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Art of Living Foundation

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

ART OF LIVING FOUNDATION, a  
California corporation,  
  
  Plaintiff,  
  
  v.  
  
DOES 1-10, inclusive,  
  
  Defendants.

Case No.: CV 10-5022-LHK  
**STIPULATION AND ~~PROPOSED~~  
PROTECTIVE ORDER**  
  
**(MODIFIED BY THE COURT)**

1           1. PURPOSES AND LIMITATIONS

2           Plaintiff contends that disclosure and discovery activity in this action are likely to involve  
3 production of confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may 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 from public disclosure and use  
8 extends only to the limited information or items that are entitled to confidential treatment under the  
9 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that  
10 this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil  
11 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied  
12 when a party seeks permission from the court to file material under seal.

13           Defendants Doe Klim and Doe/Skywalker deny Plaintiff's contention that it possesses any  
14 trade secret or that Defendants have misappropriated or disclosed any trade secret. Nothing in this  
15 Protective Order is to be construed as a waiver of any such denials or related contentions. Defendants  
16 stipulate to the entry of this Protective Order for the sole purpose of allowing Plaintiff's trade secret  
17 claims to be litigated and adjudicated in an orderly fashion.

18           Defendants Doe/Klim and Doe/Skywalker have contended and continue to contend that they  
19 and the other Doe Defendants herein have a First Amendment right to speak anonymously and that  
20 this court should not allow discovery in this action that would strip them of their right to anonymity.  
21 Nothing in this Protective Order is to be construed as in any way waiving this contention, or as an  
22 agreement, concession or admission by Defendants that disclosure of their identity pursuant to this  
23 proposed Protective Order is an adequate protection of Defendants' rights to anonymity.

24           2. DEFINITIONS

25           2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
26 information or items under this Order.

27           2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is  
28 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of

1 Civil Procedure 26(c). The designation of Protected Material as CONFIDENTIAL instead of  
2 HIGHLY CONFIDENTIAL –ATTORNEYS’ EYES ONLY shall not be construed as a waiver of the  
3 Producing Party’s argument that the Protected Material comprises or describes protectable trade  
4 secrets.

5 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
6 well as their support staff).

7 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
8 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

10 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
11 medium or manner in which it is generated, stored, or maintained (including, among other things,  
12 testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses  
13 to discovery in this matter.

14 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to  
15 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a  
16 consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor,  
17 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s  
18 competitor.

19 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
20 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party  
21 or Non-Party would create a substantial risk of serious harm that could not be avoided by less  
22 restrictive means. Nothing herein shall be construed as permitting Plaintiff to designate information  
23 or documents that Plaintiff alleges were the Trade Secrets known to, or disclosed by, Defendants to be  
24 designated as HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES ONLY.

25 2.8 House Counsel: attorneys who are employees of a party to this action. House  
26 Counsel does not include Outside Counsel of Record or any other outside counsel.

27 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal  
28 entity not named as a Party to this action.

1           2.10 Outside Counsel of Record: attorneys who are not employees of a party to this  
2 action but are retained to represent or advise a party to this action and have appeared in this action on  
3 behalf of that party or are affiliated with a law firm (including sole practitioner firms) which has  
4 appeared on behalf of that party, including counsel retained on a contract or “of counsel” basis.

5           2.11 Party: any party to this action, including all of its officers, directors, employees,  
6 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

7           2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
8 Material in this action.

9           2.13 Professional Vendors: persons or entities that provide litigation support services  
10 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
11 storing, or retrieving data in any form or medium) and their employees and subcontractors.

12           2.14 Protected Material: any Disclosure or Discovery Material that is designated as  
13 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

14           2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
15 Producing Party.

### 16           3. SCOPE

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

1           4. DURATION

2           Even after final disposition 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. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
5 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
6 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time  
7 limits for filing any motions or applications for extension of time pursuant to applicable law. **For a period  
8 of six months after the final disposition of this litigation, this court will retain jurisdiction to  
9 enforce the terms of this order.**

10           5. DESIGNATING PROTECTED MATERIAL

11           5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
12 or Non-Party that designates information or items for protection under this Order must take care to  
13 limit any such designation to specific material that qualifies under the appropriate standards. To the  
14 extent it is practical to do so, the Designating Party must designate for protection only those parts of  
15 material, documents, items, or oral or written communications that qualify – so that other portions of  
16 the material, documents, items, or communications for which protection is not warranted are not  
17 swept unjustifiably within the ambit of this Order.

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

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

26           5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
27 (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure  
28 or Discovery Material that qualifies for protection under this Order must be clearly so designated  
before the material is disclosed or produced.

Designation in conformity with this Order requires:

1 (a) for information in documentary form (e.g., paper or electronic documents, but  
2 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
3 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
4 ONLY” to each page that contains protected material. If only a portion or portions of the material on a  
5 page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)  
6 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of  
7 protection being asserted.

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

20 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
21 Designating Party identify on the record, before the close of the deposition, hearing, or other  
22 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
23 impractical to identify separately each portion of testimony that is entitled to protection and it appears  
24 that substantial portions of the testimony may qualify for protection, the Designating Party may  
25 invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have  
26 up to 21 days to identify the specific portions of the testimony as to which protection is sought and to  
27 specify the level of protection being asserted. Only those portions of the testimony that are  
28 appropriately designated for protection within the 21 days shall be covered by the provisions of this

1 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to  
2 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated as  
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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

10 Transcripts containing Protected Material shall have an obvious legend on the title  
11 page that the transcript contains Protected Material, and the title page shall be followed by a list of all  
12 pages (including line numbers as appropriate) that have been designated as Protected Material and the  
13 level of protection being asserted by the Designating Party. The Designating Party shall inform the  
14 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day  
15 period for designation shall be treated during that period as if it had been designated “HIGHLY  
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the  
17 expiration of that period, the transcript shall be treated only as actually designated.

