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27 **UNITED STATES DISTRICT COURT**
 28 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

LOUIS VUITTON MALLETIER, S.A.,

Plaintiff,

vs.

AKANOC SOLUTIONS, INC.; MANAGED
 SOLUTIONS GROUP, INC.; STEVEN CHEN
 and Does 1 through 10, inclusive,

Defendants.

) Case No. C 07-3952 JW

) Hon. James Ware

) **STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER**

) **(MODIFIED BY THE COURT)**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation would be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords extends only to the limited
8 information or items that are entitled under the applicable legal principles to treatment as
9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated
10 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule
11 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied
12 when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Party: any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and outside counsel (and their support staff).

16 2.2 Disclosure or Discovery Material: all items or information, regardless of the
17 medium or manner generated, stored, or maintained (including, among other things, testimony,
18 transcripts, or tangible things) that are produced or generated in disclosures or responses to
19 discovery in this matter.

20 2.3 "Confidential" Information or Items: Information (regardless of how
21 generated, stored or maintained) or tangible things that qualify for protection under standards
22 developed under Fed. R. Civ. P. 26(c).

23 2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items:
24 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or non-
25 party would create a substantial risk of serious injury that could not be avoided by less restrictive
26 means.

27 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from
28 a Producing Party.

1 4. DURATION

2 Even after the termination of this litigation, the confidentiality obligations imposed by this
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
4 otherwise directs. **For a period of six months after the final termination of this action, this court
shall retain jurisdiction to enforce the terms of this protective order.**

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
7 Party or non-party that designates information or items for protection under this Order must take
8 care to limit any such designation to specific material that qualifies under the appropriate standards.
9 A Designating Party must take care to designate for protection only those parts of material,
10 documents, items, or oral or written communications that qualify – so that other portions of the
11 material, documents, items, or communications for which protection is not warranted are not swept
12 unjustifiably within the ambit of this Order.

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

17 If it comes to a Party's or a non-party's attention that information or items that it
18 designated for protection do not qualify for protection at all, or do not qualify for the level of
19 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
20 withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this
22 Order (see, e.g., second paragraph of Section 5.2(a), below), or as otherwise stipulated or ordered,
23 material that qualifies for protection under this Order must be clearly so designated before the
24 material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (apart from transcripts of
27 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
28 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of

1 each page that contains protected material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
3 by making appropriate markings in the margins) and must specify, for each portion, the level of
4 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY”).

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

19 (b) for testimony given in deposition or in other pretrial or trial
20 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record,
21 before the close of the deposition, hearing, or other proceeding, all protected testimony, and further
22 specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’
23 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is
24 entitled to protection, and when it appears that substantial portions of the testimony may qualify for
25 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
26 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the
27 specific portions of the testimony as to which protection is sought and to specify the level of
28 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY”). Only those portions of the testimony that are appropriately designated for
2 protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

3 Transcript pages containing Protected Material must be separately bound by
4 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-
6 party offering or sponsoring the witness or presenting the testimony.

7 (c) for information produced in some form other than documentary, and
8 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
9 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information
11 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
12 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’
13 Eyes Only.”

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
15 to designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’
16 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under
17 this Order for such material. If material is appropriately designated as “Confidential” or “Highly
18 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,
19 on timely notification of the designation, must make reasonable efforts to assure that the material is
20 treated in accordance with the provisions of this Order.

21 5.4 Inadvertent Production of Documents. Inadvertent production of any
22 document produced in response to discovery requests in this action by any party or non-party, that a
23 party or non-party later claims should have been withheld on grounds of a privilege, including but
24 not limited to the work product doctrine (collectively the “Inadvertently Produced Privileged
25 Documents”) will not be deemed to waive any privilege, including but not limited to work product
26 protection. A party or non-party may request the return of any document that it or a non-party
27 produced by identifying the Inadvertently Produced Privileged Documents and stating the legal basis
28 for withholding such document from production in writing to all parties upon whom the

1 Inadvertently Produced Privileged Documents were served, within ten business days of discovery of
2 the inadvertent production. If a party or non-party requests the return, pursuant to this paragraph, of
3 such Inadvertently Produced Privileged Documents, the possessing parties shall, within seven
4 calendar days return to the requesting party or non-party all Inadvertently Produced Privileged
5 Documents and shall expunge from any other document or material information derived from the
6 Inadvertently Produced Privileged Document. A party may thereafter move to compel production of
7 any such Inadvertently Produced Privileged Documents it has returned, provided that the fact of
8 inadvertent production itself may not be cited as a basis for the motion.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
11 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
12 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
13 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
14 after the original designation is disclosed.

15 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
16 Party's confidentiality designation must do so in good faith and must begin the process by conferring
17 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel
18 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief
19 that the confidentiality designation was not proper and must give the Designating Party an
20 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
21 designation is offered, to explain the basis for the chosen designation. A challenging Party may
22 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
23 process first.

24 6.3 Judicial Intervention. A Party that elects to press a challenge to a
25 confidentiality designation after considering the justification offered by the Designating Party may
26 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
27 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
28 Each such motion must be accompanied by a competent declaration that affirms that the movant has

1 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
2 forth with specificity the justification for the confidentiality designation that was given by the
3 Designating Party in the meet and confer dialogue.

4 The burden of persuasion in any such challenge proceeding shall be on the
5 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
6 material in question the level of protection to which it is entitled under the Producing Party's
7 designation.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a non-party in connection with this case only for
11 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
12 disclosed only to the categories of persons and under the conditions described in this Order. When
13 the litigation has been terminated, a Receiving Party must comply with the provisions of Section 11
14 below (FINAL DISPOSITION).

