

IN THE SUPREME COURT OF THE STATE OF NEVADA

MM DEVELOPMENT COMPANY,
INC., D/B/A PLANET 13, a Nevada
Corporation,

Appellant,

vs.

TRYKE COMPANIES SO NV, LLC,
a Nevada Limited Liability Company,

Respondent.

Supreme Court Case No: 81938

Electronically Filed
May 24 2021 01:27 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENT TRYKE COMPANIES SO NV, LLC'S
MOTION TO FILE UNREDACTED ANSWERING BRIEF AND
UNREDACTED PAGES IN RESPONDENT'S APPENDIX UNDER SEAL**

Pursuant to Rule 3 of the Nevada Rules for Sealing and Redacting Court Records (the "SRCR") and the following Memorandum of Points and Authorities, Respondent Tryke Companies SO NV, LLC ("Tryke"), by and through counsel of record, respectfully moves to file: (1) its unredacted Answering Brief; and (2) an unredacted version of Tryke's Reply in Support of Motion for Preliminary Injunction and the exhibits thereto (the "Reply") – pages 622 through 647 of Tryke's Supplemental Appendix – under seal.

I. MEMORANDUM OF POINTS AND AUTHORITIES

On March 25, 2021, Appellant MM Development, Inc. ("MM Development") filed its Opening Brief along with Appendix Volumes 1, 2 and 3.

Appendix Volume 3, pages 479-496, included Tryke’s Reply, originally filed with the District Court in its redacted form based upon a Stipulated Protective Order agreed upon by the parties and entered by the District Court on July 30, 2020 (“Stipulated Protective Order”) attached hereto as **Exhibit A**. The information contained within the redacted portions of Tryke’s Reply is pertinent to and referenced in some detail in Tryke’s Answering Brief in this appeal, and thus, pursuant to the Stipulated Protective Order, Tryke is obligated to request that the Court allow it to file that information under seal. Tryke, therefore, requests that the Court allow it to submit its unredacted Answering Brief and pages 622-647 of its Supplemental Appendix under seal.

II. LEGAL ARGUMENT

A. Legal Standard

SRCR 3 sets forth the grounds upon which the Court may seal or redact documents or exhibits filed with the Court. Pursuant to SRCR 3(1), “[a]ny person may request that the court seal or redact court records for a case that is subject to these rules by filing a written motion.” SRCR 3(1). SRCR 3(4) provides, in pertinent part:

4. Grounds to seal or redact; written findings required. The court may order the court files and records, or any part thereof, in a civil action to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record. The parties’ agreement

alone does not constitute a sufficient basis for the court to seal or redact court records. The public interest in privacy or safety interests that outweigh the public interest in open court records include findings that:

(a) The sealing or redaction is permitted or required by federal or state law;

(b) The sealing or redaction furthers an order entered under NRCp 12(f) or JCRCP 12(f) or a protective order entered under NRCp 26(c) or JCRCP 26(c);

(g) The sealing or redaction is necessary to protect intellectual proprietary or property interests such as trade secrets as defined in NRS 600A.030(5). . .

SRCR 3(4)(a)-(b). SRCR 3(5)(b) states that “[a] court record shall not be sealed under these rules when reasonable redaction will adequately resolve the issues before the court under subsection 4 above.” SRCR 3(5)(b).

B. The Court Should Allow Tryke’s Unredacted Reply in Support of Its Motion for Preliminary Injunction to Be Submitted For This Court’s Consideration Under Seal

The Court should allow Tryke to submit its Answering Brief and the unredacted version of Tryke’s Reply and exhibits thereto – already submitted in this appeal as Appellant’s Appendix 479-496 in its redacted form, supplemented in its unredacted form in Tryke’s Appendix at 622-647 – under seal pursuant to SRCR 3(4).

The parties entered into a Stipulated Protective Order in the District Court case pursuant to NRCp 26(c) and which provides “any party seeking to file or disclose materials designated as Confidential Information or Highly Confidential Information with the Court in this action must seek to file such Confidential

Information or Highly Confidential Information under seal pursuant to Rule 3 of the Nevada Rules for Sealing and Redacting Court Records.” *See* Ex. A, ¶13. MM Development designated the Reply exhibit as “Highly Confidential-Attorneys Eyes Only.” For that reason, Tryke’s Reply and the exhibits thereto were originally filed with the District Court in a redacted format and submitted unredacted pursuant to a Motion to File Under Seal.

