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 15 STEPHEN GOULD CORPORATION

16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

19 REFLEX PACKAGING, INC.,  
 20 Plaintiff,  
 21 v.  
 22 STEPHEN GOULD CORPORATION,  
 Defendant.

Case No. 5:10-cv-2909 (LHK)

PROTECTIVE ORDER

[Complaint Filed: July 1, 2010]

25 AND RELATED COUNTERCLAIMS







1 reasonable care to limit any such designation to specific material that qualifies under the  
2 appropriate standards. To the extent it is practical to do so, the Designating Party must designate  
3 for protection only those parts of material, documents, items, or oral or written communications  
4 that qualify — so that other portions of the material, documents, items, or communications for  
5 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
15 Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for  
16 protection under this Order must be clearly so designated before the material is disclosed or  
17 produced. Designation in conformity with this Order requires:

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

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

1 designation, all of the material made available for inspection shall be deemed "HIGHLY  
2 CONFIDENTIAL — ATTORNEYS' EYES ONLY." After the inspecting Party has identified the  
3 documents it wants copied and produced, the Producing Party must determine which documents,  
4 or portions thereof, qualify for protection under this Order. Then, before producing the specified  
5 documents, the Producing Party must affix the appropriate legend to each page that contains  
6 Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
7 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
8 markings in the margins) and must specify, for each portion, the level of protection being asserted.

9 (b) for testimony given in deposition or in other pretrial or trial  
10 proceedings, that the Designating Party identify on the record, before the close of the deposition,  
11 hearing, or other proceeding, all protected testimony and specify the level of protection being  
12 asserted. Alternatively, when it is impractical to identify separately each portion of testimony that  
13 is entitled to protection and it appears that substantial portions of the testimony may qualify for  
14 protection, the Designating Party may, before, during or immediately after the completion of the  
15 deposition, hearing, or other proceeding, designate that all the testimony given and the entire  
16 transcript thereof shall be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
17 ATTORNEYS' EYES ONLY" until 21 days after the transcript prepared and delivered to counsel.  
18 Thereafter, only those portions of the testimony and transcript that are appropriately designated for  
19 protection within the 21 days following delivery of the transcript shall be covered by the  
20 provisions of this Stipulated Protective Order.

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

1 Transcripts containing Protected Material shall have an obvious legend on the title  
2 page that the transcript contains Protected Material, and the title page shall be followed by a list of  
3 all pages (including line numbers as appropriate) that have been designated as Protected Material  
4 and the level of protection being asserted by the Designating Party. The Designating Party shall  
5 inform the court reporter of these requirements. Any transcript that is prepared before the  
6 expiration of a 21-day period for designation shall be treated during that period as if it had been  
7 designated "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" in its entirety unless  
8 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
9 actually designated.

10 (c) for information produced in some form other than documentary and  
11 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of  
12 the container or containers in which the information or item is stored the legend  
13 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY". If only a  
14 portion or portions of the information or item warrant protection, the Producing Party, to the extent  
15 practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
17 to designate qualified information or items does not, standing alone, waive the Designating Party's  
18 right to secure protection under this Order for such material. Upon timely correction of a  
19 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
20 in accordance with the provisions of this Order.

## 21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
23 designation of confidentiality at an time. Unless a prompt challenge to a Designating Party's  
24 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary  
25 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its  
26 right to challenge a confidentiality designation by electing not to mount a challenge promptly after  
27 the original designation is disclosed.





1 The burden of persuasion in any such challenge proceeding shall be on the  
2 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass  
3 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party  
4 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
5 file a motion to retain confidentiality as described above, 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 until the Court rules on the challenge.

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  
14 13 below (FINAL DISPOSITION).

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

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

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

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

1 (c) Experts (as defined in this Order) of the Receiving Party to whom  
2 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment  
3 and Agreement to Be Bound" (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants,  
6 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
7 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

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

16 7.3 Disclosure of "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES  
17 ONLY" Information or Items. Unless otherwise ordered by the Court or permitted in writing by  
18 the Designating Party, a Receiving Party may disclose any information or item designated  
19 "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" only to:

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

24 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
25 necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be  
26 Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,  
27 have been followed;

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1 (c) the Court and its personnel;  
2 (d) court reporters and their staff, professional jury or trial consultants,  
3 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
4 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

5 (e) the author or recipient of a document containing the information or a  
6 custodian or other person who otherwise possessed or knew the information; and

7 (f) the individual at the Receiving Party who has full authority to  
8 negotiate a settlement of this action and who has signed the "Acknowledgment and Agreement to  
9 Be Bound" (Exhibit A) Information regarding the number of units of each product accused of  
10 infringement in this Action ("Accused Instrumentalities") that have been manufactured,  
11 purchased, sold, imported, exported, or used by or for the Disclosing Party. By receiving such  
12 Information regarding the number of units of Accused Instrumentalities manufactured, purchased,  
13 sold, imported, exported, or used by or for the Disclosing Party, the Receiving Party shall be  
14 deemed to have agreed to use such Information solely for purposes of this action and for no other  
15 purpose.

16 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY  
17 CONFIDENTIAL — ATTORNEYS' EYES ONLY" Information or Items to Experts.

