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 10 EVONY, LLC and REGAN MERCANTILE, LLC

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 HEROIC ERA, LTD.,
 14
 Plaintiff / Counterclaim
 15 Defendant,
 16
 v.
 17 EVONY, LLC, et al.
 18
 Defendants /
 19 Counterclaim Plaintiffs.

Case No. 10-cv-02458-SBA (BZ)

STIPULATED PROTECTIVE ORDER

Magistrate Judge Bernard Zimmerman

20 Whereas the Defendants, Evony, LLC, and Regan Mercantile, LLC (collectively
 21 “Evony”) filed a Motion for Protective Order on October 21, 2010, and the Plaintiff Heroic Era,
 22 Ltd. agrees to the entry of the Protective Order, the parties hereby represent to the Court, and
 23 jointly request that the Court find and Order the following:
 24

25 1. PURPOSES AND LIMITATIONS

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

1 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
2 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
3 protections on all disclosures or responses to discovery and that the protection it affords from
4 public disclosure and use extends only to the limited information or items that are entitled to
5 confidential treatment under the applicable legal principles. The parties further acknowledge, as
6 set forth in Section 14.4, below, that this Protective Order does not entitle them to file
7 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
8 followed and the standards that will be applied when a party seeks permission from the court to
9 file material under seal.

10 2. DEFINITIONS

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

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

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

18 2.4 Designating Party: a Party or Non-Party that designates information or
19 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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

25 2.6 Expert: a person with specialized knowledge or experience in a matter
26 pertinent to the litigation who (1) has been retained by a Party or its Counsel to serve as an expert
27 witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a
28 Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a

1 Party or of a Party's competitor.

2 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

3 Information or Items: extremely sensitive "Confidential Information or Items," disclosure of
4 which to another Party or Non-Party would create a substantial risk of serious harm that could not
5 be avoided by less restrictive means.

6 2.8 Non-Party: any natural person, partnership, corporation, association, or
7 other legal entity not named as a Party to this action.

8 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
9 this action but are retained to represent or advise a party to this action and have appeared in this
10 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
11 that party.

12 2.10 Party: any party to this action, including all of its officers, directors,
13 employees, consultants, retained experts, and Outside Counsel of Record (and their support
14 staffs).

15 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this action.

17 2.12 Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
19 organizing, storing, or retrieving data in any form or medium) and their employees and
20 subcontractors.

21 2.13 Protected Material: any Disclosure or Discovery Material that is
22 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
23 ONLY."

24 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Order cover not only Protected Material (as
28 defined above), but also (1) any information copied or extracted from Protected Material; (2) all

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

11 4. DURATION

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

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that
28 are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

1 unnecessarily encumber or retard the case development process or to impose unnecessary
2 expenses and burdens on other parties) expose the Designating Party to sanctions.

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

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this
8 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
9 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
10 designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

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

19 A Party or Non-Party that makes original documents or materials available for
20 inspection need not designate them for protection until after the inspecting Party has indicated
21 which material it would like copied and produced. During the inspection and before the
22 designation, all of the material made available for inspection shall be deemed "HIGHLY
23 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
24 documents it wants copied and produced, the Producing Party must determine which documents,
25 or portions thereof, qualify for protection under this Order. Then, before producing the specified
26 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or
27 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains
28 Protected Material. If only a portion or portions of the material on a page qualifies for protection,

1 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
2 appropriate markings in the margins) and must specify, for each portion, the level of protection
3 being asserted.

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

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

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

1 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety
2 unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as
3 actually designated.

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

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

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process by providing written notice of each designation it is challenging and describing
24 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
25 written notice must recite that the challenge to confidentiality is being made in accordance with
26 this specific paragraph of the Protective Order. The parties shall attempt to resolve each
27 challenge in good faith and must begin the process by conferring directly (in voice to voice
28 dialogue; other forms of communication are not sufficient) within 14 days of the date of service

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

8 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
9 court intervention, the Designating Party shall file and serve a motion to retain confidentiality
10 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21
11 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
12 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
13 accompanied by a competent declaration affirming that the movant has complied with the meet
14 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
15 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
16 shall automatically waive the confidentiality designation for each challenged designation. In
17 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
18 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
20 accompanied by a competent declaration affirming that the movant has complied with the meet
21 and confer requirements imposed by the preceding paragraph.

22 The burden of persuasion in any such challenge proceeding shall be on the
23 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass
24 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
25 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing
26 to file a motion to retain confidentiality as described above, all parties shall continue to afford the
27 material in question the level of protection to which it is entitled under the Producing Party's
28 designation until the court rules on the challenge.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this case only for
4 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
5 disclosed only to the categories of persons and under the conditions described in this Order.
6 When the litigation has been terminated, a Receiving Party must comply with the provisions of
7 section 15 below (FINAL DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at a
9 location and in a secure manner¹ that ensures that access is limited to the persons authorized
10 under this Order.

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
12 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
13 disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

24 (d) the court and its personnel;

25 (e) court reporters and their staff, professional jury or trial consultants, and
26 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have

27 _____
28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected
Material in password-protected form.

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

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

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

10 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by
12 the Designating Party, a Receiving Party may disclose any information or item designated
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

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

21 (c) the court and its personnel;

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

25 (e) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information.

