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18 **UNITED STATES DISTRICT COURT**  
 19 **NORTHERN DISTRICT OF CALIFORNIA**

20  
21 VIA LICENSING CORPORATION,

22 Plaintiff,

23 v.

24 HAIER AMERICA TRADING, LLC,

25 Defendant.  
26

Case No. 3:17-cv-03485-RS

**STIPULATED PROTECTIVE  
 ORDER**

1 **I. PURPOSES AND LIMITATIONS**

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

14 **II. DEFINITIONS**

- 15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information  
16 or items under this Stipulated Protective 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  
19 Federal Rule of Civil Procedure 26(c).
- 20 2.3 Counsel (without qualifier): Outside Counsel of Record and In-house Counsel (as well as  
21 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.”
- 25 2.5 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,  
27 testimony, transcripts, and tangible things), that are produced or generated in disclosures  
28 or responses to discovery in this matter.

- 1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
2 litigation who has been retained by a Party or its counsel to serve as an expert witness or  
3 as a consultant in this action.
- 4 2.7 “HIGHLY CONFIDENTIAL” Information or Items: especially sensitive “Confidential  
5 Information or Items,” disclosure of which to another Party or Non-Party would create a  
6 substantial risk of serious harm that could not be avoided by less restrictive means,  
7 including but not limited to highly confidential technical, financial, research, and  
8 development information.
- 9 2.8 In-house Counsel: attorneys who are employees of a Party to this action and employees  
10 within a Party’s legal department who report directly to an attorney. In-house Counsel do  
11 not include Outside Counsel of Record or any other outside counsel.
- 12 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity  
13 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 but  
15 are retained to represent or advise a Party to this action and have appeared in this action  
16 on behalf of that Party or are affiliated with a law firm which has appeared on behalf of  
17 that party.
- 18 2.11 Party: any party to this action, including all of its officers, directors, employees,  
19 consultants, retained experts, and Outside Counsel of Record (and their support staffs).
- 20 2.12 Privileged Material: any Disclosure or Discovery Material protected by the attorney-  
21 client privilege, the work product doctrine, or any other privilege or protection from  
22 disclosure recognized under applicable law.
- 23 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in  
24 this action.
- 25 2.14 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
26 photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
27 organizing, storing, or retrieving data in any form or medium) and their employees and  
28 subcontractors.

1 2.15 Protected Material: any Disclosure or Discovery Material that is designated as  
2 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL.”

3 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
4 Producing Party.

5 **III. SCOPE**

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

19 **IV. DURATION**

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

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1 **V. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
3 Non-Party that designates information or items for protection under this Stipulated Protective  
4 Order must take care to limit any such designation to specific material that qualifies under the  
5 appropriate standards. The Designating Party must designate for protection only those material,  
6 documents, items, or oral or written communications that qualify, so that other documents, items,  
7 or communications for which protection is not warranted are not swept unjustifiably within the  
8 ambit of this Stipulated Protective Order.

9 Mass, indiscriminate, or routinized designations are prohibited. If it comes to the  
10 Designating Party's attention that information or items that it designated for protection do not  
11 qualify for protection at all, or do not qualify for the level of protection initially asserted, that  
12 Designating Party must promptly notify all other Parties that it is withdrawing or modifying the  
13 designation.

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

18 Designation in conformity with this Stipulated Protective Order requires:

19 (a) For information in documentary form (*e.g.*, paper or electronic documents,  
20 but excluding transcripts of depositions or other pretrial or trial proceedings), the Producing  
21 Party must affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" to each  
22 document that contains Protected Material (except that a document produced in native form (*e.g.*,  
23 Excel documents) shall have the confidentiality designation appended to its file name instead or  
24 shall otherwise be designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" at the  
25 time of it is copied and produced).

26 A Party or Non-Party that makes original documents or materials available for inspection  
27 need not designate them for protection until after the inspecting Party has indicated which  
28 material it would like copied and produced. During the inspection and before the designation, all

1 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL.”  
2 After the inspecting Party has identified the documents it wants copied and produced, the  
3 Producing Party must determine which documents, or portions thereof, qualify for protection  
4 under this Stipulated Protective Order. Then, before producing the specified documents, the  
5 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
6 CONFIDENTIAL”) to each page that contains Protected Material (except that documents  
7 produced in native form (*e.g.*, Excel documents) need not be affixed with a confidentiality  
8 designation).

