

1 CALDWELL LESLIE & PROCTOR, PC
 LINDA M. BURROW, State Bar No. 194668
 2 *burrow@caldwell-leslie.com*
 LENNETTE W. LEE, State Bar No. 263023
 3 *lee@caldwell-leslie.com*
 1000 Wilshire Boulevard, Suite 600
 4 Los Angeles, California 90017-2463
 Telephone: (213) 629-9040
 5 Facsimile: (213) 629-9022

6 Attorneys for Defendants
 INTERSCOPE RECORDS (erroneously
 7 sued as "Interscope Records Inc.") and
 UMG RECORDINGS, INC. (erroneously
 8 sued as "Universal Music Corporation")

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**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JOSEPH FLOWERS,
 Plaintiff,
 v.
 INTERSCOPE RECORDS INC., et al.,
 Defendants.

Case No. CV 09-4388 CW

**~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER
 GOVERNING USE OF
 DISCOVERY MATERIALS**

Trial Date: None Set

1 **I. INTRODUCTION**

2 The parties to this action have each requested in discovery that the other party
3 produce confidential internal documents. The Court enters this Protective Order
4 pursuant to Fed. R. Civ. P. 26(c).

5 **A. Confidential Information**

6 “Confidential Information” means any information that is designated as
7 “Confidential” by any of the supplying or receiving parties, whether it be a
8 document, information contained in a document, information revealed during a
9 deposition, information revealed in an interrogatory answer or otherwise.

10 **B. Designated Criteria**

11 *1. General Criteria.* Confidential Information shall not include
12 information that either:

- 13 (a) Is in public domain at the time of disclosure; or
- 14 (b) Becomes part of the public domain through no fault of the
15 recipient.

16 *2. Confidential Information.* To the extent allowed by Fed. R. Civ.
17 P. 26, a party shall designate as “confidential” only such information that the party
18 in good faith believes in fact is confidential. Information is “Confidential” if (a) it
19 has not been intentionally released to the public by the producing party; (b) it cannot
20 be readily obtained from public sources; and (c) disclosure of the information poses
21 a reasonable risk of competitive harm to the producing party or impedes the party’s
22 right to privacy under the California Constitution and California law.

23 **C. Qualified Persons**

24 *1.* Retained counsel (and their employees who are working on this
25 matter) and in-house counsel for the parties in this litigation who are actively
26 involved in the prosecution or defense of this case;

27 *2.* Court and its staff and any other tribunal or resolution officer
28 duly appointed or assigned in connection with this litigation; and

1 3. Independent experts or consultants in this litigation who have
2 been identified in writing by the designating party via facsimile or hand delivery to
3 all other parties at least ten (10) days prior to the disclosure of Confidential
4 Information to such persons, and who have signed an Acknowledgement in the form
5 of Exhibit “A”; and

6 4. Parties, or such officers, employees or representatives of a party
7 (excluding retained and in-house counsel, as described in paragraph 3(a)), who have
8 signed an Acknowledgement in the form of Exhibit “A” prior to the disclosure of
9 any Confidential Information and such other persons as this Court may designate
10 after notice and an opportunity to be heard.

11 ***D. Use of Confidential Information***

12 All Confidential Information produced by a party in the course of this
13 litigation shall be used solely for the purpose of preparation, trial and appeal of this
14 litigation and for no other purpose, and shall not be disclosed except in accordance
15 with the terms hereof.

16 ***E. Marking of Documents***

17 Documents produced in this litigation may be designated by any party (even
18 if such designating party was not the producing party of the Confidential
19 Information) as Confidential Information by marking each page of the documents so
20 designated with a stamp indicating that the information is “Confidential.”

21 ***F. Disclosure at Depositions***

22 Information disclosed at (a) the deposition of a party or one of its present or
23 former officers, directors, employees, agents or independent experts retained for the
24 purpose of this litigation, or (b) the deposition of a non-party (which information
25 pertains to a party) may be designated by any party as Confidential Information by
26 indicating on the record at the deposition that the testimony is “Confidential” and is
27 subject to the provisions of this Order. Nothing herein shall prevent any counsel of
28 record from utilizing Confidential Information in the examination or cross-

1 examination of any person who is indicated on the document as being an author,
2 source or recipient of the Confidential Information, irrespective of which party
3 produced such information.