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

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
18 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
19 disclose any information or item designated CONFIDENTIAL only to:

20 (a) the Receiving Party's Outside Counsel of record in this action, as well
21 as employees of said Counsel to whom it is reasonably necessary to disclose the information for this
22 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
23 hereto as Exhibit A;

24 (b) the officers, directors, and employees (including House Counsel) of
25 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
26 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

27 (c) experts (as defined in this Order) of the Receiving Party to whom
28 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be

1 Bound by Protective Order” (Exhibit A);

2 (d) the Court and its personnel;

3 (e) court reporters, their staffs, and professional vendors to whom
4 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
5 Bound by Protective Order” (Exhibit A);

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

11 (g) the author of the document or the original source of the information.

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

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

20 (b) House Counsel of a Receiving Party (1) to whom disclosure is
21 reasonably necessary for this litigation; and (2) who has signed the “Agreement to Be Bound by
22 Protective Order” (Exhibit A);

23 (c) Experts (as defined in this Order) (1) to whom disclosure is
24 reasonably necessary for this litigation, (2) who have signed the “Agreement to Be Bound by
25 Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below,
26 have been followed;

27 (d) the Court and its personnel;

28 (e) court reporters, their staffs, and professional vendors to whom

1 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
2 Bound by Protective Order” (Exhibit A); and

3 (f) the author of the document or the original source of the
4 information.

5 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

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

19 (b) A Party that makes a request and provides the information
20 specified in the preceding paragraph may disclose the subject Protected Material to the identified
21 Expert unless, within seven court days of delivering the request, the Party receives a written
22 objection from the Designating Party. Any such objection must set forth in detail the grounds on
23 which it is based.

24 (c) A Party that receives a timely written objection must meet and
25 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter
26 by agreement. If ~~you~~^{no} agreement is reached, the Party seeking to make the disclosure to the Expert
27 may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5,
28 if applicable) seeking permission from the court to do so. Any such motion must describe

1 the subpoenaed party, constitute a violation of any law, rule or regulation.

2 The purpose of imposing these duties is to alert the interested parties to the existence
3 of this Protective Order to afford the Designating Party in this case an opportunity to try to protect its
4 confidentiality interests in the court from which the subpoena or order issued. The Designating
5 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
6 material – and nothing in these provisions should be construed as authorizing or encouraging a
7 Receiving Party in this action to disobey a lawful directive from another court.

8 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

16 10. FILING PROTECTED MATERIAL. Without written permission from the
17 Designating Party or a court order secured after appropriate notice to all interested persons, a Party
18 may not file in the public record in this action any Protected Material. A Party that seeks to file
19 under seal any Protected Material must comply with Civil Local rule 79-5.

20 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
21 Producing Party, within sixty days after the final termination of this action, each Receiving Party
22 must return all Protected Material to the Producing Party. As used in this subdivision, “all Protected
23 Material” includes all copies, abstracts, compilations, summaries or any other form of reproducing or
24 capturing any of the Protected Material. With permission in writing from the Designating Party, the
25 Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether
26 the Protected Material is returned or destroyed, the Receiving Party must submit a written
27 certification to the Producing Party (and, if not the same person or entity, the Designating Party) by
28 the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that

1 was returned or destroyed and that affirms that the Receiving has not retained any copies, abstracts,
2 compilations, summaries or other forms of reproducing or capturing any of the Protected Material.
3 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
4 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such
5 material contain Protected Material. Any such archival copies that contain or constitute Protected
6 Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

7 12. MISCELLANEOUS

8 12.1 Right to Further Relief. Nothing in this order abridges the right of any person
9 to seek its modification by the Court in the future.

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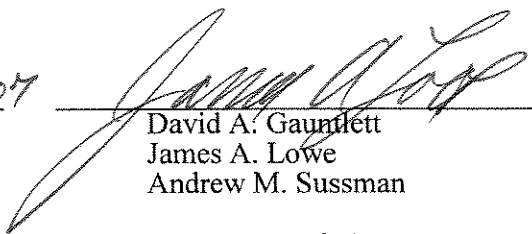
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1 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
2 Order no Party waives any right it otherwise would have to object disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence of any of the material covered by
5 this Protective Order.
6

7 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
8


9
10 **DATED:** October 24, 2007



David A. Gauntlett
James A. Lowe
Andrew M. Sussman

GAUNTLETT & ASSOCIATES
Attorneys for Defendant
Akanoc Solutions, Inc.
Managed Solutions Group, Inc.
and Steven Chen

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16 **DATED:** October 24, 2007



J. Andrew Coombs
~~Annie S. Wang~~

J. ANDREW COOMBS, PROFESSIONAL CORP.
Attorneys for Plaintiff
Louis Vuitton Malletier, S.A.

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22 **(AS MODIFIED BY THE COURT),**
23 **PURSUANT TO STIPULATION, IT IS SO ORDERED**
24 ^

25 **DATED:** November 2, 2007



~~James W. Lloyd~~ Howard R. Lloyd
United States District Judge
Magistrate

1 EXHIBIT A

2 ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

3 I, _____, of

4 _____,

5 declare under penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Northern District of
7 California on _____, 2007, in the case of *Louis Vuitton Malletier, S.A. v. Akanoc*
8 *Solution, Inc., etc., et. al.* Case No. C 07-3952 JW. I agree to comply with and to be bound by all
9 the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise
11 that I will not disclose in any manner any information or item that is subject to this Stipulated
12 Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

16 I hereby appoint _____ of

17 _____
18 as my California Agent for service of process in connection with this action or any proceedings
19 related to enforcement of this Stipulated Protective Order.

20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed Name: _____
[printed name]

24
25 Signature: _____
[signature]