9 (b) For testimony given in deposition or in other pretrial or trial proceedings,  
10 the Designating Party may invoke on the record (before the deposition, hearing, or other  
11 proceeding is concluded) a right to have up to 30 days to identify the specific portions of the  
12 testimony as to which protection is sought and to specify the level of protection being asserted.  
13 Only those portions of the testimony that are appropriately designated for protection within the  
14 30 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a  
15 Designating Party may specify, at the deposition or up to 30 days afterwards if that period is  
16 properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
17 CONFIDENTIAL.” In the absence of a contrary designation on the record at the time the  
18 testimony is given, during the 30 days and prior to a designation being made, the testimony shall  
19 be deemed “HIGHLY CONFIDENTIAL.”

20 Parties shall give the other parties notice if they reasonably expect a deposition, hearing  
21 or other proceeding to include Protected Material so that the other parties can ensure that only  
22 authorized individuals specified below in paragraphs 7.2 and 7.3 are present at those  
23 proceedings. The use of a document as an exhibit at a deposition, hearing or other proceeding  
24 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
25 CONFIDENTIAL.”

26 Transcripts containing Protected Material shall have an obvious legend on the title page  
27 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
28 pages (including line numbers as appropriate) that have been designated as Protected Material

1 and the level of protection being asserted by the Designating Party. The Designating Party shall  
2 inform the court reporter of these requirements. Any transcript that is prepared before the  
3 expiration of a 30-day period for designation shall be treated during that period as if it had been  
4 designated “HIGHLY CONFIDENTIAL” 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  
7 any other tangible items, the Producing Party must affix in a prominent place on the exterior of  
8 the container or containers in which the information or item is stored the legend  
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

10 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified  
11 information or items does not, standing alone, waive the Designating Party’s right to protection  
12 under this Stipulated Protective Order for such material. Upon correction of a designation, the  
13 Receiving Party must make reasonable efforts to assure that the material is treated in accordance  
14 with the provisions of this Stipulated Protective Order.

## 15 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
17 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
19 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
20 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
21 original designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
23 providing written notice of each designation it is challenging and describing the basis for each  
24 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
25 recite that the challenge to confidentiality is being made in accordance with this specific  
26 paragraph of the Stipulated Protective Order. The parties shall attempt to resolve each challenge  
27 in good faith and must begin the process by conferring directly (by telephone or in-person)  
28 within 7 days of the date of service of notice. In conferring, the Challenging Party must explain

1 the basis for its belief that the confidentiality designation was not proper and must give the  
2 Designating Party an opportunity to review the designated material, to reconsider the  
3 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
4 designation. A Challenging Party may seek judicial intervention to resolve the designation only  
5 if it has engaged in this meet and confer process first or establishes that the Designating Party is  
6 unwilling to participate in the meet and confer process in a timely manner.

7 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge without Court  
8 intervention, the Designating Party may file and serve a motion to retain confidentiality under  
9 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) or the  
10 Challenging Party may file a motion challenging a confidentiality designation, including a  
11 challenge to the designation of a deposition transcript or any portions thereof. Any motion  
12 brought pursuant to this provision must be accompanied by a competent declaration affirming  
13 that the movant has complied with the meet and confer requirements imposed by the preceding  
14 paragraph.

15 The burden of persuasion in any such challenge proceeding shall be on the Designating  
16 Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose  
17 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
18 sanctions. All parties shall continue to afford the material in question the level of protection to  
19 which it is entitled under the Producing Party's designation until the Court rules on the  
20 challenge.

## 21 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is disclosed or  
23 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
24 defending, or attempting to settle or otherwise resolve this litigation or any of the claims and  
25 defenses asserted in this litigation. Such Protected Material may be disclosed only to the  
26 categories of persons and under the conditions described in this Order. When the litigation has  
27 been terminated, a Receiving Party must comply with the provisions of paragraph 13 below  
28 (FINAL DISPOSITION).



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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by  
5 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
6 information or item designated “CONFIDENTIAL” only to:

- 7 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
8 employees of said Outside Counsel of Record to whom it is reasonably  
9 necessary to disclose the information for this litigation;
- 10 (b) the officers, directors, and employees (including In-house Counsel) of the  
11 Receiving Party to whom disclosure is reasonably necessary for this  
12 litigation;
- 13 (c) Experts (as defined in this Stipulated Protective Order) of the Receiving  
14 Party to whom disclosure is reasonably necessary for this litigation and  
15 who have signed the “Acknowledgment and Agreement to Be Bound” that  
16 is attached hereto as Exhibit A;<sup>1</sup>
- 17 (d) the Court and its personnel;
- 18 (e) court reporters and their staff, professional jury or trial consultants, mock  
19 jurors, and Professional Vendors to whom disclosure is reasonably  
20 necessary for this litigation and who have signed the “Acknowledgment  
21 and Agreement to Be Bound” (Exhibit A);
- 22 (f) during their depositions, witnesses in the action to whom disclosure is  
23 reasonably necessary, unless otherwise agreed by the Designating Party or  
24 ordered by the Court. Pages of transcribed deposition testimony or  
25 exhibits to depositions that reveal Protected Material must be separately  
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27 <sup>1</sup> “CONFIDENTIAL” information or items may be disclosed to an Expert without disclosure of  
28 the identity of the Expert as long as the Expert is not a current officer, director, or employee of  
a competitor of a Party or anticipated to become one.

