

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>Michael E. Dergosits (State Bar No. 118206) Igor Shoiket (State Bar No. 190066) DERGOSITS & NOAH LLP Three Embarcadero Center, Suite 410 San Francisco, CA 94111 Telephone: (415) 705-6377 Facsimile: (415) 750-6383 Email: mdergosits@dergnoah.com Email: ishoiket@dergnoah.com</p> <p>Edward W. Goldstein (TX Bar No. 08099500) Alisa Lipski (TX Bar No. 24041345) Califf T. Cooper (TX Bar No. 24055345) GOLDSTEIN & VOWELL, LLP 1177 West Loop South, Suite 400 Houston, Texas 77027 Telephone: (713) 877-1515 Facsimile: (713) 877-1737 Email: egoldstein@gviplaw.com Email: alipski@gviplaw.com Email: ccooper@gviplaw.com</p> <p>Attorneys for Plaintiff SOLANNEX, INC.</p>	<p>Claude M. Stern (Bar No. 96737) Ray Zado (Bar No. 208501) Anna T. Neill (Bar No. 270858) QUINN EMANUEL URQUHART & SULLIVAN, LLP 555 Twin Dolphin Drive, 5th Floor Redwood Shores, California 94065-2139 Telephone: (650) 801-5000 Facsimile: (650) 801-5100 Email: claudestern@quinnemanuel.com Email: rayzado@quinnemanuel.com Email: annaneill@quinnemanuel.com</p> <p>Attorneys for Defendant and Counterclaim Plaintiff MIASOLÉ, INC.</p>
---	---

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

SOLANNEX, INC., a Delaware corporation,
Plaintiff,
v.
MIASOLÉ, INC., a California corporation,
Defendant.

Civil Action No.: CV11-00171 PSG
STIPULATED PROTECTIVE ORDER

1
2 Pursuant to the Patent L.R. 2-2, Plaintiff, Solannex, Inc. (“Solannex”) and
3 Defendant, MiaSolé, Inc. (“MiaSolé”) stipulate that the following Protective Order
4 should be entered in this case.

5
6 **1. PURPOSES AND LIMITATIONS**

7 Disclosure and discovery activity in this action are likely to involve production of
8 confidential, proprietary, or private information for which special protection from public disclosure
9 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
10 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.
11 The parties acknowledge that this Order does not confer blanket protections on all disclosures or
12 responses to discovery and that the protection it affords from public disclosure and use extends only
13 to the limited information or items that are entitled to confidential treatment under the applicable legal
14 principles. The parties further acknowledge, as set forth in Section 12.4 below, that this Stipulated
15 Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-
16 5 sets forth the procedures that must be followed and the standards that will be applied when a party
17 seeks permission from the court to file material under seal.
18
19
20
21
22
23
24
25
26
27
28

1 **2. DEFINITIONS**

2 **2.1 Challenging Party:** a Party or Non-Party that challenges the designation of documents,
3 information, or other items under this Order.

4 **2.2 “CONFIDENTIAL” Information or Items:** documents, information (regardless of how
5 it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
6 of Civil Procedure 26(c).

7 **2.3 Counsel (without qualifier):** Outside Counsel of Record and In-house Counsel (as well
8 as their support staff).

9
10
11 **2.4 Designating Party:** a Party or Non-Party that designates documents, information, or items
12 that it produces in disclosures or in response to discovery as “CONFIDENTIAL” or “HIGHLY
13 CONFIDENTIAL – ATTORNEYS' EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
14 CODE.”

15
16 **2.5 Disclosure or Discovery Material:** all documents, information or items, regardless of the
17 medium or manner in which they were generated, stored, or maintained (including, among other
18 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or in
19 response to discovery in this matter.