4 Any party also may designate information disclosed at a deposition as
5 Confidential Information by notifying all of the parties in writing within ten (10)
6 days of receipt of the transcript of the specific pages and lines of the transcript,
7 which should be treated as Confidential Information thereafter. Each party shall
8 attach a copy of each such written notice to the face of the transcript and each copy
9 thereof in that party's possession, custody or control. All deposition transcripts shall
10 be treated as "Confidential" for a period of the ten days after initial receipt of the
11 transcript.

12 ***G. Disclosure to Qualified Persons***

13 Confidential Information shall not be disclosed or made available by the
14 receiving party to persons other than Qualified Persons.

15 ***H. Unintentional Failure to Designate***

16 Documents unintentionally produced without designation as Confidential
17 Information later may be designated and shall be treated as Confidential Information
18 from the date written notice of the designation is provided to the receiving party.

19 ***I. Documents Produced for Inspection Prior to Designation***

20 In the event documents are produced for inspection prior to designation, the
21 documents shall be treated as "Confidential" during inspection. At the time of
22 copying for the receiving parties, Confidential Information shall be marked
23 prominently by the producing party.

24 ***J. Further Disclosure***

25 Nothing herein shall prevent disclosure beyond the terms of this order if each
26 party designating the information as Confidential Information consents to such
27 disclosure, or if the Court after notice and an opportunity to be heard orders further
28 disclosure.

1 ***K. Challenging the Designation***

2 1. *Confidential Information.* A party shall not be obligated to
3 challenge the propriety of a designation of Confidential Information at the time such
4 designation is made, and a failure to do so shall not preclude a subsequent challenge
5 thereto. In the event that any party to this litigation in good faith disagrees at any
6 stage of these proceedings with the designation of any information as Confidential
7 Information, the parties shall first try to resolve the dispute in good faith on an
8 informal basis. If the dispute cannot be resolved, the objecting party may move the
9 Court for an order removing or altering the designated status of the disputed
10 information. The disputed information shall remain Confidential Information unless
11 and until the Court orders otherwise.

12 2. *Qualified Persons.* In the event that any party in good faith
13 disagrees with the designation of a person as a Qualified Person or the disclosure of
14 particular Confidential Information to such a person, the parties shall first try to
15 resolve the dispute in good faith on an information basis. If the dispute cannot be
16 resolved, the objecting party shall have ten (10) days from the date of the
17 designation (or, in the event Confidential Information is requested subsequent to the
18 designation of the Qualified Person, ten (10) days from the service of the request)
19 within which to move the Court for an order denying the disputed person (a) status
20 as a Qualified Person or (b) access to particular Confidential Information. The
21 motion shall fully and specifically set forth the grounds in support thereof, and the
22 objecting party shall have the burden of demonstrating that disclosure to the
23 disputed person would expose the objecting party to the risk of serious commercial
24 harm.

25 ***L. Manner of Use in Proceedings***

26 The parties shall meet and confer in good faith ten (10) days before a party
27 files an application with this Court requesting that Confidential Information be filed
28 under seal. The parties shall meet and confer in good faith regarding the relevancy

1 of the designated Confidential Information and in an effort to determine whether
2 there is a means of excerpting the document(s) at issue and/or stipulating as to
3 certain facts so as to avoid having to file Confidential Information. If the parties are
4 unable to reach an agreement regarding an alternative to filing the document(s)
5 under seal, the designating party may make an appropriate application to the Court,
6 requesting that the Court consider and permit the Confidential Information be filed
7 under seal. If the designating party makes such an application, the party who sought
8 to file such Confidential Information shall not do so until a final disposition is
9 entered as to the issue of filing the document(s) under seal.