1 bound by the court reporter and may not be disclosed to anyone except as  
2 permitted under this Stipulated Protective Order; and

- 3 (g) the author or recipient of a document containing the information or a  
4 custodian or other person who otherwise possessed or knew the  
5 information prior to its production by the Producing Party in this litigation  
6 or who came into possession of the information by means other than  
7 disclosure by the Receiving Party.

8 7.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items. Unless otherwise  
9 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may  
10 disclose any information or item designated “HIGHLY CONFIDENTIAL” to:

- 11 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
12 employees of said Outside Counsel of Record to whom it is reasonably  
13 necessary to disclose the information for this litigation;
- 14 (b) the Receiving Party’s In-house Counsel (1) who are licensed to practice in  
15 at least one state in the United States or in China, or who report directly to  
16 such an individual and who works in the Receiving Party’s legal  
17 department, and who have no involvement in competitive decision  
18 making, (2) to whom disclosure is reasonably necessary for this litigation,  
19 and (3) who have signed the “Acknowledgment and Agreement to Be  
20 Bound” that is attached hereto as Exhibit A;
- 21 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably  
22 necessary for this litigation, (2) who have signed the “Acknowledgment  
23 and Agreement to Be Bound” that is attached hereto as Exhibit A, and (3)  
24 as to whom the procedures set forth in paragraph 7.4(a), below, have been  
25 followed;
- 26 (d) the Court and its personnel;
- 27 (e) court reporters and their staff, professional jury or trial consultants, and  
28 Professional Vendors to whom disclosure is reasonably necessary for this

1 litigation and who have signed the “Acknowledgment and Agreement to  
2 Be Bound” (Exhibit A); and

3 (f) the author or recipient of a document containing the information or a  
4 custodian or other person who otherwise possessed or knew the  
5 information prior to its production by the Producing Party in this litigation  
6 or who came into possession of the information by means other than  
7 disclosure by the Receiving Party.

8 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
9 CONFIDENTIAL” Information or Items to Experts.

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

23 (b) A Party that makes a request and provides the information specified in the  
24 preceding respective paragraphs may disclose the designated “HIGHLY CONFIDENTIAL”  
25 Protected Material to the identified Expert unless, within 10 days of delivering the request, the  
26 Party receives a written objection from the Designating Party. Any such objection must set forth  
27 in detail the grounds on which it is based.  
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1 (c) A Party that receives a timely written objection must meet and confer with  
2 the Designating Party (by telephone or in-person) 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  
4 the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in  
5 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the Court to do  
6 so. Any such motion must describe the circumstances with specificity, set forth in detail the  
7 reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm (or lack  
8 thereof) that the disclosure would entail, and suggest any additional means that could be used to  
9 reduce that risk. In addition, any such motion must be accompanied by a competent declaration  
10 describing the parties' efforts to resolve the matter by agreement (*i.e.*, the extent and the content  
11 of the meet and confer discussions) and setting forth the reasons advanced by the Designating  
12 Party for its refusal to approve the disclosure.

13 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden  
14 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
15 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

16 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
17 **OTHER LITIGATION**

18 If a Party is served with a discovery request, subpoena or a court order issued in another  
19 litigation that compels disclosure of any information or items designated in this action as  
20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," that Party must:

- 21 (a) provide notice in writing to the Designating Party no later than 10 days  
22 prior to the date on which production of such information and items are  
23 required. Such notification shall include a copy of the request, subpoena or  
24 court order and confirm the date of service of the same;
- 25 (b) promptly notify in writing the party who caused the request, subpoena or  
26 order to issue in the other litigation that some or all of the material covered  
27 by the request subpoena or order is subject to this Stipulated Protective  
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1 Order. Such notification shall include a copy of this Stipulated Protective  
2 Order; and  
3 (c) cooperate with respect to all reasonable procedures sought to be pursued  
4 by the Designating Party whose Protected Material may be affected,  
5 including, but not limited to, by timely objecting to such production on  
6 behalf of the Designating Party.

