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6 Attorneys for Defendant,
7 THE PROPERTY SCIENCES GROUP, INC.

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

11 CANDIDA PALEGA, on behalf of herself and
on behalf of all others similarly situated,
12
Plaintiff,
13
v.
14 THE PROPERTY SCIENCES GROUP,
15 INCORPORATED,
16 Defendant.

Case No. 3:17-cv-00855-WHA (JSC)

The Hon. William H. Alsup

~~[PROPOSED]~~ **STIPULATED PROTECTIVE ORDER**

Action Filed: February 21, 2017
Trial Date: October 15, 2018

18 WHEREAS the parties in the action pending in the United States District Court for the
19 Northern District of California, San Francisco Division, entitled Candida Palega, et al. v. The
20 Property Sciences Group, Inc., Case No. 3:17-cv-00855-WHA (JSC) ("the Litigation"), Defendant
21 The Property Sciences Group, Inc., and Plaintiff Candida Palega (herein collectively referred to as
22 "The Parties"), by their counsel and subject to the approval of the Court, have entered into a
23 Stipulation for Protective Order re: Confidential Information ("Protective Order"), and good cause
24 appearing therefore, the court **HEREBY ORDERS AS FOLLOWS:**

25 1. PURPOSES AND LIMITATIONS

26 Disclosure and discovery activity in this action are likely to involve production of confidential,
27 proprietary, or private information for which special protection from public disclosure and from use
28 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties

1 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
2 parties acknowledge that this Order does not confer blanket protections on all disclosures or responses
3 to discovery and that the protection it affords from public disclosure and use extends only to the
4 limited information or items that are entitled to confidential treatment under the applicable legal
5 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
6 Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-
7 5 sets forth the procedures that must be followed and the standards that will be applied when a party
8 seeks permission from the court to file material under seal.

9 2. DEFINITIONS

10 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information
11 or items under this Order.

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

15 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
16 their support staff).

17 2.4 Designating Party: a Party or Non-Party that designates information or items that it
18 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

23 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
24 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
25 consultant in this action.

26 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel
27 does not include Outside Counsel of Record or any other outside counsel.

28 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal

1 entity not named as a Party to this action.

2 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
3 but are retained to represent or advise a party to this action and have appeared in this action on behalf
4 of that party or are affiliated with a law firm which has appeared on behalf of that party.

5 2.10 Party: any party to this action, including all of its officers, directors, employees,
6 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

7 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
8 in this action.

9 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
10 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
11 or retrieving data in any form or medium) and their employees and subcontractors.

12 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
13 “CONFIDENTIAL.”

14 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
15 Producing Party.

16 3. SCOPE

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

1 4. DURATION

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

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
10 Non-Party that designates information or items for protection under this Order must take care to limit
11 any such designation to specific material that qualifies under the appropriate standards. The
12 Designating Party must designate for protection only those parts of material, documents, items, or oral
13 or written communications that qualify – so that other portions of the material, documents, items, or
14 communications for which protection is not warranted are not swept unjustifiably within the ambit of
15 this Order.

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

20 If it comes to a Designating Party’s attention that information or items that it designated for protection
21 do not qualify for protection, that Designating Party must promptly notify all other Parties that it is
22 withdrawing the mistaken designation.

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

27 Designation in conformity with this Order requires:

28 (a) for information in documentary form (e.g., paper or electronic documents, but

1 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
2 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion or
3 portions of the material on a page qualifies for protection, the Producing Party also must clearly
4 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

5 A Party or Non-Party that makes original documents or materials available for inspection need
6 not designate them for protection until after the inspecting Party has indicated which material it would
7 like copied and produced. During the inspection and before the designation, all of the material made
8 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified
9 the documents it wants copied and produced, the Producing Party must determine which documents,
10 or portions thereof, qualify for protection under this Order. Then, before producing the specified
11 documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains
12 Protected Material. If only a portion or portions of the material on a page qualifies for protection, the
13 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
14 markings in the margins).