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

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
25 designate qualified information or items does not, standing alone, waive the Designating Party’s right  
26 to secure protection under this Order for such material. Upon timely correction of a designation, the  
27 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with  
28 the provisions of this Order.



1                   6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2                   6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
3 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
5 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
6 confidentiality designation by electing not to mount a challenge promptly after the original  
7 designation is disclosed.

8                   6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
9 process by providing written notice of each designation it is challenging and describing the basis for  
10 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
11 recite that the challenge to confidentiality is being made in accordance with this specific paragraph of  
12 the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin  
13 the process by conferring directly (in voice to voice dialogue; other forms of communication are not  
14 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must  
15 explain the basis for its belief that the confidentiality designation was not proper and must give the  
16 Designating Party an opportunity to review the designated material, to reconsider the circumstances,  
17 and, if no change in designation is offered, to explain the basis for the chosen designation. A  
18 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this  
19 meet and confer process first or establishes that the Designating Party is unwilling to participate in the  
20 meet and confer process in a timely manner.

21                   6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
22 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
23 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the  
24 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process  
25 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
26 competent declaration affirming that the movant has complied with the meet and confer requirements  
27 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion  
28 including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive



1 the confidentiality designation for each challenged designation. In addition, the Challenging Party  
2 may file a motion challenging a confidentiality designation at any time if there is good cause for doing  
3 so, including a challenge to the designation of a deposition transcript or any portions thereof. Any  
4 motion brought pursuant to this provision must be accompanied by a competent declaration affirming  
5 that the movant has complied with the meet and confer requirements imposed by the preceding  
6 paragraph.

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

#### 14           7. ACCESS TO AND USE OF PROTECTED MATERIAL

15           7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
16 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
17 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the  
18 categories of persons and under the conditions described in this Order. When the litigation has been  
19 terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL  
20 DISPOSITION).

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

23           7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
24 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
25 information or item designated "CONFIDENTIAL" only to:

26           (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
27 employees or independent contractors of said Outside Counsel of Record to whom it is reasonably  
28 necessary to disclose the information for this litigation and who have signed the "Acknowledgment

1 and Agreement to Be Bound” that is attached hereto as Exhibit A;

2 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
3 Party to whom disclosure is reasonably necessary for this litigation, or in the event that the Receiving  
4 Party is a natural person, that person, and who have signed the “Acknowledgment and Agreement to  
5 Be Bound” (Exhibit A)<sup>1</sup>;

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

9 (d) the court and its personnel;

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

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

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

21 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
22 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
23 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

25 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
26

27  
28 <sup>1</sup> Nothing herein requiring the signing of Exhibit A is to be construed as requiring Defendants to disclose their identities.

1 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
2 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
3 Bound” that is attached hereto as Exhibit A;

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

7 (c) the court and its personnel;

8 (d) court reporters and their staff, professional jury or trial consultants,<sup>5</sup> and  
9 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
10 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

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

13 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

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

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

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

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

19 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
20 **LITIGATION**

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

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

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

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

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

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

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

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

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

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

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

28 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of

1 receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's  
2 confidential information responsive to the discovery request. If the Non-Party timely seeks a  
3 protective order, the Receiving Party shall not produce any information in its possession or control  
4 that is subject to the confidentiality agreement with the Non-Party before a determination by the court.  
5 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking  
6 protection in this court of its Protected Material.

#### 7 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

#### 15 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED 16 MATERIAL

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

#### 25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
27 seek its modification by the court in the future.

28 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective

1 Order no 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 Stipulated Protective Order. Similarly, no  
3 Party waives any right to object on any ground to use in evidence of any of the material covered by  
4 this Protective Order.

5           12.3 Filing Protected Material. Without written permission from the Designating Party  
6 or a court order secured after appropriate notice to all interested persons, a Party may not file in the  
7 public record in this action any Protected Material. A Party that seeks to file under seal any Protected  
8 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal  
9 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant  
10 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected  
11 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under  
12 the law. A Receiving Party that wishes to file information or material that has been designated as  
13 CONFIDENTIAL or HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY by another  
14 (Disclosing) Party shall satisfy its obligations under this paragraph by indicating in its request under  
15 Civil Local Rule 79-5 that the material has been so designated by the Disclosing Party, and shall not  
16 be construed as waiving (i) any contention the Receiving Party may have that the information or  
17 material is not privileged, protectable as a trade secret, or otherwise entitled to protection under the  
18 law, or (ii) any right to seek to remove the designation under the provisions of section 6.3. If a  
19 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is  
20 denied by the court, then the Receiving Party may file the Protected Material in the public record  
21 pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

### 22           13. FINAL DISPOSITION

23           Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
24 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As  
25 used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
26 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the  
27 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to  
28 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day



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

9  
10  
11 Respectfully submitted,

12 Dated : March 16, 2011

13 KRONENBERGER BURGOYNE LLP


14  
15 s/ Jeffrey M. Rosenfeld  
Jeffrey Rosenfeld  
Attorney for Plaintiff Art of Living Foundation

16  
17 s/ Joshua Koltun  
Joshua Koltun  
Attorney for Doe/Klim and Doe/Skywalker

18  
19 **AS MODIFIED BY THE COURT,**  
20 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

21 ^

22  
23 Dated: March 18, 2011

24   
25 The Hon. ~~Lucy H. Koh~~ Howard R. Lloyd  
26 United States ~~District~~ Judge  
Magistrate

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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 \_\_\_\_\_, \_\_\_\_\_, 2011 in the case of *Art of Living Foundation v. Does*, CV 10-5022 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]