In this appeal, MM Development has filed Appendix pages 479-496 in a redacted format but has not moved this Court to allow the unredacted version to be filed under seal. Indeed, said are documents MM Development would prefer this Court did not see. However, these documents contain key information discussed in detail in Tryke’s Answering Brief. And, until the Court rules otherwise, Tryke is obligated to comply with the Stipulated Protective Order and request this Court allow the submission under seal. Accordingly, pursuant to paragraph 13 of the Protective Order and SRCR 3(4) and 3(5)(b), Tryke seeks to submit its Answering Brief and its supplemental Appendix pages 622-647, containing the unredacted version of the Reply in Support of Motion for Preliminary Injunction and its exhibits, under seal.

///

///

///

III. CONCLUSION

For the reasons stated herein, Tryke respectfully requests that the Court allow its Answering Brief and Supplemental Appendix pages 622-647 to be sealed pursuant to SRCR 3(4).

Dated this 24th day of May 2021.

H1 LAW GROUP



Eric D. Hone (NV Bar No. 8499)
Joel Z. Schwarz (NV Bar No. 9181)
Leslie A. S. Godfrey (NV Bar No. 10229)
701 North Green Valley Parkway, Suite 200
Henderson, NV 89074
Tel: (702) 608-3720
Fax: (702) 703-1063

CONANT LAW FIRM

Paul A. Conant (AZ Bar No. 012667)
(Admitted *Pro Hac Vice*)
2398 East Camelback, Suite 925
Phoenix, AZ 85016

*Attorneys for Respondent
Tryke Companies SO NV, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May 2021, I submitted the foregoing
RESPONDENT TRYKE COMPANIES SO NV, LLC'S MOTION TO FILE
UNREDACTED ANSWERING BRIEF AND UNREDACTED PAGES IN
RESPONDENT'S APPENDIX UNDER SEAL for filing and service via the
Court's eFlex electronic filing system.



An employee of H1 LAW GROUP

EXHIBIT A

Heather S. Smith
CLERK OF THE COURT

H1 LAW GROUP
701 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074
Tel: 702-608-3720



SPO

H1 LAW GROUP

Eric D. Hone, NV Bar No. 8499

eric@h1lawgroup.com

Joel Z. Schwarz, NV Bar No. 9181

joel@h1lawgroup.com

Moorea L. Katz, NV Bar No. 12007

moorea@h1lawgroup.com

701 N. Green Valley Parkway, Suite 200

Henderson NV 89074

Phone 702-608-3720

Fax 702-703-1063

CONANT LAW FIRM, PLC

Paul A. Conant, AZ Bar No. 012667

docket@conantlawfirm.com

2398 East Camelback Road, #925

Phoenix, Arizona 85016

Phone: (602) 508-9010

Fax: (602) 508-9015

Attorneys for Plaintiff

Tryke Companies SO NV, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

TRYKE COMPANIES SO NV, LLC, a Nevada
limited liability company,

Plaintiff,

vs.

MM DEVELOPMENT COMPANY, INC., dba
PLANET 13, a Nevada corporation; DOES I
through C, inclusive; and ROE BUSINESS
ENTITIES, I through C, inclusive,

Defendants.

CASE NO.: A-19-804883-C
DEPT. NO.: 24

**STIPULATED CONFIDENTIALITY
AGREEMENT AND
PROTECTIVE ORDER**

Plaintiff Tryke Companies SO NV, LLC, by and through counsel, the law firm of H1 Law Group and Conant Law Firm; and Defendant MM Development Company, Inc. dba Planet 13 ("Planet 13"), by and through counsel, the law firm of Kemp Jones, LLP; collectively referred to herein as the "Parties" and individually as a "Party", agree that good cause exists to protect the confidential nature of the information contained in documents, electronically stored data, interrogatory responses, responses to requests for admission, or deposition testimony. Due to the



1 nature of the dispute, the Parties may request and/or exchange information that is confidential
2 and proprietary regarding the Parties' businesses and their operations. Thus, the Parties have
3 agreed and stipulated to the entry of this Stipulated Confidentiality Agreement and Protective
4 Order (the "Protective Order") for the protection of business records, plans and strategies,
5 information, financial records, trade secrets and other proprietary information, confidential
6 records, commercial information, and related information produced or otherwise disclosed by the
7 Parties in this action.