10 ***M. Return of Documents***

11 Within sixty (60) days after conclusion of this litigation and any appeal
12 thereof, any document and all reproductions of documents produced by a party in
13 the possession of any of the persons specified in paragraph 3 shall be, at the option
14 of the producing party, destroyed (with attorney certification representing that such
15 destruction has taken place) or returned to the producing party except as this Court
16 may otherwise order or to the extent such information has been used as evidence at
17 any trial or hearing. If, however, evidence at any trial or hearing was filed and
18 maintained under seal, then such evidence shall be returned to the producing party
19 within one hundred twenty (120) days after conclusion of this litigation. Insofar as
20 the provisions of any protective orders entered in this action restrict the
21 communication and use of the documents produced hereunder, such orders shall
22 continue to be binding after the conclusion of this litigation, except that (a) there
23 shall be no restriction on documents that are used as exhibits in open Court unless
24 such exhibits were filed under seal, and (b) a party may seek the written permission
25 of the producing party or order of the Court with respect to dissolution or
26 modification of such protective orders.

27 ***N. Production of Documents Pursuant to Subpoena***

28 In the event that Confidential Information is subpoenaed by any court,

1 regulatory, administrative or legislative body or any person purporting to have
2 authority to subpoena such information (other than a party to this matter), the
3 responding party shall not produce such information without first giving notice to
4 the producing party to enable the producing party to have a reasonable opportunity
5 to seek protective relief.

6 ***O. Use by Counsel in Rendering Advice***

7 This order shall not bar any attorney in the course of rendering advice to such
8 attorney's client with respect to the subject matter of this litigation from conveying
9 to any party-client the attorney's evaluation in a general way of Confidential
10 Information produced or exchanged herein; provided, however, that in rendering
11 such advice and otherwise communicating with the client, the attorney shall not
12 disclose the specific contents of any Confidential Information produced by another
13 party herein if such disclosure would be contrary to the terms of this Protective
14 Order.

15 ***P. No Restriction on Party's Use of Its Own Documents***

16 This order has no effect upon, and shall not apply to, the producing party's
17 use of its own Confidential Information for any purpose following its production.

18 ***Q. No Waiver of Privilege or Other Objection***

19 The inadvertent production of any documents or other information during
20 discovery in this action shall be without prejudice to any claim that such material is
21 protected by the attorney-client privilege, the work product doctrine, or any other
22 applicable privilege, and no party shall be held to have waived any rights by such
23 inadvertent production. If the producing party provides written notice that a
24 document or information previously produced by that party is privileged or
25 protected work product, the receiving party shall make no use of the document or
26 information pending a determination by the Court as to the propriety of a claim of
27 privilege, except to the extent necessary to address the privilege question before the
28 Court. Neither the execution of this Confidentiality and Protective Order nor the

1 production or receipt of Confidential Information under this order shall prejudice in
2 any way the rights of the parties to object to the production of documents they
3 consider not subject to discovery.

4 ***R. Duty to Ensure Compliance***

5 Any party designating any person as a Qualified Person shall have the duty
6 reasonably to ensure that such person observes the terms of this Protective Order
7 and shall be responsible for breach of such duty by such person. The original
8 Acknowledgement described in paragraph 3 shall be maintained in the possession of
9 the attorneys of record for the party designating a Qualified Person and any other
10 party may, for good cause shown, petition the Court; for production of such
11 Acknowledgement.

12 ***S. Modification and Exceptions***

13 Any party may seek an order of this Court affording additional protection to
14 Confidential Information or other confidential information, or otherwise modifying
15 this Protective Order.

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EXHIBIT "A"

**ACKNOWLEDGEMENT AND REPRESENTATION OF
PERSONS HAVING ACCESS TO CONFIDENTIAL INFORMATION**

I hereby agree to abide by the terms of the Confidentiality and Protective Order (the "Protective Order") entered in the action captioned *Joseph Flowers v. Interscope Records, Inc.* et al., Case No. CV 09-4388 CW, pending in the United States District Court for the Northern District of California (the "Lawsuit"), in order to gain access to non-public, confidential information and information otherwise protected by the Protective Order. Accordingly, I further represent to the Court the following:

1. I have read the Protective Order and I understand its provisions and terms. I understand that I have the right to consult an attorney regarding the meaning of any provision of the Protective Order or this Acknowledgement and Representation. Any questions I had regarding the Protective Order or this Acknowledgement and Representation have been answered by counsel.

2. My current address and telephone number are:
Address: _____

Telephone: _____

3. My current job title and employer are:

4. My current employer's address is:

