

Hunton & Williams LLP  
575 Market Street, Suite 3700  
San Francisco, California 94105

1 Kurtis A. Powell (admitted *pro hac vice*)  
kpowell@hunton.com  
2 Emily Burkhardt Vicente (State Bar No. 263990)  
ebvicente@hunton.com  
3 Y. Anna Suh (State Bar No. 228632)  
asuh@hunton.com  
4 Susan S. Joo (State Bar No. 260369)  
sjoo@hunton.com  
5 HUNTON & WILLIAMS LLP  
575 Market Street, Suite 3700  
6 San Francisco, California 94105  
Telephone: (415) 975-3700  
7 Facsimile: (415) 975-3701  
8 Attorneys for Defendants  
ACUITY SPECIALTY PRODUCTS, INC.;  
9 ZEP INC.

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION  
13

14 DON AGUILAR, an individual; DAVID  
ALEMAN, an individual; GEORGE  
15 ALTOBELL, an individual; DENNIS  
ASUNTO, an individual; MAX  
16 BALLANTINE, an individual; STERLING  
CALDER, an individual; BRIAN CALLE, an  
17 individual; MARIO CERVANTEZ, an  
individual; CURTIS CHANCELLOR, an  
18 individual; GABRIEL COLLINS, an  
individual; DELION CUMMINGS, an  
19 individual; JERRY DAVIS, an individual;  
KIRK DICKINSON, an individual; GREGG  
20 DOBROW, an individual; BRIAN  
DRUCKER, an individual; DAVID  
21 ELDRIDGE, an individual; ROBERT  
ESTERLEY, an individual; RICHARD  
22 FAIRCHILD, an individual; ROBERT FELIX,  
an individual; JULIE FORTNER, an  
23 individual; THOMAS FOWLER, an  
individual; JEFFREY FULLER, an individual;  
24 DAVID GARELICK, an individual;  
REGINALD HAWKINS, an individual;  
25 DOUGLAS HEFFERNAN, an individual;  
ROBERT HOPPE, an individual; KATHLEEN  
26 JANISCH, an individual; SUSAN JOHNSON,  
an individual; CHRISTINA LAMB  
27

Case No. 3:13-CV-00563- WHO

*Assigned to Hon. William H. Orrick*

**STIPULATION AND ~~(PROPOSED)~~  
PROTECTIVE ORDER GOVERNING  
THE EXCHANGE AND PROTECTION  
OF CONFIDENTIAL INFORMATION**

28 STIPULATION AND ~~(PROPOSED)~~ PROTECTIVE ORDER GOVERNING THE EXCHANGE AND  
PROTECTION OF CONFIDENTIAL INFORMATION  
CASE NO. 3:13-CV-00563-WHO

1 (PAYTON), an individual; THERON LEE, an  
individual; GARY LEVINE, an individual;  
2 WILLIAM LOWE, an individual; DAN  
MANNION, an individual; JASON MARTIN,  
3 an individual; FELIX MONTES, an individual;  
SAM MORA, an individual; ERIC OFTEDAL,  
4 an individual; MARK OSBORN, an  
individual; DAVID OVADIA, an individual;  
5 RYAN PEREZ, an individual; DAVID  
RAINS, an individual; JAMES RICHMOND,  
6 an individual; FLORENCE RODRIGUEZ, an  
individual; JANET SALEH, an individual;  
7 JERMON SCOTT, an individual; ROBERT  
SEVERNS, an individual; JUSTIN SHORES,  
8 an individual; GARRETT SMITH, an  
individual; JAMES STEAD, an individual;  
9 WILLIAM TELLOUS, an individual;  
MICHELLE TOMPKINS, an individual;  
10 GERALD TURNER, an individual; ASTRID  
UNRINE, an individual; LYNN  
11 WOODFORD, an individual,

12 Plaintiffs,

13 v.

14 ZEP INC., a Delaware corporation; ACUITY  
SPECIALTY PRODUCTS, INC., a Georgia  
15 corporation; and DOES 1 through 100,  
inclusive,

16 Defendants.

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19 **STIPULATION AND ~~PROPOSED~~ PROTECTIVE ORDER GOVERNING THE**  
20 **EXCHANGE AND PROTECTION OF CONFIDENTIAL INFORMATION**

21 To expedite the flow of discovery material, facilitate the prompt resolution of disputes  
22 over the confidentiality of information, adequately protect material entitled to be kept  
23 confidential, and ensure that protection is afforded only to material so entitled, it is ORDERED as  
24 follows:  
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1 page containing the confidential information with the designation “Confidential” and to  
2 separately bind such pages as “Confidential.”

