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 12 GMYL, L.P.

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15
 16 GMYL, L.P., a California limited partnership;
 17 Plaintiff,
 18 vs.
 19 ERNESTO COPPOLA, an individual; COPPOLA
 FOODS LIMITED, a foreign company; and
 20 DOES 1 THROUGH 10
 21 Defendants.

CASE NO. 13-cv-04739-RS
**STIPULATED PROTECTIVE ORDER FOR
 LITIGATION INVOLVING PATENTS,
 HIGHLY SENSITIVE CONFIDENTIAL
 INFORMATION AND/OR TRADE
 SECRETS**

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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 disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
5 the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
7 or responses to discovery and that the protection it affords from public disclosure and use extends
8 only to the limited information or items that are entitled to confidential treatment under the applicable
9 legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
10 Stipulated Protective Order does not entitle them to file confidential information under seal; Civil
11 Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the
12 standards that will be applied when a party seeks permission from the Court to file material under
13 seal.

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
19 Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
21 as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or items that it
23 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

25 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
26 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
27 transcripts, and tangible things), that are produced or generated in disclosures or responses to
28 discovery in this matter.

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

6 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
7 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or
8 Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive
9 means.

10 2.8 House Counsel: attorneys who are employees of a party to this action but does not
11 include Outside Counsel of Record or any other outside counsel.

12 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
13 entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action
15 but are retained to represent or advise a party to this action and have appeared in this action on behalf
16 of that party or are affiliated with a law firm which has appeared on behalf of that party.

17 2.11 Party: any party to this action, including all of its officers, directors, employees,
18 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

19 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
20 in this action.

21 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
22 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
23 or retrieving data in any form or medium) and their employees and subcontractors.

24 2.14 Protected Material: subject to Section 3 below, any Disclosure or Discovery Material
25 that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’
26 EYES ONLY.”

27 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
28 Producing Party.

1 3. SCOPE

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

13 Any use of Protected Material at trial shall be governed by a separate agreement or order.

14 4. DURATION

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

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
23 Non-Party that designates information or items for protection under this Order must take care to limit
24 any such designation to specific material that qualifies under the appropriate standards. To the extent
25 it is practical to do so, the Designating Party must designate for protection only those parts of
26 material, documents, items, or oral or written communications that qualify – so that other portions of
27 the material, documents, items, or communications for which protection is not warranted are not
28 swept unjustifiably within the ambit of this Order.

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

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

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
10 e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
11 Discovery Material that qualifies for protection under this Order must be clearly so designated before
12 the material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic documents, but
15 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
16 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
17 ONLY" to each page that contains protected material. If only a portion or portions of the material on
18 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
19 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of
20 protection being asserted. A Party or Non-Party that makes original documents or materials available
21 for inspection need not designate them for protection until after the inspecting Party has indicated
22 which material it would like copied and produced. During the inspection and before the designation,
23 all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
24 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
25 copied and produced, the Producing Party must determine which documents, or portions thereof,
26 qualify for protection under this Order. Then, before producing the specified documents, the
27 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
28 CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains Protected Material.

1 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
2 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
3 margins) and must specify, for each portion, the level of protection being asserted.

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

17 Parties shall give the other parties notice if they reasonably expect a deposition, hearing, or
18 other proceeding to include Protected Material so that the other parties can ensure that only
19 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
20 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
21 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
22 ATTORNEYS’ EYES ONLY.”

23 Transcripts containing Protected Material shall have an obvious legend on the title page that
24 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
25 (including line numbers as appropriate) that have been designated as Protected Material and the level
26 of protection being asserted by the Designating Party. The Designating Party shall inform the court
27 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day
28 period for designation shall be treated during that period as if it had been designated “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
2 expiration of that period, the transcript shall be treated only as actually designated. Notwithstanding
3 the above, nothing in this provision 5.2(b) shall give any deponent or his/its counsel the right to
4 exclude entirely from a deposition an opposing party; rather, the parties are required to exclude his or
5 its opposition in a deposition only to the extent the testimony sought and being given constitutes
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.

