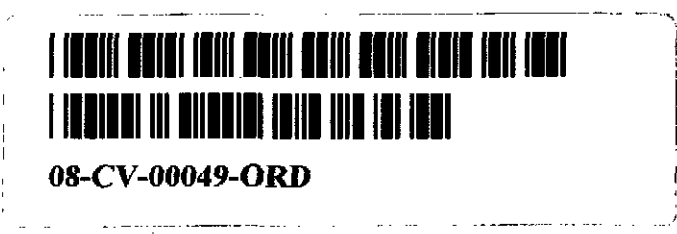


The Honorable James L. Robart

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WESTERN DISTRICT OF WASHINGTON
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BY



UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NATIONAL PRODUCTS, INC.,

Plaintiff,

v.

GAMBER-JOHNSON LLC,

Defendant.

Civil Case No. CV08-0049-JLR

**STIPULATED PROTECTIVE
ORDER**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and the stipulation of the parties hereto, the Court hereby enters the following Protective Order:

1. This Protective Order shall apply to all documents, information, or other things subject to discovery in this action ("Discovery Material") that contain proprietary, confidential or commercially sensitive information not known to the general public, comprising or containing trade secrets or other confidential research and development, know-how, financial results or that a Producing Party is under an obligation to a third party to maintain as confidential, as well as pleadings, testimony and other information and designated as either "CONFIDENTIAL" or "STRICTLY CONFIDENTIAL." As used herein, "Producing Party" shall refer to the Parties to this action or Third Parties who

1 disclose information in this action. "Receiving Party" shall refer to the Parties to this action
2 who receive Discovery Material from a Producing Party.

3 2. Any party or other person producing or disclosing Discovery Material may
4 designate it as set forth herein as (a) "CONFIDENTIAL" or (b) "STRICTLY
5 CONFIDENTIAL" subject to this Protective Order if it contains confidential, proprietary or
6 commercially sensitive information, market-sensitive information and/or trade secrets.

7 3. In the absence of written permission from the Producing Party, Discovery
8 Material designated as either "CONFIDENTIAL" or "STRICTLY CONFIDENTIAL":

9 (a) Shall be protected from disclosure as specified herein, unless the
10 Producing Party so states in writing, or a party obtains an Order of the Court declaring that
11 all or certain portions of such Discovery Material are not, in fact, protected or should be
12 subject to an alternative designation.

13 (b) Shall be used only for purposes of this litigation.

14 (c) Shall not be used in connection with the prosecution of any patent
15 application (whether original, continuation, or reissue) by a Receiving Party, nor shall it be
16 used in connection with any other proceeding before the U.S. Patent and Trademark Office
17 ("PTO") except by further order of the Court or the written consent of the Producing Party
18 in a signed writing. Should the disclosure of discovery material trigger a duty to disclose
19 information to the PTO under 37 C.F.R. § 1.56, written consent of the Producing Party shall
20 not be unreasonably withheld.

21 4. The Producing Party may designate documents or other tangible Discovery
22 Materials by placing the following legend or similar legend on the document or thing:
23 "CONFIDENTIAL" or "STRICTLY CONFIDENTIAL":
24

1 (a) In the event that original documents are produced for inspection, the
2 Producing Party may designate such documents by placing the appropriate legend on the
3 documents in the copying process;

4 (b) Written discovery may be designated by placing the following legend
5 on every page of any such document prior to production: "CONFIDENTIAL" or
6 "STRICTLY CONFIDENTIAL."

7 (c) All information disclosed during a deposition shall be deemed
8 STRICTLY CONFIDENTIAL on a provisional basis until the time within which it may be
9 designated as CONFIDENTIAL or STRICTLY CONFIDENTIAL has passed. Any party or
10 third party may designate any specific passages of the transcript as CONFIDENTIAL or
11 STRICTLY CONFIDENTIAL in writing within ten days after receipt of the final version of
12 the transcript. Any testimony not so designated within ten days after receipt of the final
13 version of the transcript may be treated as non-confidential. No party or third party can
14 preserve confidentiality of the deposition by a blanket designation of confidentiality that
15 does not differentiate between confidential and non-confidential portions of the transcript.