3           2.4. Any party may designate as Confidential any information produced or  
4 furnished by another party or non-party who came into possession of such information under  
5 circumstances in which the confidentiality was not waived as a matter of law, including, but not  
6 limited to, attorneys, physicians, experts, accountants, consultants, agents and employees, by  
7 informing the opposing party in writing of such designation. All parties shall affix a stamp  
8 identifying such document so designated as Confidential.

9           2.5. If any party believes that a document or other information that has been  
10 designated as Confidential is not entitled to be treated as Confidential, the party will notify the  
11 designating party of its objection to the Confidential designation. The parties shall meet and  
12 confer in an attempt to reach an agreement regarding the confidential status of the document or  
13 information within fifteen (15) business days after the objecting party has advised the designating  
14 party of its objection. If the objection is not resolved, and if the objecting party notifies the  
15 designating party in writing of its intent to disclose the information beyond the restrictions in  
16 Section 4.0 as well as the person and/or entity to whom it intends to make such disclosure, then  
17 the designating party shall have fifteen (15) business days after receipt of such written  
18 notification to file a motion to have the document or information treated as Confidential; if such  
19 motion is not timely filed, then the objecting party may, for purposes of this case only, make the  
20 indicated disclosure.

21           **3.0. Qualified Persons with Access to Confidential Information.**

22           3.1 “Confidential Information” shall not be disclosed to any person other than  
23 “Qualified Persons.” As used herein, “Qualified Persons” means:

- 24           (1) The named parties to this litigation;
- 25           (2) Counsel of record for the parties in this action;

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1 (3) Employees of counsel for the parties in this litigation or individuals  
2 or entities with which counsel contract to the extent reasonably necessary to render services that  
3 assist counsel in the litigation, including but not limited to individuals or entities providing  
4 duplicating or imaging services (“employees”);

5 (4) Experts and consultants retained or employed to assist counsel for  
6 the parties with the prosecution, defense, and/or appeal of this action (“experts”);

7 (5) The authors, addressees or originators of the Confidential  
8 Information;

9 (6) The Court, persons employed by the Court, and videographers and  
10 stenographers recording or transcribing any hearing, trial or deposition in this action or any  
11 appeal therefrom, and stenographic reporters and videographers;

12 (7) Witnesses at deposition, if document disclosure to the witnesses is  
13 reasonably calculated to lead to the discovery of admissible evidence; and

14 (8) Persons being prepared or evaluated for testimony at deposition or  
15 any other hearing or proceeding in this proceeding (“potential witnesses”) with a need to know  
16 Confidential Information, provided the potential witnesses sign the Agreement To Be Bound By  
17 Protective Order attached as Exhibit A before such disclosure is made.

18 **4.0. Restrictions on the Use and Disclosure of Confidential Information.**

19 4.1. All information designated as Confidential shall be used solely for  
20 purposes of this proceeding and not for any other personal, business, commercial or other purpose  
21 whatsoever.

22 4.2. In the event any party wishes to show any documents or other information  
23 designated as Confidential to anyone other than Qualified Persons, that party or its attorneys shall  
24 first advise the opposing party and seek an informal resolution of or agreement on the same. In  
25 the event that agreement or resolution cannot be reached, the party seeking to show the  
26 Confidential Information to anyone other than Qualified Persons shall apply to the Court for relief  
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1 from this Order. In the event the parties to this proceeding agree, or the Court orders, that the  
2 Confidential Information may be disclosed to someone other than Qualified Persons, that person  
3 shall sign the Agreement To Be Bound By Protective Order set forth in Exhibit A before such  
4 disclosure is made.

5 4.3. All Confidential documents and information presented to the Court through  
6 argument, memoranda, pleadings or otherwise shall be submitted pursuant to the Northern  
7 District of California Local Rule 79-5 and General Order No. 62. In particular, no party shall  
8 submit any Confidential documents and information to the Court unless the party e-files an  
9 administrative motion for leave to file under seal. Only if the Court first denies the administrative  
10 motion may the party file the Confidential documents as a public document.

11 4.4. Under no circumstance will any party or the representative(s) of any party  
12 to this Litigation provide or disclose any Confidential materials that have been provided,  
13 produced, or obtained during this Litigation to the press or media, to other current or former  
14 employees or independent contractors of Defendants, or to any other individual or company,  
15 except as otherwise expressly allowed under the terms of this Order.

16 4.5. If a party is served with a subpoena or a Court order issued in other  
17 litigation that would compel disclosure of any information or items designated in this action as  
18 Confidential by the opposing party, the subpoenaed party must immediately notify the opposing  
19 party, in writing and in no event more than three (3) court days after receiving the subpoena or  
20 Court order. Such notification must include a copy of the subpoena or Court order.