20
21 **2.6 Expert:** a person with specialized knowledge or experience in a matter pertinent to the
22 litigation who (1) has been retained by a Party or its Counsel to serve as an expert witness or as a
23 consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and
24 (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's
25 competitor.
26
27
28

1 **2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or**
2 **Items:** extremely sensitive “CONFIDENTIAL” Information or Items, disclosure of which to another
3 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less
4 restrictive means.
5

6 **2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:** extremely
7 sensitive “Confidential Information or Items” representing computer code and associated comments
8 and revision histories, formulas, engineering specifications, or schematics that define or otherwise
9 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to
10 another Party or Non-Party would create a substantial risk of serious harm that could not be avoided
11 by less restrictive means.
12

13 **2.9 In-house Counsel:** attorneys who are employees of a party to this action. In-house
14 Counsel does not include Outside Counsel of Record or any other outside counsel.
15

16 **2.10 Non-Party:** any natural person, partnership, corporation, association, or other legal entity
17 not named as a Party to this action.
18

19 **2.11 Outside Counsel of Record:** attorneys who are not and have not at any time been
20 employees of a Party to this action but are retained to represent or advise a Party to this action and
21 have appeared in this action on behalf of that Party or are affiliated with a law firm which has
22 appeared on behalf of that Party.
23

24 **2.12 Party:** any party to this action, including specifically Plaintiff Solannex, Inc. and
25 Defendant MiaSolè, Inc., as well as all of their officers, directors, employees, consultants, retained
26 experts, and Outside Counsel of Record (and their support staffs).
27

28 **2.13 Producing Party:** a Party or Non-Party that produces Disclosure or Discovery Material
in this action.

1 **2.14 Professional Vendors:** persons or entities that provide litigation support services (e.g.,
2 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
3 or retrieving data in any form or medium) and their employees and subcontractors.

4 **2.15 Protected Material:** any Disclosure or Discovery Material that is designated as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as
6 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

7 **2.16 Receiving Party:** a Party that receives Disclosure or Discovery Material from a
8 Producing Party.

9 **3. SCOPE**

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

22 **4. DURATION**

1 Even after final disposition of this litigation, the confidentiality obligations imposed by this
2 Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court order
3 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
4 defenses in this action, with or without prejudice; or (2) final judgment herein after the completion
5 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
6 limits for filing any motions or applications for extension of time pursuant to applicable law.
7

8 **5. DESIGNATING PROTECTED MATERIAL**

9 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party or
10 Non-Party that designates information or items for protection under this Order must take care to limit
11 any such designation to specific material that qualifies under the appropriate standards. To the extent
12 it is practical to do so, the Designating Party must designate for protection only those parts of
13 material, documents, items, or oral or written communications that qualify – so that other portions of
14 the material, documents, items, or communications for which protection is not warranted are not
15 swept unjustifiably within the ambit of this Order.
16
17

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to
19 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

23 If it comes to a Designating Party's attention that information or items that it designated for
24 protection do not qualify for protection at all or do not qualify for the level of protection initially
25 asserted, that Designating Party must promptly notify any other Party that it is withdrawing the
26 mistaken designation.
27
28

1 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order (see,
2 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
3 Discovery Material that qualifies for protection under this Order must be clearly so designated before
4 the material is disclosed or produced.

5 Designation in conformity with this Order requires:

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

13 A Party or Non-Party that makes original documents or materials available for inspection need
14 not designate them for protection until after the inspecting Party has indicated which material it would
15 like copied and produced. During the inspection and before the designation, all of the material made
16 available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the
18 Producing Party must determine which documents, or portions thereof, qualify for protection under
19 this Order. Then, before producing the specified documents, the Producing Party must affix the
20 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected
22 Material. If only a portion or portions of the material on a page qualifies for protection, the Producing
23 Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
24
25
26
27
28

1 margins) and must specify, for each portion, the level of protection being asserted.

