel of Record: attorneys who are not employees of a party  
8 to this action but are retained to represent or advise a party to this action and have  
9 appeared in this action on behalf of that party or are affiliated with a law firm which has  
10 appeared on behalf of that party.

11 2.11 Preexisting Outside Counsel: attorneys who are not employees of a party to  
12 this action but already have been retained to represent or advise a party to this action and  
13 are named specifically in this section: Margaret Polson and Jessica Olson of Oppedahl  
14 Patent Law Firm, LLC.

15 2.12 Party: any party to this action, including all of its officers, directors,  
16 employees, consultants, retained experts, and Outside Counsel of Record and Preexisting  
17 Outside Counsel (and their support staffs).

18 2.13 Producing Party: a Party or Non-Party that produces Disclosure or  
19 Discovery Material in this action.

20 2.14 Professional Vendors: persons or entities that provide litigation support  
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
22 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
23 their employees and subcontractors.

24 2.15 Protected Material: any Disclosure or Discovery Material that is  
25 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’  
26 EYES ONLY.”

27 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material  
28 from a Producing Party.

1 3. SCOPE

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

16 4. DURATION

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

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
26 Party or Non-Party that designates information or items for protection under this Order  
27 must take care to limit any such designation to specific material that qualifies under the  
28 appropriate standards. To the extent it is practical to do so, the Designating Party must

1 designate for protection only those parts of material, documents, items, or oral or written  
2 communications that qualify – so that other portions of the material, documents, items, or  
3 communications for which protection is not warranted are not swept unjustifiably within  
4 the ambit of this Order.

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

10 If it comes to a Designating Party’s attention that information or items that it  
11 designated for protection do not qualify for protection at all or do not qualify for the level  
12 of protection initially asserted, that Designating Party must promptly notify all other  
13 parties that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
15 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
16 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
17 must be clearly so designated before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

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

27 A Party or Non-Party that makes original documents or materials available for  
28 inspection need not designate them for protection until after the inspecting Party has

1 indicated which material it would like copied and produced. During the inspection and  
2 before the designation, all of the material made available for inspection shall be deemed  
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party  
4 has identified the documents it wants copied and produced, the Producing Party must  
5 determine which documents, or portions thereof, qualify for protection under this Order.  
6 Then, before producing the specified documents, the Producing Party must affix the  
7 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
8 ATTORNEYS’ EYES ONLY”) 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  
10 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in  
11 the margins) and must specify, for each portion, the level of protection being asserted.

12 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
13 that the Designating Party identify on the record, before the close of the deposition,  
14 hearing, or other proceeding, all protected testimony and specify the level of protection  
15 being asserted. When it is impractical to identify separately each portion of testimony that  
16 is entitled to protection and it appears that substantial portions of the testimony may  
17 qualify for protection, the Designating Party may invoke on the record (before the  
18 deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to  
19 identify the specific portions of the testimony as to which protection is sought and to  
20 specify the level of protection being asserted. Only those portions of the testimony that are  
21 appropriately designated for protection within the 21 days shall be covered by the  
22 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may  
23 specify, at the deposition or up to 21 days afterwards if that period is properly invoked,  
24 that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 Parties shall give the other parties notice if they reasonably expect a deposition,  
27 hearing or other proceeding to include Protected Material so that the other parties can  
28 ensure that only authorized individuals who have signed the “Acknowledgment and

1 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a  
2 document as an exhibit at a deposition shall not in any way affect its designation as  
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

4 Transcripts containing Protected Material shall have an obvious legend on the title  
5 page that the transcript contains Protected Material, and the title page shall be followed by  
6 a list of all pages (including line numbers as appropriate) that have been designated as  
7 Protected Material and the level of protection being asserted by the Designating Party. The  
8 Designating Party shall inform the court reporter of these requirements. Any transcript that  
9 is prepared before the expiration of a 21-day period for designation shall be treated during  
10 that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
11 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period,  
12 the transcript shall be treated only as actually designated.

