

United States District Court
Northern District of California

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13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

<p>16 KAPU GEMS and KAPU GEMS LTD., 17 Plaintiffs, 18 v. 19 DIAMOND IMPORTS, INC. 20 and YAIR YACHDAV, 21 Defendants.</p>	<p>Case No. CV 15-03531-MMC STIPULATED PROTECTIVE ORDER</p>
<p>22 DIAMOND IMPORTS, INC., 23 Counterclaimant, 24 v. 25 KAPU GEMS, KAPU GEMS LTD., 26 and KALPESH VAGHANI. 27 Counterdefendants.</p>	

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1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use for any
4 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to
5 and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this
6 Order does not confer blanket protections on all disclosures or responses to discovery and that the
7 protection it affords from public disclosure and use extends only to the limited information or items that are
8 entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as
9 set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file
10 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
11 and the standards that will be applied when a party seeks permission from the court to file material under
12 seal.

13
14 2. DEFINITIONS

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

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

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

22 2.5 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 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or
26 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 discovery in

1 this matter.

2 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
3 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant
4 in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time
5 of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

6 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:
7 extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party
8 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

9
10 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does
11 not include Outside Counsel of Record or any other outside counsel.

12 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity
13 not named as a Party to this action.

14 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but
15 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
16 party or are affiliated with a law firm which has appeared on behalf of that party.

17 2.13 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
20 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
21 this action.

22 2.15 Professional Vendors: persons or entities that provide litigation support services (e.g.,
23 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
24 retrieving data in any form or medium) and their employees and subcontractors.

25 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
26 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

27 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
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1 Party.

2 3. SCOPE

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

15 4. DURATION

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

22 5. DESIGNATING PROTECTED MATERIAL

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

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

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

11
12 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
13 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

14 Material that qualifies for protection under this Order must be clearly so designated before the
15 material is disclosed or produced.

16 Designation in conformity with this Order requires:

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

23
24 A Party or Non-Party that makes original documents or materials available for inspection need not
25 designate them for protection until after the inspecting Party has indicated which material it would like
26 copied and produced. During the inspection and before the designation, all of the material made available
27 for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the
28 inspecting Party has identified the documents it wants copied and produced, the Producing Party must

1 determine which documents, or portions thereof, qualify for protection under this Order. Then, before
2 producing the specified documents, the Producing Party must affix the appropriate legend
3 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that
4 contains Protected Material. If only a portion or portions of the material on a page qualifies for protection,
5 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
6 markings in the margins) and must specify, for each portion, the level of protection being asserted.

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

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

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

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

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
13 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
14 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party
15 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
16 Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
19 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation
20 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
21 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
22 designation by electing not to mount a challenge promptly after the original designation is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
24 providing written notice of each designation it is challenging and describing the basis for each challenge.
25 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
26 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
27 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by

1 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14
2 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its
3 belief that the confidentiality designation was not proper and must give the Designating Party an
4 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
5 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
6 the next stage of the challenge process only if it has engaged in this meet and confer process first or
7 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely
8 manner.

9 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
10 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in
11 compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or
12 within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,
13 whichever is earlier.¹ Each such motion must be accompanied by a competent declaration affirming that the
14 movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure
15 by the Designating Party to make such a motion including the required declaration within 21 days (or 14
16 days, if applicable) shall automatically waive the confidentiality designation for each challenged
17 designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation
18 at any time if there is good cause for doing so, including a challenge to the designation of a deposition
19 transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a
20 competent declaration affirming that the movant has complied with the meet and confer requirements
21 imposed by the preceding paragraph.

22 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
23 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
24 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
25

26 _____
27 ¹ Alternative: It may be appropriate in certain circumstances for the parties to agree to shift the
28 burden to move on the Challenging Party after a certain number of challenges are made to avoid
an abuse of the process. The burden of persuasion would remain on the Designating Party.

1 Designating Party has waived the confidentiality designation by failing to file a motion to retain
2 confidentiality as described above, all parties shall continue to afford the material in question the level of
3 protection to which it is entitled under the Producing Party’s designation until the court rules on the
4 challenge.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
7 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
8 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
9 persons and under the conditions described in this Order. When the litigation has been terminated, a
10 Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure
12 manner² that ensures that access is limited to the persons authorized under this Order.

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

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

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

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

24 (d) the court and its personnel;

25
26
27 _____
28 ² It may be appropriate under certain circumstances to require the Receiving Party to store any
electronic Protected Material in password-protected form.

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

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

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

11
12 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information
13 or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY” only to:

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

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

22 (d) the court and its personnel;

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

26 (f) the author or recipient of a document containing the information or a custodian or other person who
27

1 otherwise possessed or knew the information.