27 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

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

15 (b) A Party that makes a request and provides the information specified in the
16 preceding respective paragraphs may disclose the subject Protected Material to the identified
17 Expert unless, within 14 days of delivering the request, the Party receives a written objection
18 from the Designating Party. Any such objection must set forth in detail the grounds on which it is
19 based.

20 (c) A Party that receives a timely written objection must meet and confer with
21 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
22 agreement within seven days of the written objection. If no agreement is reached, the Party
23 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7
24 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court
25 to do so. Any such motion must describe the circumstances with specificity, set forth in detail the

26 _____
27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the
28 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 reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the
2 disclosure would entail, and suggest any additional means that could be used to reduce that risk.
3 In addition, any such motion must be accompanied by a competent declaration describing the
4 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and
5 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal
6 to approve the disclosure.

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

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
11 OTHER LITIGATION

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

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

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

21 (c) cooperate with respect to all reasonable procedures sought to be pursued by
22 the Designating Party whose Protected Material may be affected.³

23 If the Designating Party timely seeks a protective order, the Party served with the
24 subpoena or court order shall not produce any information designated in this action as
25 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a
26

27 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to
28 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 determination by the court from which the subpoena or order issued, unless the Party has obtained
2 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
3 seeking protection in that court of its confidential material – and nothing in these provisions
4 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a
5 lawful directive from another court.

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

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

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

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

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

23 3. make the information requested available for inspection by the
24 Non-Party.

25 (c) If the Non-Party fails to object or seek a protective order from this court
26 within 14 days of receiving the notice and accompanying information, the Receiving Party may
27 produce the Non-Party’s confidential information responsive to the discovery request. If the
28 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information

1 in its possession or control that is subject to the confidentiality agreement with the Non-Party
2 before a determination by the court.⁴ Absent a court order to the contrary, the Non-Party shall
3 bear the burden and expense of seeking protection in this court of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

26 12.2 Right to Assert Other Objections. By entry of this Protective Order no

27 _____
28 ⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a
Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 Party waives any right it otherwise would have to object to disclosing or producing any
2 information or item on any ground not addressed in this Protective Order. Similarly, no Party
3 waives any right to object on any ground to use in evidence of any of the material covered by this
4 Protective Order.

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

17 13. FINAL DISPOSITION

18 Within 60 days after the final disposition of this action, as defined in paragraph 4,
19 each Receiving Party must return all Protected Material to the Producing Party or destroy such
20 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
21 compilations, summaries, and any other format reproducing or capturing any of the Protected
22 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
23 submit a written certification to the Producing Party (and, if not the same person or entity, to the
24 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
25 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
26 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
27 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
28 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,

1 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
2 product, and consultant and expert work product, even if such materials contain Protected
3 Material. Any such archival copies that contain or constitute Protected Material remain subject to
4 this Protective Order as set forth in Section 4 (DURATION).

5
6 Respectfully submitted, this 29th day of October, 2010 by:

7 /s/ Derek Linke .
8 Derek Linke
9 (Admitted *pro hac vice*)
10 Derek A. Newman
11 Newman & Newman, Attorneys at Law, LLP
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13 Seattle, WA 98104
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16 Attorneys for Plaintiff / Counterclaim
17 Defendant HEROIC ERA, LTD.

18 /s/ Steven M. Cowley .
19 Steven M. Cowley
20 (Admitted *pro hac vice*)
21 Jon-Paul Manuel Lapointe
22 Andrew T. O'Connor
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Attorneys for Defendants /
Counterclaim Plaintiffs
EVONY, LLC and REGAN
MERCANTILE, LLC

ORDER

19 AND NOW, this 1st day of November, 2010, it is hereby ORDERED that:

- 20 a) good cause for the enclosed Stipulated Protective Order has been established; and,
21 b) the terms of the enclosed Stipulated Protective Order are hereby approved.

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24 Honorable Bernard Zimmerman,
25 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Protective Order that was issued by the
United States District Court for the Northern District of California on [date] in the case of
_____ [insert formal name of the case and the number and initials assigned to it
by the court]. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

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

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

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CERTIFICATE OF SERVICE

COMMONWEALTH OF MASSACHUSETTS, COUNTY OF SUFFOLK:

I, Steven M. Cowley, declare as follows:

I am employed in the County of Suffolk, Commonwealth of Massachusetts. I am over the age of 18 and not a party to the within-entitled action. My business address is 111 Huntington Avenue, Boston, Massachusetts 02119. On October 29, 2010, I served a true and correct copy of the following document(s) on all parties via the Court’s Electronic Case Management System on all counsel of record:

STIPULATED PROTECTIVE ORDER

Derek Linke, Esq.
linke@newmanlaw.com

Derek A. Newman, Esq.
derek@newmanlaw.com

Newman & Newman, Attorneys at Law, LLP
505 Fifth Avenue South, Suite 610
Seattle, WA 98104
Phone: (206) 274-2800
Facsimile: (206) 274-2801
Attorneys for Plaintiff Heroic ERA, Ltd.

I declare under penalty of perjury under the laws of the United States and the State of California that the above is true and correct. Executed on October 29, 2010, at Boston, Massachusetts.

/s/ Steven M. Cowley
Steven M. Cowley