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

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

## 25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
27 of confidentiality at any time. Unless a prompt challenge to a Designating Party’s  
28 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,

1 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party  
2 does not waive its right to challenge a confidentiality designation by electing not to mount  
3 a challenge promptly after the 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  
6 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
7 written notice must recite that the challenge to confidentiality is being made in accordance  
8 with this specific paragraph of the Protective Order. The parties shall attempt to resolve  
9 each challenge in good faith and must begin the process by conferring directly (in voice to  
10 voice dialogue; other forms of communication are not sufficient) within 14 days of the date  
11 of service of notice. In conferring, the Challenging Party must explain the basis for its  
12 belief that the confidentiality designation was not proper and must give the Designating  
13 Party an opportunity to review the designated material, to reconsider the circumstances,  
14 and, if no change in designation is offered, to explain the basis for the chosen designation.  
15 A Challenging Party may proceed to the next stage of the challenge process only if it has  
16 engaged in this meet and confer process first or establishes that the Designating Party is  
17 unwilling to participate in the meet and confer process in a timely 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  
20 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order  
21 62, 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  
23 is earlier. Each such motion must be accompanied by a competent declaration affirming  
24 that the movant has complied with the meet and confer requirements imposed in the  
25 preceding paragraph. Failure by the Designating Party to make such a motion including the  
26 required declaration within 21 days (or 14 days, if applicable) shall automatically waive  
27 the confidentiality designation for each challenged designation. In addition, the  
28 Challenging Party may file a motion challenging a confidentiality designation at any time



1 if there is good cause for doing so, including a challenge to the designation of a deposition  
2 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
3 accompanied by a competent declaration affirming that the movant has complied with the  
4 meet and confer requirements imposed by the preceding paragraph.

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

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

26 (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
27 as employees of said Outside Counsel of Record to whom it is reasonably necessary to  
28 disclose the information for this litigation and who have signed the “Acknowledgment and

1 Agreement to Be Bound” that is attached hereto as Exhibit A;

2 (b) the Receiving Party’s Preexisting Outside Counsel in this action, as well  
3 as employees of said Preexisting Outside Counsel to whom it is reasonably necessary to  
4 disclose the information for this litigation and who have signed the “Acknowledgment and  
5 Agreement to Be Bound” that is attached hereto as Exhibit A;

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

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

12 (e) the court and its personnel;

13 (f) court reporters and their staff, professional jury or trial consultants, and  
14 Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
15 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

22 (h) the author or recipient of a document containing the information or a  
23 custodian or other person who otherwise possessed or knew the information.

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

28 (a) the Receiving Party’s Outside Counsel of Record in this action, as well

1 as employees of said Outside Counsel of Record to whom it is reasonably necessary to  
2 disclose the information for this litigation and who have signed the “Acknowledgment and  
3 Agreement to Be Bound” that is attached hereto as Exhibit A;

4 (b) the Receiving Party’s Preexisting Outside Counsel in this action, as well  
5 as employees of said Preexisting Outside Counsel to whom it is reasonably necessary to  
6 disclose the information for this litigation and who have signed the “Acknowledgment and  
7 Agreement to Be Bound” that is attached hereto as Exhibit A;

8 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably  
9 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to  
10 Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2),  
11 below, have been followed;

12 (d) the court and its personnel;

13 (e) court reporters and their staff, professional jury or trial consultants,<sup>5</sup> and  
14 Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
15 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

16 (f) the author or recipient of a document containing the information or a  
17 custodian or other person who otherwise possessed or knew the information.

18 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated  
20 House Counsel or Experts.

21 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the  
22 Designating Party, a Party that seeks to disclose to Designated House Counsel any  
23 information or item that has been designated “HIGHLY CONFIDENTIAL –  
24 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written  
25 request to the Designating Party that (1) sets forth the full name of the Designated House  
26 Counsel and the city and state of his or her residence, and (2) describes the Designated  
27 House Counsel’s current and reasonably foreseeable future primary job duties and  
28 responsibilities in sufficient detail to determine if House Counsel is involved, or may

1 become involved, in any competitive decision-making.

2 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the  
3 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
4 information or item that has been designated “HIGHLY CONFIDENTIAL –  
5 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written  
6 request to the Designating Party that (1) identifies the general categories of “HIGHLY  
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party  
8 seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the  
9 city and state of his or her primary residence, (3) attaches a copy of the Expert’s current  
10 resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity  
11 from whom the Expert has received compensation or funding for work in his or her areas  
12 of expertise or to whom the expert has provided professional services, including in  
13 connection with a litigation, at any time during the preceding five years, and (6) identifies  
14 (by name and number of the case, filing date, and location of court) any litigation in  
15 connection with which the Expert has offered expert testimony, including through a  
16 declaration, report, or testimony at a deposition or trial, during the preceding five years.

17 (b) A Party that makes a request and provides the information specified in  
18 the preceding respective paragraphs may disclose the subject Protected Material to the  
19 identified Designated House Counsel or Expert unless, within 14 days of delivering the  
20 request, the Party receives a written objection from the Designating Party. Any such  
21 objection must set forth in detail the grounds on which it is based.

22 (c) A Party that receives a timely written objection must meet and confer  
23 with the Designating Party (through direct voice to voice dialogue) to try to resolve the  
24 matter by agreement within seven days of the written objection. If no agreement is reached,  
25 the Party seeking to make the disclosure to Designated House Counsel or the Expert may  
26 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule  
27 79-5 and General Order 62, if applicable) seeking permission from the court to do so. Any  
28 such motion must describe the circumstances with specificity, set forth in detail the reasons

1 why the disclosure to Designated House Counsel or the Expert is reasonably necessary,  
2 assess the risk of harm that the disclosure would entail, and suggest any additional means  
3 that could be used to reduce that risk. In addition, any such motion must be accompanied  
4 by a competent declaration describing the parties' efforts to resolve the matter by  
5 agreement (i.e., the extent and the content of the meet and confer discussions) and setting  
6 forth the reasons advanced by the Designating Party for its refusal to approve the  
7 disclosure.

8 In any such proceeding, the Party opposing disclosure to Designated House  
9 Counsel or the Expert shall bear the burden of proving that the risk of harm that the  
10 disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's  
11 need to disclose the Protected Material to its Designated House Counsel or Expert.

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
13 OTHER LITIGATION

14 If a Party is served with a subpoena or a court order issued in other litigation that  
15 compels disclosure of any information or items designated in this action as  
16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
17 that Party must:

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

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

24 (c) cooperate with respect to all reasonable procedures sought to be pursued  
25 by the Designating Party whose Protected Material may be affected.<sup>1</sup>

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27

28 <sup>1</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

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

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

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

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

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

24                           2.     promptly provide the Non-Party with a copy of the  
25 Stipulated Protective Order in this litigation, the relevant discovery request(s), and a  
26 reasonable specific description of the information requested; and

27                           3.     make the information requested available for inspection by  
28 the Non-Party.

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

9 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

18 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
19 PROTECTED MATERIAL

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

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
3 person to seek its modification by the court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
5 Protective Order no Party waives any right it otherwise would have to object to disclosing  
6 or producing any information or item on any ground not addressed in this Stipulated  
7 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
8 evidence of any of the material covered by this Protective Order.

9 12.3 Filing Protected Material. Without written permission from the Designating  
10 Party or a court order secured after appropriate notice to all interested persons, a Party may  
11 not file in the public record in this action any Protected Material. A Party that seeks to file  
12 under seal any Protected Material must comply with Civil Local Rule 79-5 and General  
13 Order 62. Protected Material may only be filed under seal pursuant to a court order  
14 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local  
15 Rule 79-5 and General Order 62, a sealing order will issue only upon a request establishing  
16 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise  
17 entitled to protection under the law. If a Receiving Party's request to file Protected Material  
18 under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the  
19 court, then the Receiving Party may file the Protected Material in the public record  
20 pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

21 13. FINAL DISPOSITION

22 Within 60 days after the final disposition of this action, as defined in paragraph 4,  
23 each Receiving Party must return all Protected Material to the Producing Party or destroy  
24 such material. As used in this subdivision, "all Protected Material" includes all copies,  
25 abstracts, compilations, summaries, and any other format reproducing or capturing any of  
26 the Protected Material. Whether the Protected Material is returned or destroyed, the  
27 Receiving Party must submit a written certification to the Producing Party (and, if not the  
28 same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies



1 (by category, where appropriate) all the Protected Material that was returned or destroyed  
2 and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
3 compilations, summaries or any other format reproducing or capturing any of the Protected  
4 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of  
5 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
6 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
7 consultant and expert work product, even if such materials contain Protected Material. Any  
8 such archival copies that contain or constitute Protected Material remain subject to this  
9 Protective Order as set forth in Section 4 (DURATION).

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11

12 Dated: January 25, 2013

DAVIS & LEONARD, LLP

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/s/ Stephen L. Davis

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Stephen L. Davis  
Attorneys for Defendant  
John Gennaro

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18 Dated: January 25, 2013

LOSCH & EHRLICH

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/s/ Joseph Ehrlich

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Joseph Ehrlich  
Mark R. Meyer  
Attorneys for Beauty Weapons, LLC;  
Sabrina Denebeim; and Veronica Bryan

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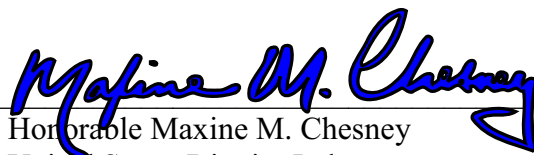
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25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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27 DATED: January 30, 2013

  
Honorable Maxine M. Chesney  
United States District Judge

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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 [date] in the case  
of \_\_\_\_\_ CV12-05383 MMC. 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]