16 5. A Producing Party may designate material as CONFIDENTIAL if the
17 material is proprietary or commercially sensitive information. Discovery Material
18 designated as "CONFIDENTIAL" may be disclosed to:

19 (a) The outside attorneys working on this action on behalf of any party,
20 including paralegals, and clerical employees working under the direct supervision of such
21 counsel;

22 (b) Any person not employed by or affiliated with a party who is
23 expressly retained or sought to be retained by any attorney described in paragraph 5(a) to
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1 assist in preparation of this action for trial as a consultant or testimonial expert, with
2 disclosure only to the extent necessary to perform such work;

3 (c) The following party representatives, two per side, and their respective
4 secretarial, clerical and paralegal personnel, but only after compliance with the provisions of
5 paragraph 7 below:

6 National Products Inc.:

- 7 1. Jeff Carnevali
8 2. Chad Remmers

9 Gamber-Johnson LLC:

- 10 1. Jeff Greene
11 2. Jennifer Coleman

12 (d) Court reporters and videographers retained to record testimony taken
13 in depositions;

14 (e) The Court, jury, and court personnel; and

15 (f) Independent stenographic, clerical, secretarial, photocopying,
16 scanning, indexing, paralegal, data entry, data processing, drafting, graphics or design
17 services and trial consulting services retained by a Party.

18 6. Any "CONFIDENTIAL" information which a Producing Party believes is
19 extremely sensitive in nature and thus should not be disclosed to a director, officer,
20 employee, or consultant of any other party may be designated by the Producing Party at the
21 time of disclosure of such information as "STRICTLY CONFIDENTIAL." The parties
22 contemplate that "STRICTLY CONFIDENTIAL" material shall consist of or include
23 particularly sensitive technical information relating to research, development, marketing,
24 manufacture and production of products; technical, business and research information

1 regarding products; highly sensitive financial information and marketing plans and
2 forecasts, customer lists, pricing data, cost data, customer orders, customer quotations; any
3 pending or abandoned patent applications, foreign or domestic, as well as such other
4 documents, information, materials or things that relate to other proprietary information
5 within the meaning of Federal Rule of Civil Procedure 26(c)(1)(G) that the Producing Party
6 reasonably believes is of such nature and character that disclosure of such information
7 would be harmful to the Producing Party. Discovery Material designated as "STRICTLY
8 CONFIDENTIAL" may be disclosed only to:

9 (a) The outside attorneys working on this action on behalf of any party,
10 paralegals and clerical employees of the outside counsel's firm working under the direct
11 supervision of such counsel;

12 (b) Any person not employed by a party who is expressly retained or
13 sought to be retained by any attorney described in paragraph 6(a) to assist in preparation of
14 this action for trial as a consultant or testimonial expert, with disclosure only to the extent
15 necessary to perform such work;

16 (c) Court reporters and videographers retained to record testimony taken
17 in depositions;

18 (d) The Court, jury, and court personnel;

19 (e) Independent stenographic, clerical, secretarial, photocopying,
20 scanning, indexing, paralegal, data entry, data processing, drafting, graphics or design
21 services and trial consulting services retained by a Party; and

22 (f) Any other person with the prior written consent of the Producing
23 Party or Third Party.

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1 7. The persons receiving "CONFIDENTIAL" information or "STRICTLY
2 CONFIDENTIAL" information are enjoined from disclosing it to any other person, except
3 in conformance with this Order. Each individual who receives any "CONFIDENTIAL"
4 information or "STRICTLY CONFIDENTIAL" information hereby agrees to subject
5 himself/herself to the jurisdiction of this Court for the purpose of any proceedings relating to
6 the performance under, compliance with or violation of this Protective Order.