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

16 A Party shall give another Party notice if it reasonably expect a deposition, hearing, or other
17 proceeding to include Protected Material so that the other Party can ensure that only authorized
18 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are
19 present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way
20 affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
21 EYES ONLY.”
22
23

24 Transcripts containing Protected Material shall have an obvious legend on the title page that
25 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
26 (including line numbers as appropriate) that have been designated as Protected Material and the level
27 of protection being asserted by the Designating Party. The Designating Party shall inform the court
28

1 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period
2 for designation shall be treated during that period as if it had been designated “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
4 expiration of that period, the transcript shall be treated only as actually designated.
5

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

13 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to designate
14 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
15 protection under this Order for such material. Upon timely correction of a designation, the Receiving
16 Party must make reasonable efforts to assure that the material is treated in accordance with the
17 provisions of this Order.
18

19 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

20 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a designation of
21 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
23 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
24 confidentiality designation by electing not to mount a challenge promptly after the original
25 designation is disclosed.
26

27 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute process by providing
28

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

15 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge without court intervention,
16 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7
17 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of
18 challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve
19 their dispute, whichever is earlier. Each such motion must be accompanied by a competent
20 declaration affirming that the movant has complied with the meet and confer requirements imposed in
21 the preceding paragraph. Failure by the Designating Party to make such a motion including the
22 required declaration within 21 days (or 14 days, if applicable) shall automatically waive the
23 confidentiality designation for each challenged designation. In addition, the Challenging Party may
24 file a motion challenging a confidentiality designation at any time if there is good cause for doing so,
25 including a challenge to the designation of a deposition transcript or any portions thereof. Any motion
26
27
28

1 brought pursuant to this provision must be accompanied by a competent declaration affirming that the
2 movant has complied with the meet and confer requirements imposed by the preceding paragraph.

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

11 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

12 **7.1 Basic Principles.**

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

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

22 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.**

23 Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a
24 Receiving Party may only disclose any information or item designated “CONFIDENTIAL” to:
25

26 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
27 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
28

1 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
2 attached hereto as Exhibit A;

3 (b) In-house Counsel of the Receiving Party to whom disclosure is reasonably necessary for
4 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
5

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

9 (d) the Court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants, and Professional
11 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
13

14 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
15 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
16 unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed
17 deposition testimony or exhibits to depositions that reveal Protected Material must be clearly
18 identified by the court reporter and may not be disclosed to anyone except as permitted under this
19 Stipulated Protective Order; and
20

21 (g) the author or recipient of a document containing the Protected Material or a custodian or
22 other person who otherwise possessed or knew the information.
23

24 **7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and**
25 **“HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items.**

26 Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a
27 Receiving Party may only disclose information or items designated “HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to:

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

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

10
11 (c) the Court and its personnel;

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

15 (e) the author or recipient of a document containing Protected Material or a custodian or other
16 person who otherwise possessed or knew the information.

17
18 **7.4 Procedures for Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
19 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to
20 Experts.**

21 (a) Unless otherwise ordered by the Court or agreed to in writing by the Designating Party, a
22 Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has
23 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
24 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c), first must make a written
25 request to the Designating Party that (1) identifies the general categories of “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
27
28

1 CODE” Protected Material that the Receiving Party seeks permission to disclose to the Expert, (2)
2 sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
3 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
4 identifies each person or entity from whom the Expert has received compensation or funding for
5 work in his or her areas of expertise or to whom the expert has provided professional services,
6 including in connection with any litigation, at any time during the preceding five years¹, and (6)
7 identifies (by name and number of the case, filing date, and location of court) any litigation in
8 connection with which the Expert has offered expert testimony, including through a declaration,
9 report, or testimony at a deposition or trial, during the preceding five years.
10

11
12 (b) Following a waiting period of fourteen (14) days after serving the request on the
13 Designating Party, a Party that makes a request and provides the information specified in the
14 preceding respective paragraphs may disclose the subject Protected Material to the identified Expert
15 unless, within those 14 days following the delivery of the request, the Party receives a written
16 objection from the Designating Party. Any such objection must set forth in detail the grounds on
17 which it is based.
18