8 Whereas, the Parties desire to produce certain documents or other material that contain
9 proprietary and/or confidential information;

10 The Court, finding good cause for entry of a protective order pursuant to NRCP 26(c) and
11 NRCP 29, hereby ORDERS that:

12 **1. Applicability of this Protective Order:** Subject to Section 2 below, this
13 Protective Order does not and will not govern any trial proceedings in this action but will
14 otherwise be applicable to and govern the handling of documents, electronically stored data,
15 depositions, deposition exhibits, interrogatory responses, responses to requests for admissions,
16 responses to requests for production of documents, and all other discovery obtained pursuant to
17 Nevada Rules of Civil Procedure or other legal process by or from, or produced on behalf of, a
18 party, non-party or witness in connection with this action (this information hereinafter shall be
19 referred to as "Discovery Material"). As used herein, "Producing Party" or "Disclosing Party"
20 shall refer to the parties and nonparties that give testimony or produce documents or other
21 information in connection with this action; "Receiving Party" shall refer to the parties in this
22 action that receive such information, and "Authorized Recipient" shall refer to any person or
23 entity authorized by Section 11 of this Protective Order to obtain access to Confidential
24 Information or Highly Confidential Information as defined in Section 5, or the contents of such
25 Discovery Material.

26 **2. No Waiver:** This Protective Order is entered solely for the purpose of facilitating
27 the exchange of documents and information among the parties to this action without involving
28 the Court unnecessarily in the process. Nothing in this Protective Order, nor the production of



any information or document under the terms of this Protective Order, nor any proceedings pursuant to this Protective Order, shall be deemed to be a waiver of any rights or objections to challenge the authenticity or admissibility of any document, testimony or other evidence at trial. Additionally, this Protective Order will not prejudice the right of any party or nonparty to oppose production of any information on the ground of attorney-client privilege, work product doctrine, or any other privilege or protection provided under the law.

3. Designation of Information: Any Producing Party may designate Discovery Material that is in its possession, custody, or control produced to a Receiving Party as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” under the terms of this Protective Order if the Producing Party in good faith reasonably believes that such Discovery Material contains nonpublic, confidential information as defined in Section 5 below.

4. Exercise of Restraint and Care in Designating Material for Protection: Each Producing Party that designates information or items for protection under this Protective Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. Indiscriminate designations are prohibited.

5. Confidential Information: For purposes of this Protective Order, “Confidential Information” means information that constitutes, reflects, or discloses nonpublic information, trade secrets, or other know-how, research, development, or financial, proprietary, commercially sensitive, confidential business, accounting, marketing, regulatory, strategic information (including business plans, negotiations, strategies, or decisions, scientific and technical information, and nonpublic designs), information about existing and potential customers, the disclosure of which the Producing Party believes in good faith might reasonably result in economic, competitive, or business injury to the Producing Party (or its parents, subsidiaries, affiliates, personnel, or clients) and which is not publicly known and cannot be ascertained from an inspection of publicly available sources, documents, material, or devices. “Confidential Information” shall also include sensitive personal information that is not otherwise publicly available, such as home addresses; social security numbers; dates of birth; employment

///



1 personnel files; home telephone records/numbers; employee disciplinary records; earnings
2 statements; tax records; and other similar personal financial information.

3 “Highly Confidential Information” is any Confidential Information as defined above, the
4 disclosure of which would create a substantial risk of economic, competitive, or business injury
5 to the Producing Party.

6 **6. Designating Confidential Information and Highly Confidential Information:**

7 If any party in this action determines in good faith that any information, documents, things, or
8 responses produced in the course of discovery in this action should be designated as Confidential
9 Information or Highly Confidential Information (the “Designating Party”), it shall advise any
10 party receiving such material of this fact, and all copies of such document, things, or responses,
11 or portions thereof deemed to be confidential shall be marked “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS EYES ONLY” (whether produced in hard copy or electronic
13 form) at the expense of the Designating Party and treated as such by all parties. A Designating
14 Party may inform another party that a document is Confidential or Highly Confidential by
15 providing the Bates number of the document in writing. If Confidential Information or Highly
16 Confidential Information is produced via an electronic form on a computer readable medium
17 (e.g., CD-ROM), other digital storage medium, or via Internet transmission, the Producing Party
18 or Designating Party shall affix in a prominent place on the storage medium or container file on
19 which the information is stored, and on any container(s) for such medium, the legend “Includes
20 CONFIDENTIAL INFORMATION” and/or “HIGHLY CONFIDENTIAL INFORMATION –
21 ATTORNEYS EYES ONLY”. Nothing in this section shall extend confidentiality or the
22 protections associated therewith to any information that does not otherwise constitute
23 “Confidential Information” or “Highly Confidential Information” as defined in Section 5 herein.