7 (a) Before counsel may disclose confidential material to any person
8 described in Paragraphs 5(b-c) and (f) and/or 6(b) and (f) above, such counsel shall require
9 the person to whom the disclosure is to be made to read a copy of this Protective Order and
10 sign the form annexed hereto as Exhibit "A." Counsel disclosing confidential material to a
11 person required to execute a copy of the form annexed as Exhibit "A" shall maintain the
12 originals of such form(s):

13 (b) Each in-house counsel who is to receive "CONFIDENTIAL"
14 information from an opposing party in this case shall execute an affidavit stating that he or
15 she has read this Order and will be bound by the terms hereof; and

16 (c) Counsel who makes confidential material available to persons set
17 forth in Paragraphs 5(a-c) and/or (f) and/or 6(a-c) above shall be responsible for limiting
18 distribution thereof to those persons authorized under this Protective Order and such counsel
19 shall be prepared to account for the disposition and use of these materials to those persons.

20 All copies of confidential material disclosed shall be subject to the same restrictions
21 imposed herein on original materials. Any person having access to confidential material
22 pursuant to Paragraphs 5 (e-f) and/or 6 (e-f) above whose participation in this litigation has
23 been terminated or otherwise concluded shall return all confidential material as soon as
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1 practicably possible thereafter to the receiving party's counsel of record herein, but in no
2 event longer than thirty (30) days after the termination or conclusion of the participation.

3 8. If any receiving party intends to disclose any confidential material to any
4 person described in Paragraphs 5(b) and/or 6(b), the receiving party intending to disclose
5 such confidential material shall notify counsel for such Producing Party in writing, at least
6 ten (10) business days before any such disclosure is made, of the identity of each such
7 person and if an employee, their job responsibilities. If the receiving party intends to
8 disclose any confidential material to a potential or actual expert witness in this case, the
9 receiving party shall include such expert's curriculum vitae with its notification to the
10 Producing Party. If the Producing Party objects to such disclosure, it shall notify the
11 receiving party intending to disclose the confidential material in writing of its objection(s)
12 prior to the date on which the disclosure is intended to be made. Should the party intending
13 to make the disclosure disagree with the basis for the objection(s), the parties must first
14 attempt to resolve the objections informally. If the informal efforts do not resolve the
15 dispute within five (5) days, the party intending to disclose may file a motion requesting that
16 the objection(s) be quashed after that five (5) day period has passed. The party intending to
17 disclose shall have the burden of proof by a preponderance of the evidence on the issue of
18 the sufficiency vel non of the objection(s). Pending a ruling by the Court upon any such
19 objection(s), the Discovery Material shall not be disclosed to any person objected to by such
20 Producing Party.

21 9. To the extent that any Discovery Material is used in the taking of depositions,
22 all such Discovery Material shall remain subject to the provisions of this Order, along with
23 the transcript pages of the deposition testimony dealing with the confidential information. If
24 confidential information is used in any deposition, the reporter shall be informed of this

1 Order and shall be required to operate in a manner consistent with this Order. In the event
2 the deposition is videotaped, the original and all copies of the videotape shall be marked by
3 the video technician to indicate that the contents of the videotape are subject to this
4 Protective Order in substantially the same form as follows below:

5 This videotape contains confidential testimony used in this
6 case and is not to be viewed or the contents thereof to be
7 displayed or revealed except by order of the Court, or
8 pursuant to written stipulation of the parties.

9 10. The parties agree to be bound by the terms of this Protective Order with
10 respect to any Third Party that produces confidential information in this lawsuit provided
11 that such Third Party agrees in writing to be bound by the terms of this Protective Order. A
12 party that seeks confidential information from a Third Party shall provide with any
13 subpoena or other governmental process directed to that Third Party requesting such
14 information a copy of this Protective Order and written notice informing the Third Party that
15 it may take advantage of the protections afforded by this Protective Order. An inadvertent
16 failure to provide a copy of this Protective Order shall not constitute a breach of this
17 provision.