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

26
27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert
28 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 reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any
2 additional means that could be used to reduce that risk. In addition, any such motion must be
3 accompanied by a competent declaration describing the parties' efforts to resolve the matter by
4 agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the
5 reasons advanced by the Designating Party for its refusal to approve the disclosure.
6

7 In any such proceeding, the Party opposing disclosure to any Expert shall bear the burden of
8 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
9 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.
10

11 **8. PROSECUTION BAR**

12 Absent written consent from the Producing Party, any individual who receives access to
13 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Optional: or "HIGHLY
14 CONFIDENTIAL – SOURCE CODE" information shall not be involved in the prosecution of
15 patents or patent applications relating to [photovoltaic solar cells], including without limitation the
16 patents asserted in this action and any patent or application claiming priority to or otherwise related
17 to the patents asserted in this action, before any foreign or domestic agency, including the United
18 States Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph,
19 "prosecution" includes, but is not limited to, directly or indirectly drafting, amending, advising, or
20 otherwise affecting the scope or maintenance of patent claims. Prosecution further includes, for
21 example, original prosecution, reissue and reexamination proceedings. This Prosecution Bar shall
22 begin when access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY
23 CONFIDENTIAL – SOURCE CODE" information is first received by the affected individual and
24 shall end two (2) years after final termination of this action.
25
26

27 **9. SOURCE CODE**

1 (a) To the extent production of source code becomes necessary in this case, a Producing
2 Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” if it comprises
3 or includes confidential, proprietary or trade secret source code.

4 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” shall
5 be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” information including the Prosecution Bar set forth in Paragraph 8] and may be disclosed
7 only to the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
8 information may be disclosed, as set forth in Paragraphs 7.3 and 7.4.

9 (c) Any source code produced in discovery shall be made available for inspection, in a format
10 allowing it to be reasonably reviewed and searched, during normal business hours or at other
11 mutually agreeable times, at an office of the Producing Party’s counsel or another mutually agreed
12 upon location. The source code shall be made available for inspection on a secured computer in a
13 secured room without Internet access or network access to other computers, and the Receiving Party
14 shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable
15 media or recordable device. The Producing Party may visually monitor the activities of the
16 Receiving Party’s representatives during any source code review, but only to ensure that there is no
17 unauthorized recording, copying, or transmission of the source code. The Receiving Party must keep
18 a paper log indicating the names of any individuals inspecting the source code and dates and times of
19 inspection, and the names of any individuals to whom paper copies of portions of source code are
20 provided.
21
22
23
24

25 (d) The Receiving Party may request paper copies of limited portions of source code that are
26 reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or
27 for deposition or trial, but shall not request paper copies for the purposes of reviewing the source
28

1 code other than electronically as set forth in paragraph (c) in the first instance. The Producing Party
2 shall provide all such source code in paper form including bates numbers and the label “HIGHLY
3 CONFIDENTIAL - SOURCE CODE.” The Producing Party may challenge the amount of source
4 code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set
5 forth in Paragraph 6 whereby the Producing Party is the “Challenging Party” and the Receiving Party
6 is the “Designating Party” for purposes of dispute resolution.
7

8 (e) The Receiving Party shall maintain a record of any individual who has inspected any
9 portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper
10 copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall
11 not create any electronic or other images of the paper copies and shall not convert any of the
12 information contained in the paper copies into any electronic format. The Receiving Party shall only
13 make additional paper copies if such additional copies are (1) necessary to prepare court filings,
14 pleadings, or other papers (including a testifying expert’s expert report), (2) necessary for deposition,
15 or (3) otherwise necessary for the preparation of its case. Any paper copies used during a deposition
16 shall be retrieved by the Producing Party at the end of each day and must not be given to or left with
17 a court reporter or any other individual. The Receiving Party must provide notice to the Producing
18 Party before including “HIGHLY CONFIDENTIAL – SOURCE CODE” information in a court
19 filing, pleading, or expert report.
20
21
22