2 8. Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Experts.

4 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that
5 seeks to disclose to Designated House Counsel any information or item that has been designated “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written
7 request to the Designating Party that (1) sets forth the full name of the Designated House Counsel and the
8 city and state of his or her residence, and (2) describes the Designated House Counsel’s current and
9 reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine if
10 House Counsel is involved, or may become involved, in any competitive decision-making.³

11 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that
12 seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must
14 make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission
16 to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her
17 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current
18 employer(s), (5) identifies each person or entity from whom the Expert has received compensation or
19 funding for work in his or her areas of expertise or to whom the expert has provided professional services,
20 including in connection with a litigation, at any time during the preceding five years,⁴ and (6) identifies (by
21 name and number of the case, filing date, and location of court) any litigation in connection with which the
22

23 _____
24 ³ It may be appropriate in certain circumstances to require any Designated House Counsel who
25 receives “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information pursuant to
26 this Order to disclose any relevant changes in job duties or responsibilities prior to final
27 disposition of the litigation to allow the Designating Party to evaluate any later-arising competitive
28 decision-making responsibilities.

⁴ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
party, then the Expert should provide whatever information the Expert believes can be disclosed
without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
shall be available to meet and confer with the Designating Party regarding any such engagement.

1 Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or
2 trial, during the preceding five years.⁵

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

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

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

23 7.5 PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any
25 information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –

26 ⁵ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain
27 limited work prior to the termination of the litigation that could foreseeably result in an improper
28 use of the Designating Party's "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information.

1 ATTORNEYS’ EYES ONLY” that Party must:

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

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

7
8 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party
9 whose Protected Material may be affected.⁶

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

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

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

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

26 _____
27 ⁶ The purpose of imposing these duties is to alert the interested parties to the existence of this
28 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 to produce the Non-Party’s confidential information, then the Party shall:

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

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

7 3. make the information requested available for inspection by the Non-Party.
8

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

16 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

24
25
26
27 ⁷ The purpose of this provision is to alert the interested parties to the existence of confidentiality
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this court.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

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

11 12. MISCELLANEOUS

12 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
13 modification by the court in the future.

14 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
15 Party waives any right it otherwise would have to object to disclosing or producing any information or item
16 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to
17 object on any ground to use in evidence of any of the material covered by this Protective Order.

18 14.4 Filing Protected Material. Without written permission from the Designating Party or a
19 court order secured after appropriate notice to all interested persons, a Party may not file in the public
20 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
21 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a
22 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule
23 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is
24 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving
25 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the
26 court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local
27 Rule 79-5(e)(2) unless otherwise instructed by the court.

13. FINAL DISPOSITION

1 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
2 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used
3 in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any
4 other format reproducing or capturing any of the Protected Material. Whether the Protected Material is
5 returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and,
6 if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by
7 category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
8 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format
9 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
10 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
11 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and
12 consultant and expert work product, even if such materials contain Protected Material. Any such archival
13 copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in
14 Section 4 (DURATION).

15
16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED: November 21, 2016

PADUANO & WEINTRAUB, LLP

By: /s/ Anthony Paduano

Anthony Paduano (admitted pro hac vice)
Attorneys for Kapu Gems and Kapu Gems, Ltd.

20
21 DATED: November 21, 2016

FOREMAN & BRASSO, P.C

By: /s/ Ronald D. Foreman

Ronald D. Foreman
Attorneys for Diamond Imports, Inc.
and Yair Yachdav

GENERAL ORDER CERTIFICATION

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In accordance with General Order No. 45, Rule X, Anthony Paduano attest that concurrence in the filing of this document has been obtained from each signatory above.

DATED: November 21, 2016

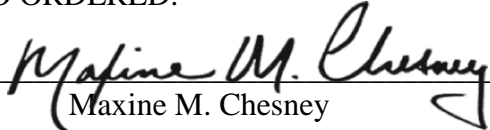
PADUANO & WEINTRAUB, LLP

By: /s/ Anthony Paduano

Anthony Paduano
Attorneys for Kapu Gems and Kapu
Gems, Ltd.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: November 22, 2016



Maxine M. Chesney
United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____, of _____, declare under penalty of perjury that I
4 have read in its entirety and understand the Stipulated Protective Order that was issued by the United States
5 District Court for the Northern District of California on November __, 2016 in the case of _____
6 Kapu Gems and Kapu Gems Ltd. v. Diamond Imports, Inc. and Yair Yachdav, Case Number 3:15-cv-
7 03531-MMC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
8 and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment
9 in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or
10 item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance
11 with the provisions of this Order.

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

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

20
21 Date: _____

22
23 City and State where sworn and signed: _____

24 Printed name: _____

25
26
27 Signature: _____