24 **7. Redaction Allowed:** Any Producing Party may redact from the documents or
25 things it produces matter that the Producing Party claims is subject to the attorney-client
26 privilege, the work product doctrine, a legal prohibition against disclosure, or any other privilege
27 from disclosure. A Producing Party may not withhold non-privileged, responsive information
28 solely on the grounds that such information is contained in a document that includes privileged



1 information. The Producing Party shall mark each redaction with a legend stating
2 “REDACTED”. All documents redacted based on attorney-client privilege or work-product
3 immunity shall be listed in an appropriate log in conformity with Nevada law and Nevada Rule
4 of Civil Procedure 26(b)(5). However, the Parties shall not be required to provide a log for any
5 privileged communications or work product created after June 24, 2019. Any other redaction
6 made pursuant to this Section 7, whether based on a claim of privilege, protection, or otherwise,
7 shall likewise be identified on an appropriate log indicating the justification for the redaction.
8 Where a document consists of more than one page, the page on which information has been
9 redacted shall so be marked. The Producing Party shall preserve an un-redacted version of such
10 document.

11 **8. Use of Confidential Information and Highly Confidential Information:**

12 Except as provided herein, Confidential Information and Highly Confidential Information
13 designated or marked shall be maintained in confidence, used solely for the purposes of this
14 action, to the extent not otherwise prohibited by an order of the Court, shall be disclosed to no
15 one except those persons identified herein in Section 11, and shall be handled in such manner
16 until such designation is removed by the Designating Party or by order of the Court. Confidential
17 Information and Highly Confidential Information produced by another party shall not be used by
18 any Receiving Party for any commercial, competitive or personal purpose. Nothing in this
19 Protective Order shall govern or restrict a Producing Party’s use of its own Confidential
20 Information, Highly Confidential Information or any of its own non-confidential information in
21 any way.

22 **9. Designation of Previously Disclosed Documents:** Once the Court enters this

23 Protective Order, a party shall have thirty (30) calendar days to designate as Confidential or
24 Highly Confidential any documents previously produced in this action, which it can do by
25 stamping “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL – ATTORNEYS EYES
26 ONLY” on the document, or informing the other parties of the Bates-numbers of the documents
27 so designated.

28 ///



1 **10. Use of Confidential Information in Depositions:** Counsel for any party shall
2 have the right to disclose Confidential Information or Highly Confidential Information at
3 depositions, provided that such disclosure is consistent with this Protective Order. Any counsel
4 of record may request that all persons not entitled under Section 11 of this Protective Order to
5 have access to Confidential Information or Highly Confidential Information leave the deposition
6 room during the confidential portion of the deposition. Failure of such persons to comply with a
7 request to leave the deposition shall constitute substantial justification for counsel to advise the
8 witness that the witness need not answer the question where the answer would disclose
9 Confidential Information or Highly Confidential Information until such unauthorized person
10 leaves the deposition room.

11 Additionally, at any deposition session, (1) upon inquiry with regard to the content of any
12 discovery material(s) designated or marked as “CONFIDENTIAL” and “HIGHLY
13 CONFIDENTIAL – ATTORNEYS EYES ONLY”; (2) whenever counsel for a party deems that
14 the answer to a question may result in the disclosure or revelation of Confidential Information or
15 Highly Confidential Information; and/or (3) whenever counsel for a party deems that the answer
16 to any question has resulted in the disclosure or revelation of Confidential Information or Highly
17 Confidential Information, counsel to any party may designate portions of a deposition transcript
18 and/or video of any deposition (or any other testimony) as containing Confidential Information
19 or Highly Confidential Information in accordance with this Order by a statement on the record
20 during the deposition or by notifying all other parties in writing, within fifteen (15) calendar days
21 of receiving the transcript or video that it contains Confidential Information or Highly
22 Confidential Information and designating the specific pages, lines, and/or counter numbers as
23 containing Confidential Information or Highly Confidential Information. If a designation is made
24 via a statement on the record during a deposition, that portion of the testimony so designated
25 shall be set forth in a separate transcript with the appropriate designation appearing on each page
26 thereof, where available. If a separate, properly designated transcript is not available from the
27 court reporter, counsel must follow up in writing within fifteen (15) calendar days of receiving
28 the transcript or video, identifying the specific pages, lines, and/or counter numbers containing



1 the Confidential Information or Highly Confidential Information. If no confidentiality
2 designations are made within the fifteen (15) calendar day period, the entire transcript shall be
3 considered non-confidential. During the fifteen (15) day period, the entire transcript and video
4 shall be treated as Confidential Information or Highly Confidential Information.