23 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
24 **OTHER LITIGATION**

25 If a Party is served with a subpoena or a court order issued in other litigation that compels
26 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that Party must:
28

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

3 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
4 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
5 Order. Such notification shall include a copy of this Stipulated Protective Order; and
6

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

9 If the Designating Party timely seeks a protective order, the Party served with the subpoena
10 or court order shall not produce any information designated in this action as “CONFIDENTIAL” or
11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
12 SOURCE CODE” before a determination by the court from which the subpoena or order issued,
13 unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear
14 the burden and expense of seeking protection in that court of its confidential material – and nothing
15 in these provisions should be construed as authorizing or encouraging a Receiving Party in this
16 action to disobey a lawful directive from another court.
17
18

19 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
20 **THIS LITIGATION**

21 (a) The terms of this Order are applicable to information produced by a Non-Party in this
22 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
23 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by
24 Non-Parties in connection with this litigation is protected by the remedies and relief provided by this
25 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
26 additional protections.
27
28

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

4 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all
5 of the information requested is subject to a confidentiality agreement with a Non-Party;

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

9 (3) make the information requested available for inspection by the Non-Party.

10 (c) If the Non-Party fails to object or seek a protective order from this Court within 14 days
11 of receiving the notice and accompanying information, the Receiving Party may produce the Non-
12 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
13 protective order, the Receiving Party shall not produce any information in its possession or control
14 that is subject to the confidentiality agreement with the Non-Party before a determination by the
15 court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
16 seeking protection in this court of its Protected Material.

17 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
19 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
20 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
21 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
22 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
23
24
25
26
27
28

1 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be
2 Bound” that is attached hereto as Exhibit A.

3 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
4 **PROTECTED MATERIAL**

5 Inspection or production of Discovery Material shall not constitute a waiver in any proceeding
6 of the attorney-client privilege, work product immunity, or any other applicable privilege or
7 immunity. After the Producing Party becomes aware of any inadvertent or unintentional disclosure,
8 the Producing Party may designate any such documents as within the attorney-client privilege, work
9 product immunity or any other applicable privilege or immunity, and request in writing return of such
10 documents to the Producing Party. The inadvertent or unintentional disclosure shall not operate as a
11 waiver in any proceeding whether or not the holder of the privilege or immunity took reasonable steps
12 to prevent the disclosure or promptly took reasonable steps to rectify the error in accordance with
13 Federal Rule of Evidence 502(b). Upon request by the Producing Party, the Receiving Party shall
14 immediately retrieve and return all copies of such inadvertently produced document(s). Nothing
15 herein shall prevent the Receiving Party from challenging the propriety of the attorney-client
16 privilege, work product immunity or other applicable privilege or immunity designation by
17 submitting a challenge to the Arbitrator in accordance with the Arbitrator’s procedure for addressing
18 discovery disputes.
19
20
21

22 **14. COUNSEL’S COMMUNICATION WITH CLIENT**
23

24 Nothing in this Order shall preclude or impede outside counsel’s ability to communicate
25 with or advise their clients or decision makers for such clients based on outside counsel’s review
26 and evaluation of Protected Material produced by the opposing Party. Outside Counsel may discuss
27 with the employees and officers of such clients who have responsibility for managing the lawsuit,
28 or those persons who have responsibility for making decisions about possible settlement of the

1 lawsuit (“Client Decision Makers”), the general nature of Protected Material without disclosing the
2 specifics of any such information, solely to the extent such disclosure is necessary for effectively
3 advising such clients and their decision makers. Such Client Decision Makers who receive general
4 information about Protected Material shall not disclose such information except to other Client
5 Decision Makers and solely to the extent such disclosure is necessary for effectively managing this
6 Action.

7 **15. MISCELLANEOUS**

8 **15.1 Right to Further Relief.** Nothing in this Order abridges the right of any person to seek
9 its modification by the court in the future.