15 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
16 Designating Party identify on the record, before the close of the deposition, hearing, or other
17 proceeding, all protected testimony.

18 (c) for information produced in some form other than documentary and for any other
19 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
20 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion
21 or portions of the information or item warrant protection, the Producing Party, to the extent
22 practicable, shall identify the protected portion(s).

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

28 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
2 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
3 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
4 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
5 confidentiality designation by electing not to mount a challenge promptly after the original
6 designation is disclosed.

7 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
8 providing written notice of each designation it is challenging and describing the basis for each
9 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
10 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
11 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the
12 process by conferring directly (in voice to voice dialogue; other forms of communication are not
13 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
14 explain the basis for its belief that the confidentiality designation was not proper and must give the
15 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
16 and, if no change in designation is offered, to explain the basis for the chosen designation. A
17 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this
18 meet and confer process first or establishes that the Designating Party is unwilling to participate in the
19 meet and confer process in a timely manner.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
21 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
22 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
23 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
24 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
25 competent declaration affirming that the movant has complied with the meet and confer requirements
26 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion
27 including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive
28 the confidentiality designation for each challenged designation. In addition, the Challenging Party

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

6 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
7 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
8 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
9 Designating Party has waived the confidentiality designation by failing to file a motion to retain
10 confidentiality as described above, all parties shall continue to afford the material in question the level
11 of protection to 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 disclosed or
15 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
16 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
17 categories of persons and under the conditions described in this Order. When the litigation has been
18 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
19 DISPOSITION).

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

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

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

1 (b) the officers, directors, and employees (including House Counsel) of the Receiving
2 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
3 “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, professional jury or trial consultants, mock jurors, and
9 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
10 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

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

21 If a Party is served with a subpoena or a court order issued in other litigation that compels
22 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
23 must:

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

26 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
27 other litigation that some or all of the material covered by the subpoena or order is subject to this
28 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.

3 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
4 court order shall not produce any information designated in this action as “CONFIDENTIAL” before
5 a determination by the court from which the subpoena or order issued, unless the Party has obtained
6 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
7 seeking protection in that court of its confidential material – and nothing in these provisions should be
8 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
9 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 in this
13 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
14 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing
15 in these provisions should be construed as prohibiting a Non-Party from seeking additional
16 protections.

17 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
18 Party’s confidential information in its possession, and the Party is subject to an agreement with the
19 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 some or all
21 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 Protective Order in
23 this litigation, the relevant discovery request(s), and a reasonably specific description of the
24 information requested; and

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

26 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days
27 of receiving the notice and accompanying information, the Receiving Party may produce the Non-
28 Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a

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

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
25 its modification by the court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
27 Party waives any right it otherwise would have to object to disclosing or producing any information or
28 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any

1 right to object on any ground to use in evidence of any of the material covered by this Protective
2 Order.

3 12.3 Filing Protected Material. Without written permission from the Designating Party or a
4 court order secured after appropriate notice to all interested persons, a Party may not file in the public
5 record in this action any Protected Material. A Party that seeks to file under seal any Protected
6 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
7 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to
8 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected
9 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under
10 the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local
11 Rule 79-5(d) is denied by the court, then the Receiving Party may file the information in the public
12 record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

13 13. FINAL DISPOSITION

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

KENNEDY HODGES, LLP

DATED: August 24, 2017

By: /s/ William Hogg
Galvin B. Kennedy
William Hogg
Attorneys for Plaintiff,
CANDIDA PALEGA

CAFFARELLI & ASSOCIATES LTD

DATED: August 24, 2017

By: /s/ Lorrie T. Peeters
Lorrie T. Peeters
Attorneys for Plaintiff,
CANDIDA PALEGA


**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

DATED: August 24, 2017

By: /s/ Jordon R. Ferguson
John M. Cowden
Jordon R. Ferguson
Attorneys for Defendant,
THE PROPERTY SCIENCES GROUP, INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED

Dated: August 28, 2017.



William Alsup
Hon. ~~Jacqueline Scott Corley~~
United States ~~Magistrate~~ Judge