5 All originals and copies of deposition transcripts that contain Confidential Information or
6 Highly Confidential Information shall be prominently marked “CONFIDENTIAL” and
7 “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” on the cover thereof and, if and
8 when filed with the Court, the portions of such transcript so designated shall be filed under seal.
9 Any DVD or other digital storage medium containing Confidential Information or Highly
10 Confidential Information deposition testimony shall be labeled in accordance with the provisions
11 of Section 6.

12 **11. Persons Authorized to Receive Confidential Information:** Confidential
13 Information produced pursuant to this Protective Order may be disclosed or made available only
14 to the Court, its employees, other court personnel, any discovery referee, mediator or other
15 official who may be appointed by the Court, and to the persons below:

16 (a) A party, or officers, directors, employees, members, managers, and agents
17 of a party deemed necessary by counsel to aid in the prosecution, defense, or settlement
18 of this action;

19 (b) Counsel for a party (including in-house attorneys, contract attorneys,
20 outside attorneys associated with a law firm(s) of record, and support personnel, such as
21 law clerks, paralegals, secretaries, and clerical staff employed by such counsel);

22 (c) Persons retained by a party to provide litigation support services
23 (photocopying, videotaping, translating, preparing exhibits or demonstrations, organizing,
24 storing, retrieving data in any form or medium, etc.);

25 (d) Consultants or expert witnesses (together with their support staff) retained
26 for the prosecution or defense of this litigation, provided that such an expert or consultant
27 is not a current employee of a direct competitor of a party named in this action and
28 provided such Consultant and expert witness agrees to maintain the information as

Confidential pursuant to this Order and executes Exhibit A; however, a party may seek leave of the Court to provide information to a consultant employed by a competitor;

(e) Court reporter(s) and videographers(s) employed in this action;

(f) Any authors and/or recipients of the Confidential Information (to the extent the author or recipient is in possession of the information or documents through means other than Discovery Materials produced in this action);

(g) A witness at any deposition or other proceeding in this action, provided such witness agrees on the record to maintain the information as Confidential pursuant to this Order and shall execute Exhibit A; and

(h) Any other person as to whom the parties in writing agree or that the Court in these proceedings so designates.

Any person to whom Confidential Information is disclosed pursuant to subparts (a) through (h) hereinabove shall be advised that the Confidential Information is being disclosed pursuant to an order of the Court, that the information may not be disclosed by such person to any person not permitted to have access to the Confidential Information pursuant to this Protective Order, and that any violation of this Protective Order may result in the imposition of such sanctions as the Court deems proper. Any person to whom Confidential Information is disclosed pursuant to subpart (a) if they are merely an “agent” but do not fall into any other category in that sub-part, (c), (d), (f), (g) and (h), of this Section shall also be required to execute a copy of the form Exhibit A. The persons shall agree in writing to be bound by the terms of this Protective Order by executing a copy of Exhibit A (which shall be maintained by the counsel of record for the party seeking to reveal the Confidential Information) in advance of being shown the Confidential Information. No party (or its counsel) shall discourage any persons from signing a copy of Exhibit A. If a person refuses to execute a copy of Exhibit A, the party seeking to reveal the Confidential Information shall seek an order from the Court directing that the person be bound by this Protective Order. In the event of the filing of such a motion, Confidential Information may not be disclosed to such person until the Court resolves the issue. Proof of each written agreement provided for under this Section shall be maintained by each of the parties



1 while this action is pending and disclosed to the other parties upon good cause shown and upon
2 order of the Court.

3 **12. Persons Authorized to Receive Highly Confidential Information:** Highly
4 Confidential Information produced pursuant to this Protective Order may be disclosed or made
5 available only to the Court, its employees, other court personnel, any discovery referee, mediator
6 or other official who may be appointed by the Court, and the following persons:

7 (a) Counsel for a party (including contract attorneys, outside attorneys
8 associated with a law firm(s) of record, and support personnel, such as law clerks,
9 paralegals, secretaries, and clerical staff employed by such counsel);

10 (b) Persons retained by a party to provide litigation support services
11 (photocopying, videotaping, translating, preparing exhibits or demonstrations, organizing,
12 storing, retrieving data in any form or medium, etc.), provided such persons agree to
13 maintain the information as Highly Confidential pursuant to this Order and executes
14 Exhibit A;

15 (c) Consultants or expert witnesses (together with their support staff) retained
16 for the prosecution or defense of this litigation, provided that such an expert or consultant
17 is not a current employee of a direct competitor of a party named in this action and
18 provided such consultant and expert witness agrees to maintain the information as Highly
19 Confidential pursuant to this Order and executes Exhibit A; however, a party may seek
20 leave of the Court to provide information to a consultant employed by a competitor;

21 (d) Court reporter(s) and videographers(s) employed in this action, provided
22 such persons agree to maintain the information as Highly Confidential pursuant to this
23 Order and executes Exhibit A; and

24 (e) Any other person as to whom the parties in writing agree or that the Court
25 in these proceedings so designates, provided such persons agree to maintain the
26 information as Highly Confidential pursuant to this Order and executes Exhibit A.

27 Any person to whom Highly Confidential Information is disclosed pursuant to subparts
28 (a) through (e) hereinabove shall be advised that the Highly Confidential Information is being



disclosed pursuant to an order of the Court, that the information may not be disclosed by such person to any person not permitted to have access to the Highly Confidential Information pursuant to this Protective Order, and that any violation of this Protective Order may result in the imposition of such sanctions as the Court deems proper. If a person refuses to execute a copy of Exhibit A, the party seeking to reveal the Highly Confidential Information shall seek an order from the Court directing that the person be bound by this Protective Order. In the event of the filing of such a motion, Highly Confidential Information may not be disclosed to such person until the Court resolves the issue. Proof of each written agreement provided for under this Section shall be maintained by each of the parties while this action is pending and disclosed to the other parties upon good cause shown and upon order of the Court.

13. Filing of Confidential Information and Highly Confidential Information with the Court: Any party seeking to file or disclose materials designated as Confidential Information or Highly Confidential Information with the Court in this action must seek to file such Confidential Information or Highly Confidential Information under seal pursuant to Rule 3 of the Nevada Rules for Sealing and Redacting Court Records. The Designating Party will have the burden to provide the Court with any information necessary to support the designation as Confidential Information or Highly Confidential Information.

14. Notice to Nonparties: Any party issuing a subpoena to a nonparty shall enclose a copy of this Protective Order and advise the nonparty that it may designate any Discovery Material it produces pursuant to the terms of this Protective Order, should the producing nonparty wish to do so. This Protective Order shall be binding in favor of designating nonparties to the maximum extent permitted by law. Any nonparty invoking the Protective Order shall comply with, and be subject to, all applicable sections of the Protective Order.

15. Knowledge of Unauthorized Use or Possession: If a party receiving Confidential Information or Highly Confidential Information learns of any possession, knowledge, use or disclosure of any Confidential Information or Highly Confidential Information in violation of the terms of this Protective Order, the Receiving Party shall immediately notify in writing the party that produced the Confidential Information or Highly



1 Confidential Information at issue. The Receiving Party shall promptly furnish the Producing
2 Party the full details of such possession, knowledge, use or disclosure. With respect to such
3 unauthorized possession, knowledge, use or disclosure the Receiving Party shall assist the
4 Producing Party in remedying the disclosure (e.g., by retrieving the Confidential Information or
5 Highly Confidential Information from an unauthorized recipient) and/or preventing its
6 recurrence.

7 **16. Copies, Summaries or Abstracts:** Any copies, summaries, abstracts or exact
8 duplications of Confidential Information or Highly Confidential Information shall be marked
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” and shall
10 be considered Confidential Information or Highly Confidential Information subject to the terms
11 and conditions of this Protective Order. Attorney-client communications and attorney work-
12 product regarding Confidential Information and Highly Confidential Information shall not be
13 subject to this section (*i.e.*, it need not be marked “CONFIDENTIAL” and
14 “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY”), regardless of whether they
15 summarize, abstract, paraphrase, or otherwise reflect Confidential Information.

16 **17. Information Not Confidential:** The restrictions set forth in this Protective Order
17 shall not be construed to apply to any information or materials that:

18 (a) Were lawfully in the Receiving Party’s possession prior to such
19 information being designated as Confidential Information in this action, and that the
20 Receiving Party is not otherwise obligated to treat as confidential;

21 (b) Were obtained without any benefit or use of Confidential Information or
22 Highly Confidential Information from a third party having the right to disclose such
23 information to the Receiving Party without restriction or obligation of confidentiality;

24 (c) Were independently developed after the time of disclosure by persons who
25 did not have access to the Producing Party’s Confidential Information or Highly
26 Confidential Information;

27 ///

28 ///



1 (d) Have been or become part of the public domain by publication or
2 otherwise and not due to any unauthorized act or omission on the part of a Receiving
3 Party; or

4 (e) Under law, have been declared to be in the public domain.

5 **18. Challenges to Designations:** Any party may object to the designation of
6 Confidential Information or Highly Confidential Information (“Objecting Party”) on the ground
7 that such information does not constitute Confidential Information or Highly Confidential
8 Information by serving written notice upon counsel for the Producing Party within thirty (30)
9 calendar days of the date the item(s) was designated and produced, specifying the item(s) in
10 question and the grounds for the objection. If a party objects to the designation of any materials
11 as Confidential Information or Highly Confidential Information, the Objecting Party shall
12 arrange for an EDCR 2.34 conference to be held within fifteen (15) calendar days of service of a
13 written objection to the designation to attempt to informally resolve the dispute. If the parties
14 cannot resolve the matter, the Objecting Party may file a motion with the Court to resolve the
15 dispute. Such motions must be filed within fifteen (15) calendar days of the EDCR 2.34
16 conference. This Protective Order will not affect the burden of proof on any such motion, or
17 impose any burdens upon any party that would not exist had the Protective Order not been
18 entered; as a general matter, the burden shall be on the Producing Party to establish the propriety
19 of the designation. Any contested information shall continue to be treated as confidential and
20 subject to this Protective Order until such time as such motion has been ruled upon. In the event
21 the Court determines that any material was improperly designated as Highly Confidential, the
22 Court may award the attorney’s fees of the objecting party relating to motion practice regarding
23 the improper designation.

24 **19. Use in Court:** If any Confidential Information or Highly Confidential
25 Information is used in any pretrial Court proceeding in this action, it shall not lose its
26 confidential status through such use, and the party using such information shall take all
27 reasonable steps consistent with the Nevada Supreme Court Rules Governing Sealing and
28 Redacting Court Records to maintain its confidentiality during such use.



1 **20. Reservation of Rights:** The parties each reserve the right to seek or oppose
2 additional or different protection for particular information, documents, materials, items, or
3 things. This Protective Order shall neither enlarge nor affect the proper scope of discovery in this
4 Action. In addition, this Protective Order shall not limit or circumscribe in any manner any rights
5 the Parties (or their respective counsel) may have under common law or pursuant to any state,
6 federal, or foreign statute or regulation, and/or ethical rule.

7 **21. Inadvertent Failure to Designate:** The inadvertent failure to designate
8 information produced in discovery as Confidential Information or Highly Confidential
9 Information shall not be deemed, by itself, to be a waiver of the right to so designate such
10 discovery materials as Confidential Information or Highly Confidential Information. Within a
11 reasonable time of learning of any such inadvertent failure, the Producing Party shall notify all
12 Receiving Parties of such inadvertent failure and take such other steps as necessary to correct
13 such failure after becoming aware of it. Disclosure of such discovery materials to any other
14 person prior to later designation of the Discovery Materials in accordance with this section shall
15 not violate the terms of this Protective Order. However, immediately upon being notified of an
16 inadvertent failure to designate, all parties shall treat such information as though properly
17 designated, and shall take any actions necessary to prevent any future unauthorized disclosure,
18 use, or possession.

19 **22. No Waiver of Privilege:** Disclosure (including production) of information after
20 the entry of this Protective Order that a party or nonparty later claims was inadvertent and should
21 not have been disclosed because of a privilege, including, but not limited to, the attorney-client
22 privilege or work-product doctrine (“Privileged Information”), shall not constitute a waiver of, or
23 estoppel as to, any claim of attorney-client privilege, attorney-work product, or other ground for
24 withholding production as to which the Disclosing or Producing Party would be entitled in this
25 action.

26 **23. Effect of Disclosure of Privileged Information:** The Receiving Party hereby
27 agrees to promptly return, sequester, or destroy any Privileged Information disclosed or produced
28 by a Disclosing or Producing Party upon request by the Disclosing or Producing Party regardless



of whether the Receiving Party disputes the designation of Privileged Information. The Receiving Party may sequester (rather than return or destroy) such Privileged Information only if it contends that the information itself is not privileged or otherwise protected and it challenges the privilege designation, in which case it may only sequester the information until the claim of privilege or other protection is resolved. If any party disputes the privilege claim, that Objecting Party shall object in writing by notifying the Producing Party of the dispute and the basis therefore. The parties thereafter shall meet and confer in good faith regarding the disputed claim within fifteen (15) calendar days after service of the written objection. In the event that the parties do not resolve their dispute, the Objecting Party may bring a motion for a determination of whether a privilege applies within fifteen (15) calendar days of the meet and confer session, but may only contest the asserted privileges on ground other than the inadvertent production of such document(s). In making such a motion, the Objecting Party shall not disclose the content of the document(s) at issue, but may refer to the information contained on the privilege log. Nothing herein shall relieve counsel from abiding by applicable ethical rules regarding inadvertent disclosure and discovery of inadvertently disclosed privileged or otherwise protected material. The failure of any party to provide notice or instructions under this Section shall not constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney-work product, or other ground for withholding production as to which the Disclosing or Producing Party would be entitled in this action.