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

15 **IX. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
16 **THIS LITIGATION**

17 (a) The terms of this Stipulated Protective Order are applicable to information  
18 produced by a Non-Party in this action, which the Non-Party can designate as  
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” as provided herein. Such information  
20 produced by Non-Parties in connection with this litigation is protected by the remedies and relief  
21 provided by this Stipulated Protective Order. Nothing in these provisions should be construed as  
22 prohibiting a Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request, to  
24 produce a Non-Party’s confidential information in its possession, and the Party is subject to an  
25 agreement, other than this Stipulated Protective Order, with the Non-Party not to produce the  
26 Non-Party’s confidential information, then the Party shall:

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- 1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- 2) promptly provide the Non-Party with a copy of this Stipulated Protective Order, the relevant discovery request(s), and a reasonably specific description of the information requested; and
- 3) make the information requested available for inspection by the Non-Party.

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

**X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

**XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is Privileged Material, the Receiving Parties shall comply with Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal Rule of Evidence 502(d) and (e), the Parties

1 agree, and the Court orders, that the procedure set forth below provides the Producing Party a  
2 method for retrieving or “clawing back” inadvertently produced Privileged Material, subject to  
3 any resolution of any dispute over the privileged or protected status of the Privileged Material,  
4 and for foreclosing any arguments of waiver, subject to the procedures outlined below for  
5 bringing disputed claims to the Court for resolution.

6 (a) If a Producing Party has a good faith belief that Privileged Material has  
7 been inadvertently produced, and at any time notifies Receiving Parties in writing that the  
8 Producing Party disclosed Privileged Material (an “Inadvertent Disclosure Notice”), or any Party  
9 or Non-Party receiving Privileged Material discovers such disclosure (in which case the  
10 Receiving Party shall give the Producing Party prompt written notice), then, consistent with  
11 Federal Rule of Evidence 502(d), the inadvertent production of Privileged Material shall not be  
12 deemed a waiver — in the above-captioned action or in any other proceeding, including in  
13 Federal, State, arbitral or foreign proceedings — of the applicable privilege, protection, or  
14 prohibition from disclosure.

15 (b) Upon receipt of any Inadvertent Disclosure Notice claiming that a  
16 document is or includes Privileged Material, all other Parties (regardless of whether they agree  
17 with the claim of privilege or work-product protection) shall promptly:

- 18 1) use reasonable efforts to destroy or sequester all copies of the  
19 inadvertently produced documents or material in their possession,  
20 custody, or control and notify the Producing Party that they have  
21 done so; and
- 22 2) take reasonable steps to retrieve and destroy or sequester the  
23 inadvertently produced documents or material from other persons,  
24 if any, to whom such documents or material have been provided  
25 consistent with Federal Rule of Civil Procedure 26(b)(5)(B), and  
26 notify the Producing Party that they have done so.

27 (c) To the extent a Receiving Party disputes the claim of privilege or  
28 work-product protection (the “Disputing Party”), the Disputing Party shall notify in writing the

1 Producing Party of its position within thirty (30) days of receiving the Inadvertent Disclosure  
2 Notice (a “Dispute Notification”). Within seven (7) days of receiving the Dispute Notification,  
3 the Producing Party shall either withdraw its claim of privilege or confer with the Disputing  
4 Party in an effort to resolve their disagreement. If no such resolution is reached, the Disputing  
5 Party may apply to the Court for a ruling on the Producing Party’s claim of privilege. In arguing  
6 issues concerning protection for material claimed to constitute Privileged Material, no Party shall  
7 assert as a basis for the relief it seeks (including if a Receiving Party seeks a ruling that the  
8 disclosed information was never privileged) the fact or circumstance that such documents have  
9 already been inadvertently produced in the above-captioned action. However, the Receiving  
10 Party must comply with the provisions of Federal Rule of Civil Procedure 26(b)(5)(B) and  
11 paragraph (b) above regardless of whether it disputes the claim of privilege or work-product  
12 protection.