21 4.6. Nothing in this Order shall prevent a party from any use of its own  
22 Confidential materials.

23 **5.0. No Admission or Waiver.**

24 5.1. This Order shall not affect the right of any party or other person to seek  
25 from the Court at a future time an Order (or a modification of this Order) that provides greater,  
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1 lesser or no restriction of access to Confidential Information or for a separate protective order as  
2 to any particular document or information.

3 5.2. This Order shall not be construed as an admission or agreement that any  
4 document designated as Confidential is, in fact, confidential or otherwise is entitled to any  
5 protective relief.

6 5.3. The inadvertent disclosure of any Confidential Information shall not be  
7 deemed to be a waiver of the applicable protections or privileges as to either: (i) the document,  
8 communication or material disclosed, and (ii) other protected or privileged documents,  
9 communications or materials relating to or concerning the same subject matter. Any such  
10 Confidential Information inadvertently disclosed, and all copies and records thereof, shall be  
11 immediately returned to the producing party upon written notice by the disclosing party.

12 5.4. If a party discovers that, through inadvertence, documents containing  
13 Confidential Information have been provided to the opposing party without being properly  
14 designated pursuant to Section 2.2 hereof, the producing party shall promptly notify the receiving  
15 party in writing of the error. The notification shall include an identification of the documents or  
16 information (by control number or some other specific form of identification), and the receiving  
17 party shall affix a stamp identifying each document or item of information so identified as  
18 Confidential unless the parties agree that some other procedure for remedying the inadvertence is  
19 more appropriate under the circumstances.

20 5.5. If a party learns that, by inadvertence or otherwise, it has disclosed  
21 Confidential Information to any person or in any circumstance not authorized under this  
22 Protective Order, that party must immediately (a) notify in writing the party who designated the  
23 materials as Confidential of the unauthorized disclosures, (b) use its best efforts to retrieve all  
24 copies of the Confidential material, (c) inform the person or persons to whom unauthorized  
25 disclosures were made of all the terms of this Order, and (d) request such person or persons to  
26 execute the Agreement To Be Bound By Protective Order attached as Exhibit A.





1 this Protective Order until a designating party agrees otherwise in writing or a court order  
2 otherwise directs.

3 **8.0. Miscellaneous.**

4 8.1 Right to Further Relief. Nothing in this Order abridges the right of any person  
5 to seek its modification by the Court in the future.

6 8.2 Right to Assert Other Objections. By stipulating to the entry of this Order, no  
7 party waives any right it otherwise would have to object to disclosing or producing any  
8 information or document on any ground not addressed in this Order. Similarly, no party waives  
9 any right to object on any ground to use in evidence any of the information or documents covered  
10 by this Order. This Order also does not constitute a waiver of any argument regarding the  
11 timeliness of objections or production of documents.

12 8.3. The parties hereby voluntarily agree to comply with the terms of this Order  
13 immediately upon its execution by all parties hereto, and they shall continue to comply with its  
14 terms regardless of when or whether it is entered by the Court.

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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 *DON AGUIAR, et al. v. ACUITY SPECIALTY PRODUCTS, INC., et al.*, Case No. 3:13-CV-00563-WHO, 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 the United States District Court for the Northern District of California for purposes of enforcing this Protective Order.

Signature: \_\_\_\_\_

Dated: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

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IT IS SO STIPULATED.

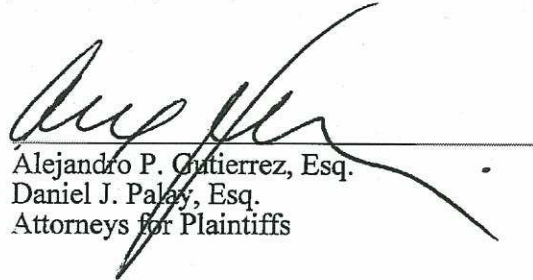
August 7, 2013

PALAY LAW FIRM

- and -

LAW OFFICES OF HATHAWAY, PERRETT,  
WEBSTER, POWERS, CHRISMAN & GUTIERREZ


By:

  
Alejandro P. Gutierrez, Esq.  
Daniel J. Palay, Esq.  
Attorneys for Plaintiffs

August 7, 2013

HUNTON & WILLIAMS LLP

By:

  
Kurt A. Powell, Esq. (admitted *pro hac vice*)  
Emily Burkhardt Vicente, Esq.  
Y. Anna Suh, Esq.  
Attorneys for Defendants  
ACUITY SPECIALTY PRODUCTS, INC.;  
ZEP INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: August 12, 2013



Hon. William H. Orrick  
United States District Judge