18 11. The recipients of CONFIDENTIAL or STRICTLY CONFIDENTIAL
19 information that is provided under this Order and all material that derives therefrom shall
20 maintain such information in a safe and secure area and all reasonable precautions shall be
21 taken with respect to the storage, custody, use and/or dissemination of such information.
22 Any CONFIDENTIAL or STRICTLY CONFIDENTIAL information that is copied,
23 reproduced, summarized, or abstracted shall be subject to the terms of this Order.

24 12. Filing Under Seal - Local Rule 5(g) Applies

1 (a) If any party wishes to file with the Court any document that contains
2 or comprises CONFIDENTIAL or STRICTLY CONFIDENTIAL information, that party
3 shall file that document under seal and shall simultaneously bring a supporting motion for
4 leave to accept that document under seal pursuant to Local Rule CR 5(g)(2). If that motion
5 is denied, the filing party shall promptly re-file that document so it is available on a public
6 basis. In either event, the document shall be deemed timely filed as of the date of the
7 motion under Local Rule CR 5(g)(2).

8 (b) If, through inadvertence or otherwise, any Confidential or Highly
9 Confidential document is filed with the Court without the appropriate notice, the person
10 responsible for the disclosure shall immediately bring all pertinent facts relating to such
11 disclosure to the attention of counsel for all parties and to the Court, without prejudice to
12 other rights and remedies of any party, and shall make every effort to prevent further
13 disclosure.

14 (c) Nothing contained in this Protective Order shall be construed to
15 prejudice any party's right to use Discovery Material at any hearing in this litigation or at
16 the trial of this litigation or any appeal therefrom, provided that the party desiring to use the
17 Discovery Material gives reasonable advance notice of the intent to use the Discovery
18 Material. The confidentiality of such materials shall be protected as determined and
19 directed by the court.

20 13. None of the provisions of this Protective Order shall apply to the following
21 categories of documents and information and either party may apply to remove the
22 restrictions set forth herein based upon a showing that information designated
23 CONFIDENTIAL or STRICTLY CONFIDENTIAL had been:

24 (a) available to the public at the time of its production hereunder;

1 (b) available to the public after the time of its production through no
2 unauthorized act, or failure to act, on behalf of the receiving party, its counsel,
3 representatives or experts;

4 (c) known to such receiving party or known to have been independently
5 developed by such receiving party prior to its production herein or without use or benefit of
6 the information;

7 (d) obtained outside of this action by such receiving party from the
8 Producing Party without having been designated and CONFIDENTIAL and/or STRICTLY
9 CONFIDENTIAL, provided, however, that this provision does not negate any pre-existing
10 obligation of confidentiality;

11 (e) obtained by such receiving party after the time of disclosure
12 hereunder from a non-party having the right to disclose the same; or

13 (f) previously produced, disclosed and/or provided by the Producing
14 Party to the Receiving Party or any non-party without an obligation of confidentiality.

15 14. The inadvertent production of documents subject to the attorney client
16 privilege or the attorney work-product privilege will not waive the attorney client privilege
17 or the attorney work-product privilege, absent an express order by the Court to the contrary.
18 *In the event that a producing party inadvertently or unintentionally produces a document*
19 *that otherwise is not discoverable for reasons of the attorney-client privilege, work product*
20 *immunity, or other privilege, doctrine, or immunity, such party shall promptly give written*
21 *notice to the requesting party upon discovering such inadvertent disclosure. Immediately*
22 *upon receiving such notice, outside counsel for the receiving party shall sequester all*
23 *identified information, including any and all copies, in its offices until the matter is resolved*
24 *either by agreement of the parties or by Court order. If the parties are unable to reach a*

1 satisfactory agreement as to the return, destruction, or use of such documents within
2 fourteen (14) days of such notice, the receiving party may, within that time period, request
3 that the Court resolve the matter. If the receiving party does not make such a motion, it
4 shall return such document and all copies to the producing party. The period of time that
5 elapses while a party follows the procedures set forth in this paragraph for resolving any
6 inadvertent disclosure dispute shall not be considered as a factor in deciding whether a
7 party's delay in attending to the inadvertent disclosure was reasonable under the
8 circumstances.