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

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
14 designate qualified information or items does not, standing alone, waive the Designating Party’s right
15 to secure protection under this Order for such material. Upon timely correction of a designation, the
16 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
17 the provisions of this Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
26 by providing written notice of each designation it is challenging and describing the basis for each
27 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
28 recite that the challenge to confidentiality is being made in accordance with this specific Section of

1 the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin
2 the process by conferring directly (in voice to voice dialogue; other forms of communication are not
3 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
4 explain the basis for its belief that the confidentiality designation was not proper and must give the
5 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
6 and, if no change in designation is offered, to explain the basis for the chosen designation. A
7 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in
8 this meet and confer process first or establishes that the Designating Party is unwilling to participate
9 in the meet and confer process in a timely manner. Notwithstanding the above, in the event a dispute
10 arises during the period dedicated for jurisdictional discovery, the parties shall meet and confer
11 pursuant to the Notice of Reference and Order re Discovery Procedures (Dkt. No. 41), and shall
12 follow all procedures set forth therein.

13 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
14 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
15 Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable)
16 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet
17 and confer process will not resolve their dispute, whichever is earlier. Each such motion must be
18 accompanied by a competent declaration affirming that the movant has complied with the meet and
19 confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make
20 such a motion including the required declaration within 21 days (or 14 days, if applicable) shall
21 automatically waive the confidentiality designation for each challenged designation. In addition, the
22 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
23 good cause for doing so, including a challenge to the designation of a deposition transcript or any
24 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
25 competent declaration affirming that the movant has complied with the meet and confer requirements
26 imposed by the preceding paragraph. Notwithstanding the above, in the event a dispute continues
27 after a meet and confer session during the period dedicated for jurisdictional discovery, the parties
28

1 shall make all efforts to make their respective motions to the Court as soon as practicable, and in
2 accordance with the Notice of Reference and Order re Discovery Procedures (Dkt. No. 41).

3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.

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

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
12 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
13 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
14 the categories of persons and under the conditions described in this Order. When the litigation has
15 been terminated, a Receiving Party must comply with the provisions of Section 15 (FINAL
16 DISPOSITION) below.

17 Protected Material must be stored and maintained by a Receiving Party at a location and in a
18 secure manner that ensures that access is limited to the persons authorized under this Order. This
19 shall include but not necessarily be limited to storing in password-protected form any electronic
20 Protected Material that is stored on any laptop, mobile, or other removable storage device.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
22 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
23 information or item designated "CONFIDENTIAL" only to:

24 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
25 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
26 information for this litigation;

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

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

7 (d) the Court and its personnel;

8 (e) court reporters and their staff;

9 (f) professional jury or trial consultants, and Professional Vendors to whom
10 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and
11 Agreement to Be Bound” (Exhibit A);

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

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

20 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
21 information or items. Unless otherwise ordered by the Court or permitted in writing by the
22 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

24 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
25 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
26 information for this litigation;

27 (b) Designated House Counsel of the Receiving Party (1) who has no involvement
28 in competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,

1 (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to
2 whom the procedures set forth in Section 7.4(a)(1), below, have been followed;

3 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
4 for this litigation, and (2) who have signed the “Acknowledgment and Agreement to Be Bound”
5 (Exhibit A);

6 (d) the Court and its personnel;

7 (e) court reporters and their staff, professional jury or trial consultants and their
8 staff, mock jurors and Professional Vendors to whom disclosure is reasonably necessary for this
9 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

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

12 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL
13 – ATTORNEYS’ EYES ONLY” Information or Items to House Counsel.

14 (a) Unless otherwise ordered by the Court or agreed to in writing by the
15 Designating Party, a Party that seeks to disclose to House Counsel any information or item that has
16 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
17 Section 7.3(b) first must disclose in writing to the Designating Party that (1) sets forth the full name
18 of the House Counsel and the city and state of his or her residence, and (2) describes the House
19 Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in
20 sufficient detail to determine if House Counsel is involved, or may become involved, in any
21 competitive decision-making.