18 (a) Unless otherwise ordered by the Court or agreed to in writing by the  
19 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
20 information or item that has been designated "HIGHLY CONFIDENTIAL -- ATTORNEYS'  
21 EYES ONLY" pursuant to paragraph 7.3(c) first must make a written request to the Designating  
22 Party that (1) identifies the general categories of "HIGHLY CONFIDENTIAL - ATTORNEYS'  
23 EYES ONLY" information that the Receiving Party seeks permission to disclose to the Expert, (2)  
24 sets forth the full name of the Expert and the city and state of his or her primary residence, (3)  
25 attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5)  
26 identifies each person or entity from whom the Expert has received compensation or funding for  
27 work in his or her areas of expertise or to whom the expert has provided professional services,

1 including in connection with a litigation, at any time during the preceding five years and (6)  
2 identities (by name and number of the case, filing date, and location of court) any litigation in  
3 connection with which the Expert has offered expert testimony, including through a declaration,  
4 report, or testimony at a deposition or trial, during the preceding five years.

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

10 (c) A Party that receives a timely written objection must meet and  
11 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the  
12 matter by agreement within seven days of the written objection. If no agreement is reached, the  
13 Party seeking to make the disclosure to the Expert may file a motion as provided in Civil Local  
14 Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the  
15 Court to do so. Any such motion must describe the circumstances with specificity, set forth in  
16 detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm  
17 that the disclosure would entail, and suggest any additional means that could be used to reduce  
18 that risk. In addition, any such motion must be accompanied by a competent declaration  
19 describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of  
20 the meet and confer discussions) and setting forth the reasons advanced by the Designating Party  
21 for its refusal to approve the disclosure.

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

26 7.5 "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY"  
27 information may be disclosed to a specifically designated House Counsel of a Party *only if* such

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1 disclosure is first agreed to in writing by the Designating Party or upon further order of the Court.  
2 Nothing in this Order will preclude such agreement or further order. Any House Counsel allowed  
3 to see such information after an agreement or order must sign the "Acknowledgment and  
4 Agreement to Be Bound" (Exhibit A) and will be bound by this Order.

5 8. PROSECUTION BAR

6 Absent written consent from the Producing Party, any individual who receives  
7 access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information shall not be  
8 involved in the prosecution of patents or patent applications relating to thermoformed cushion  
9 products, including without limitation the patent asserted in this action and any patent or  
10 application claiming priority to or otherwise related to the patent asserted in this action, before any  
11 foreign or domestic agency, including the United States Patent and Trademark Office ("the Patent  
12 Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly drafting,  
13 amending, advising, or otherwise affecting the scope or maintenance of patent claims. To avoid  
14 any doubt, "prosecution" as used in this paragraph does not include representing a party  
15 challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue  
16 protest, ex parte reexamination or inter partes reexamination). This Prosecution Bar shall begin  
17 when access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information is first  
18 received by the affected individual and shall end two (2) years after final termination of this  
19 action.

20 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
21 OTHER LITIGATION

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

25 (a) promptly notify in writing the Designating Party, and shall include a  
26 copy of the subpoena or court order.

1 (b) promptly notify in writing the party who caused the subpoena or  
2 order to issue in the other litigation that some or all of the material covered by the subpoena or  
3 order is subject to this Protective Order. and

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

6 If the Designating Party timely seeks a protective order, the Party served with the  
7 subpoena or court order shall not produce any information designated in this action as  
8 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY" before a  
9 determination by the Court from which the subpoena or order issued, unless the Party has obtained  
10 the Designating Party's permission. The Designating Party shall bear the burden and expense of  
11 seeking protection in that court of its confidential material and nothing in these provisions should  
12 be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful  
13 directive from another Court.

14 10. NON-PARTY PROTECTED MATERIALS

15 (a) The terms of this Order are applicable to information produced by a  
16 Non-Party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
17 ATTORNEYS' EYES ONLY". Such information produced by Non-Parties in connection with  
18 this litigation is protected by the remedies and relief provided by this Order. Nothing in these  
19 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to  
21 produce a Non-Party's confidential information in its possession and the Party is subject to an  
22 agreement with the Non-Party not to produce the Non-Party's confidential information, then the  
23 Party shall:

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



1 whatever procedure may be established in an e-discovery order that provides for production  
2 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
3 parties reach an agreement on the effect of disclosure of a communication or information covered  
4 by the attorney-client privilege or work product protection, the parties may incorporate their  
5 agreement in the stipulated protective order submitted to the Court.

6 13. MISCELLANEOUS

7 13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
8 person to seek its modification by the Court in the future.

9 13.2 Right to Assert Other Objections. By stipulating to the entry of this  
10 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
11 producing any information or item on any ground not addressed in this Stipulated Protective  
12 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
13 the material covered by this Protective Order.

14 13.3 Filing Protected Material. Without written permission from the Designating  
15 Party or a court order secured after appropriate notice to all interested persons, a Party may not file  
16 in the public record in this action any Protected Material. A Party that seeks to file under seal any  
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
18 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
19 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
20 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
21 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
22 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the Court, then the  
23 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule  
24 79-5(e) unless otherwise instructed by the Court.

25 14. FINAL DISPOSITION

26 Within 60 days after the Final Disposition of this action, as defined in paragraph 4,  
27 each 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 that (1) identifies (by category, where appropriate) all  
6 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
7 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
8 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
9 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
10 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
11 product, and consultant and expert work product, even if such materials contain Protected  
12 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
13 this Protective Order as set forth in Section 4 (DURATION).

14

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16

17 DATED:

Feb. 10, 2011



Attorneys for Plaintiff

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19 DATED:

Feb 9, 2011



Attorneys for Defendant

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21 IT IS SO ORDERED.

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24 Date:

March 10, 2011



Hon. Paul Singh Grewal

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 Stipulated Protective Order that was issued by the United

States District Court for the Northern District of California on \_\_\_\_\_ in the case of

*Reflex Packaging, Inc., v. Stephen Gould Corporation*, Case No. 5:10-cv-2909 (LHK). 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]