9 Nothing herein shall preclude the receiving party from challenging the privilege
10 or immunity claimed by the disclosing party regarding the inadvertently produced
11 document or information, and the receiving party may use the inadvertently produced
12 document or information that is claimed to be privileged or work product in a
13 submission to the Court, filed under seal, when challenging the privilege or immunity
14 claimed by the disclosing party.

15 15. The inadvertent failure by a party to designate Discovery Material as
16 CONFIDENTIAL or STRICTLY CONFIDENTIAL shall not be a waiver of such
17 designation provided that the party who fails to make such designation informs the receiving
18 party that such Discovery Material is CONFIDENTIAL or STRICTLY CONFIDENTIAL
19 within ten (10) days from when the failure to designate first became known to the Producing
20 Party. The Receiving Party shall not be in breach of this Order for any use of such
21 Discovery Material before the Receiving Party is informed of the inadvertent failure to
22 designate. Once the receiving party has been informed of the inadvertent failure to
23 designate pursuant to this provision, the receiving party shall treat such Discovery Material
24 thereafter pursuant to the terms of this Order.

1 16. In the event of a disclosure of any Discovery Material designated
2 CONFIDENTIAL or STRICTLY CONFIDENTIAL to a person or persons not authorized to
3 such access under this Order, the party responsible for having made such disclosure, and
4 each party with knowledge thereof, shall immediately inform counsel for the party whose
5 Discovery Material has been disclosed of all known relevant information concerning the
6 nature and circumstances of the disclosure. The responsible disclosing party shall also
7 promptly take all reasonable measures to retrieve the improperly disclosed Discovery
8 Material and to ensure that no further or greater unauthorized disclosure and/or use thereof
9 is made.

10 17. As soon as practicably possible following the termination of this litigation,
11 including any appeals, the parties shall deliver all materials produced by an opposing party
12 designated "CONFIDENTIAL" or "STRICTLY CONFIDENTIAL" to their respective
13 outside counsel in this case. Not later than thirty (30) days after the final disposition of this
14 litigation, all confidential material shall be returned to the Producing Party or, in alternative,
15 with the written consent of the producing Party, destroyed. The party receiving any
16 Discovery Material shall certify in writing that all confidential material, including
17 confidential material disclosed pursuant to paragraphs 4, 5 and 6 has been returned or
18 destroyed.

19 18. Any party may object in writing to the designation by the Producing Party of
20 any material as CONFIDENTIAL and/or STRICTLY CONFIDENTIAL material,
21 specifying the material to which the objection is addressed. Thereafter, further protection of
22 such material shall be resolved in accordance with the following procedures.
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1 (a) The objecting party shall have the burden of conferring either in
2 person, in writing or by telephone with the Producing Party claiming protection (as well as
3 any other interested party) in a good faith effort to resolve the dispute;

4 (b) Failing agreement, the objecting party may bring a noticed motion to
5 the Court for a ruling that the Discovery Material sought to be protected is not entitled to
6 such status and protection. This Court shall determine any unresolved disputes using the
7 same standards as if the Producing Party had applied for a protective order under the Federal
8 Rules of Civil Procedure, the Local Rules for the Western District of Washington, and
9 related law.

10 Notwithstanding any challenge to a designation, all material so designated
11 shall be treated as such and shall be subject to the provisions hereof until one of the
12 following occurs: (a) the party who designated the material as CONFIDENTIAL and/or
13 STRICTLY CONFIDENTIAL withdraws such designation in writing, or (b) the Court rules
14 that the Discovery Material is not entitled to the designation.

15 19. This stipulation is without prejudice to the right of any party to seek further
16 or additional protection of information for which the protection of this Order is not believed
17 by such party to be adequate. Nothing in this Protective Order shall be deemed to bar or
18 preclude any Producing Party from seeking such additional protection, including, without
19 limitation, an order that certain matter may not be discovered at all.