22 (b) A Party that makes a disclosure and provides the information specified in the
23 preceding respective paragraph may disclose the subject Protected Material to the identified House
24 Counsel unless, within 14 days of delivering the request, the Party receives a written objection from
25 the Designating Party. Any such objection must set forth in detail the grounds on which it is based.
26 Notwithstanding the above, in the event a Party objects to the name shown pursuant to provision
27 7.4(a), above, then the Parties shall make all efforts to make engage in a meet and confer session as
28 soon as practicable.

1 (c) A Party that receives a timely written objection must meet and confer with the
2 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
3 within seven days of the written objection. If no agreement is reached, the Party seeking to make the
4 disclosure to House Counsel may file a motion as provided in Civil Local Rule 7 (and in compliance
5 with Civil Local Rule 79-5 and General Order 62, if applicable) seeking permission from the Court to
6 do so. Any such motion must describe the circumstances with specificity, set forth in detail the
7 reasons why the disclosure to House Counsel is reasonably necessary, assess the risk of harm that the
8 disclosure would entail, and suggest any additional means that could be used to reduce that risk. In
9 addition, any such motion must be accompanied by a competent declaration describing the parties'
10 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
11 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve
12 the disclosure. Notwithstanding the above, in the event a dispute continues after a meet and confer
13 session during the period dedicated for jurisdictional discovery, then the Parties shall make all efforts
14 to make their respective motions to the Court as soon as practicable, and in accordance with the
15 Notice of Reference and Order re Discovery Procedures (Dkt. No. 41).

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

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
21 LITIGATION

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

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

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

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

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

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

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

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

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

25 3. make the information requested available for inspection by the Non-
26 Party.

27 (c) If the Non-Party fails to object or seek a protective order from this Court
28 within 14 days of receiving the notice and accompanying information, the Receiving Party may

1 produce the Non- Party’s confidential information responsive to the discovery request. If the Non-
2 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
3 possession or control that is subject to the confidentiality agreement with the Non-Party before a
4 determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden
5 and expense of seeking protection in this Court of its Protected Material.

6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
15 MATERIAL

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

1 12. MISCELLANEOUS

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

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

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

20 13. FINAL DISPOSITION

21 Within 60 days after the final disposition of this action, as defined in Section 4, each
22 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
23 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
24 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
25 the Protected Material is returned or destroyed, the Receiving Party must submit a written
26 certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by
27 the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that
28 was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,

1 abstracts, compilations, summaries, or any other format reproducing or capturing any of the Protected
2 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
3 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
4 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
5 and expert work product, even if such materials contain Protected Material. Any such archival copies
6 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
7 Section 4 (DURATION).

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9 DATED: March 10, 2014

/s/ Sharoni S. Finkelstein

Attorneys for Plaintiff

10 DATED: March 9, 2014



Walter C. Pfeiffer
COLT/SINGER/BEA LLP
Attorneys for Defendants

11 PURSUANT TO STIPULATION, IT IS SO ORDERED.

12
13
14
15 DATED: 3/11/14



RICHARD SEEBORG
United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or type
4 full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the Northern
6 District of California on [date] in the case of *GMYL, L.P. v. Ernesto Coppola et al.*, United States
7 District Court (N.D. Cal.) Case No. 13-cv-04739-RS. I agree to comply with and to be bound by all
8 the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
9 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise
10 that I will not disclose in any manner any information or item that is subject to this Stipulated
11 Protective Order to any person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Northern
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even
14 if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as
17 my California agent for service of process in connection with this action or any proceedings related to
18 enforcement of this Stipulated Protective Order.

19 Date: _____

20 City and State where sworn and signed: _____

21 Printed name: _____
22 [printed name]

23 Signature: _____
24 [signature]

L.R. 5-1(i) ATTESTATION

I, Sharoni S. Finkelstein, am the ECF user whose ID and password are being used to file the parties' STIPULATED PROTECTIVE ORDER. In compliance with Local Rule 5-1(i), I hereby attest that Walter C. Pfeffer, counsel for Defendants, has concurred in this filing.

/s/ Sharoni S. Finkelstein

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