10 **15.2 Right to Assert Other Objections.** By stipulating to the entry of this Protective Order
11 no Party waives any right it otherwise would have to object to disclosing or producing any
12 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
13 Party waives any right to object on any ground to the use in evidence of any of the material covered
14 by this Protective Order.
15

16 **15.3 Export Control.** Disclosure of Protected Material shall be subject to all applicable laws
17 and regulations relating to the export of technical data contained in such Protected Material, including
18 the release of such technical data to foreign persons or nationals in the United States or elsewhere.
19 The Producing Party shall be responsible for identifying any such controlled technical data, and the
20 Receiving Party shall take measures necessary to ensure compliance.
21

22 **15.4 Filing Protected Material.** Without written permission from the Designating Party or a
23 Court order secured after appropriate notice to all interested persons, a Party may not file in the public
24 record in this action any Protected Material. A Party that seeks to file under seal any Protected
25 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
26 pursuant to a Court order authorizing the sealing of the specific Protected Material at issue. Pursuant
27
28

1 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected
2 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under
3 the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local
4 Rule 79-5(d) is denied by the court, then the Receiving Party may file the Protected Material in the
5 public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.
6

7 15.5 Treatment of Draft Reports. The Parties agree that draft reports, draft declarations, draft
8 affidavits, or notes taken by Experts will not be subject to discovery. The Parties also agree that all
9 communications (including e-mail communications) between the Parties' Expert and In-house
10 Counsel or Counsel of Record, as well as documents relating to such communications, except for
11 documents, information, and things included in or attached to such communications that are directly
12 relied upon by a testifying Expert in his or her Expert report, will not be subject to discovery. Only
13 the final Expert report served on an opposing Party and the materials the testifying Expert relied upon
14 during preparation of the report are discoverable. The Parties will identify and produce copies of any
15 documents "considered by the witness in forming the opinion" as required by Fed. R. Civ. P.
16 26(a)(2)(B).
17
18

19 **16. FINAL DISPOSITION**

20 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
21 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
22 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
23 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
24 the Protected Material is returned or destroyed, the Receiving Party must submit a written
25 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
26 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
27
28

1 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
2 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
3 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
4 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
5 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
6 and Expert work product, even if such materials contain Protected Material. Any such archival
7 copies that contain or constitute Protected Material remain subject to this Protective Order as set
8 forth in Section 4 (DURATION).
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court for the
6 Northern District of California on _____ [date] in the case of Solannex, Inc. v. MiaSole, Inc., Case
7 No. CV11-00171 PSG. I agree to comply with and to be bound by all the terms of this Stipulated
8 Protective Order, and I understand and acknowledge that failure to so comply could expose me to
9 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
10 any manner any information or item that is subject to this Stipulated Protective Order to any person
11 or entity except in strict compliance with the provisions of this Order.
12

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

17 I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone number] as
19 my California agent for service of process in connection with this action or any proceedings related
20 to enforcement of this Stipulated Protective Order.
21

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____
25 [printed name]

26 Signature: _____
27 [signature]

1 The undersigned hereby attests pursuant to General Order 45.X.B. that concurrence in the electronic
2 filing of this document has been obtained from the other signatories.

3 Dated: May 25, 2011

By: /s/ Edward W. Goldstein

6 Respectfully submitted,

8 Dated: May 25, 2011

GOLDSTEIN & VOWELL, LLP

10 By /s/ Edward W. Goldstein

Edward W. Goldstein

Attorney for Plaintiff, Solannex, Inc.

13 Dated: May 25, 2011

QUINN EMANUEL URQUHART & SULLIVAN, LLP

15 By /s/ Claude M. Stern

Claude M. Stern

Attorney for Defendant and Counterclaim Plaintiff,
Miasole, Inc.

20 PURSUANT TO STIPULATION IT IS SO ORDERED

22 DATED: ___ May 25 _____, 2011

24 
25 _____
26 Hon. Paul S. Grewal
27 United States Magistrate Judge
28