20 20. If at any time the Discovery Material is subpoenaed by any court, arbitral,
21 administrative or legislative body, the person to whom the subpoena or other request is
22 directed shall immediately give written notice thereof to every party who has produced such
23 Discovery Material and to its counsel and shall provide each such party with an opportunity
24 to object to the production of confidential materials. If the Producing Party does not move

1 for a protective order within ten (10) days of the date written notice is given, the party to
2 whom the referenced subpoena is directed may produce, on or after the date set for
3 production in the subpoena, such Discovery Material in response thereto.

4 21. Nothing in this Order shall preclude any party to the lawsuit or its attorneys
5 (a) from showing a document designated as "CONFIDENTIAL" or "STRICTLY
6 CONFIDENTIAL" to an individual who either prepared or reviewed the document prior to
7 the filing of this action, or (b) from disclosing or using, in any manner or for any purpose,
8 its own information or documents designated by that same party as "CONFIDENTIAL" or
9 "STRICTLY CONFIDENTIAL."

10 22. The parties agree that the terms of this Order shall survive and remain in
11 effect after the termination of the above-captioned matter. The Court shall retain
12 jurisdiction to hear disputes arising out of this Protective Order.

13 23. This Order shall be binding upon the parties hereto, their attorneys, and their
14 successors, executors, personal representatives, administrators, heirs, legal representatives,
15 assigns, subsidiaries, divisions, employees, agents, retained experts, and the persons or
16 organizations over which they have direct control.

17 24. Execution of this Protective Order shall not constitute a waiver of the right of
18 any party to claim in this action or otherwise that any documents, or any portion thereof, are
19 privileged or otherwise non-discoverable, or are not admissible in evidence in this action or
20 any other proceeding. Counsel for a Producing Party may redact specific material that the
21 Producing Party believes, in good faith, is subject to the attorney-client privilege, work-
22 product immunity or other legally cognizable privilege or immunity. The deletion of all
23 material redacted shall be clearly indicated by visibly marking the document where material
24 has been deleted with the word "REDACTED" or a solid black line.

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DARBY & DARBY P.C.

Dated: July 15, 2008

By: s/ David K. Tellekson
David K. Tellekson, WSBA No. 33523
Robert L. Jacobson, WSBA No. 30838
Mark P. Walters, WSBA No. 30819
1191 Second Avenue
Seattle, Washington 98101
Telephone: (206) 262-8900
Facsimile: (206) 262-8901
Email: dtellekson@darbylaw.com

Attorneys for Plaintiff National Products, Inc.

MICHAEL BEST & FRIEDRICH LLP

Dated: July 15, 2008


By: s/ David L. De Bruin
David L. De Bruin (pro hac vice)
Melanie J. Reichenberger (pro hac vice)
Two Prudential Plaza
180 North Stetson Avenue, Suite 2000
Chicago, IL 60601
Phone: (312) 222-0800
Fax: (312) 222-0818
E-mail: dldebruin@michaelbest.com
mjreichenberger@michaelbest.com

Mark S. Parris (WSBA No. 13870)
Molly A. Terwilliger (WSBA No. 28449)
HELLER EHRMAN LLP
701 Fifth Avenue, Suite 6100
Seattle, WA 98104-7098
Phone: (206) 389-6004
Fax: (206) 447-0849
E-mail: mark.parris@hellerehrman.com

Attorneys for Defendant Gamber-Johnson LLC

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IT IS SO ORDERED this 17th day of July, 2008.



Hon. James L. Robart
United States District Judge

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EXHIBIT A

I, _____, acknowledge and declare that I have received a copy of the Protective Order (“Order”) in National Products, Inc. v. Gamber-Johnson LLC, United States District Court, Western District of Washington, Civil Case No. CV08-0049-JLR. Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

Dated: _____

[Signature]

[Print Name]