13 (d) If, during a deposition, a Party claims that a document being used in the  
14 deposition (*e.g.*, marked as an exhibit, shown to the witness, or made the subject of examination)  
15 is subject to privilege or work-product protection, it may at its sole election (a) allow the  
16 document to be used in the deposition without waiver of its claim of privilege or work-product  
17 protection or (b) consistent with Federal Rule of Civil Procedure 30(h)(3), instruct the witness  
18 not to answer questions concerning the document pending a prompt resolution of any  
19 disagreement concerning the document’s privileged or work-product protected status. If the  
20 Party allows the examination concerning the document to proceed on a non-waiver basis, the  
21 Parties shall sequester all copies of the purportedly privileged or work-product protected  
22 document. Immediately following the deposition, the Parties will commence the procedure  
23 outlined in the preceding paragraphs to address the claim of privilege or other protection as to  
24 both the privileged document and any testimony provided concerning the document. If a Party  
25 disputes the claim of privilege or work-product protection, then until the dispute is resolved, no  
26 persons other than Outside Counsel of Record in this action and those present at the deposition  
27 will have any access to the inadvertently produced document and any testimony related thereto.  
28



1 If the Party instructs the witness not to answer questions concerning the document, the Parties  
2 will then cooperate in promptly submitting the issue of the document's status to the Court.

3 **XII. MISCELLANEOUS**

4 12.1 Right to Further Relief. Nothing in this Stipulated Protective Order abridges the right of  
5 any person to seek its modification by the Court in the future.

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

11 12.3 Filing Protected Material. Without written permission from the Designating Party or a  
12 court order secured after appropriate notice to all interested persons, a Party other than the  
13 Designating Party or Producing Party may not file in the public record in this action any  
14 Protected Material. A Party that seeks to file under seal any Protected Material must comply  
15 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court  
16 order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local  
17 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material  
18 at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the  
19 law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local  
20 Rule 79-5(d) is denied by the Court in its entirety pursuant to Civil Local Rule 79-5(f)(2), then  
21 the Receiving Party and Designating Party must, within 3 days of such Order, meet and confer to  
22 attempt to agree upon a redacted version of the Protected Material that the Receiving Party may  
23 file in the public record, unless otherwise instructed by the Court. If no agreement is reached  
24 with respect to a redacted version of the document to be filed, the Receiving Party may file the  
25 Protected Material in the Public Record pursuant to pursuant to Civil Local Rule 79-5(f)(2).

26 **XIII. FINAL DISPOSITION**

27 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
28 Receiving Party must return all Protected Material to the Producing Party or destroy such

1 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
2 compilations, summaries, and any other format reproducing or capturing any of the Protected  
3 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
4 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
5 Designating Party) by the 60 day deadline confirming that (1) the Protected Material in the  
6 possession of the Receiving Party has been returned or destroyed in accordance with this  
7 Stipulated Protective Order and (2) the Receiving Party has not retained any copies, abstracts,  
8 compilations, summaries, or any other format reproducing or capturing any of the Protected  
9 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
10 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
11 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  
13 archival copies that contain or constitute Protected Material remain subject to this Stipulated  
14 Protective Order as set forth in paragraph 4.

15 **IT IS SO STIPULATED**, through Counsel of Record.

16 

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*Attorneys for Plaintiff*

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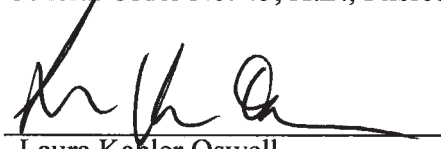
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I, Laura Kabler Oswell, am the ECF user whose ID and password are being used to file this Stipulated Protective Order. In compliance with General Order No. 45, X.B., I hereby attest that Jon L. Rewinski has concurred in this filing.

  
\_\_\_\_\_  
Laura Kabler Oswell

\* \* \*

**IT IS ORDERED** that the forgoing Stipulated Protective Order is **APPROVED**.

Dated: 2/20/18

  
\_\_\_\_\_  
HON. RICHARD SELBORG  
UNITED STATES DISTRICT JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 [print or type full address], declare that I have read in its entirety and understand the Stipulated  
5 Protective Order that was issued by the United States District Court for the Northern District of  
6 California on [date] in the case of *Via Licensing Corporation v. Haier America Trading, LLC*,  
7 No. 3:17-cv-03485-RS. I agree to comply with and to be bound by all the terms of this  
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
9 expose me to sanctions and punishment in the nature of contempt. I will not disclose in any  
10 manner any information or item that is subject to this Stipulated Protective Order to any person  
11 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  
13 Northern District of California for the purpose of enforcing the terms of this Stipulated  
14 Protective Order, even 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  
17 number] as my California agent for service of process in connection with this action or any  
18 proceedings related to enforcement of this Stipulated Protective Order.

19  
20 Date: \_\_\_\_\_

21 City and State where sworn and signed: \_\_\_\_\_

22  
23 Printed name: \_\_\_\_\_

24  
25 Signature: \_\_\_\_\_  
26  
27  
28