24. Inadvertent Production of Non-Discoverable Documents: If a Producing Party inadvertently produces a document that contains no discoverable information, the Producing Party may request in writing that the Receiving Party return the document, and the Receiving Party shall return the document. A Producing Party may not request the return of a document pursuant to this section if the document contains any discoverable information. If a Producing Party inadvertently fails to redact personal information (e.g., a social security number), the Producing Party may provide the Receiving Party a substitute version of the document that redacts the personal information, and the Receiving Party shall return the original, un-redacted document to the Producing Party.



1 **25. Return/Destruction of Information:** Within sixty (60) calendar days after the
2 final disposition of this action, by settlement or otherwise, all Confidential Information or Highly
3 Confidential Information produced by an opposing party or nonparty (including, without
4 limitation, any copies, extracts or summaries thereof) as part of discovery in this action shall be
5 destroyed by the parties to whom the Confidential Information or Highly Confidential
6 Information was produced, and each counsel shall, by declaration delivered to all counsel for the
7 Producing Party, affirm that all such Confidential Information or Highly Confidential
8 Information (including, without limitation, any copies, extracts or summaries thereof) has been
9 destroyed; provided, however, that each counsel shall be entitled to retain pleadings, motions and
10 memoranda in support thereof, declarations or affidavits, deposition transcripts and videotapes,
11 or documents reflecting attorney work product or consultant or expert work product, even if such
12 material contains or refers to Confidential Information or Highly Confidential Information, but
13 only to the extent necessary to preserve a litigation file with respect to this action. Nothing in this
14 Protective Order shall require that counsel for the parties, as defined under Section 11(b), search
15 through their email archives to find every instance where an email to or from counsel may attach
16 Confidential Information or Highly Confidential Information, or backup systems to find every
17 instance where a document or file may contain Confidential Information or Highly Confidential
18 Information. However, unless it is an archival copy as permitted above, Confidential Information
19 or Highly Confidential Information stored on a shared drive, attorneys' desktops, or printed in
20 hard copy, must be destroyed pursuant to this Section.

21 **26. Attorney's Fees:** Nothing in this Protective Order is intended to either expand or
22 limit a prevailing party's right under the Nevada Rules of Civil Procedure or other applicable
23 state or federal law to pursue costs and attorneys' fees incurred related to confidentiality
24 designations or the abuse of the process described herein.

25 **27. Injunctive Relief and Sanctions Available for Unauthorized Disclosure or**
26 **Use of Confidential Information or Highly Confidential Information:** The Parties and/or
27 nonparties shall not utilize any Confidential Information or Highly Confidential Information for
28 their own personal and/or business advantage or gain, aside from purposes solely related to the



instant litigation. The Parties and nonparties acknowledge and agree that unauthorized use and/or disclosure of Confidential Information or Highly Confidential Information beyond this litigation shall subject the offending party or nonparty to sanctions contemplated in NRCP 37(b)(2)(A)-(D), up to and including entry of judgment against the offending party in circumstances involving willful disobedience with this order. Further, the Parties and/or nonparties receiving or being given access to Confidential Information or Highly Confidential Information acknowledge that monetary remedies would be inadequate to protect each party in the case of unauthorized disclosure or use of Confidential Information or Highly Confidential Information that the Receiving Party only received through discovery in this action and that injunctive relief would be necessary and appropriate to protect each party's rights in the event there is any such unauthorized disclosure or use of Confidential Information or Highly Confidential Information. The availability of injunctive relief to protect against the unauthorized disclosure or use of Confidential Information or Highly Confidential Information shall not be exclusive.

28. Other Actions and Proceedings: If a Receiving Party (a) is subpoenaed in another action, investigation, or proceeding, (b) is served with a demand in another action, investigation, or proceeding, or (c) is served with any legal process by one not a party to this Protective Order, seeking materials which were produced or designated as Confidential Information or Highly Confidential Information pursuant to this Protective Order, the Receiving Party shall give prompt, actual, written notice by electronic transmission to counsel of record for such Producing Party within five (5) business days of receipt of such subpoena, demand or legal process, or such shorter notice as may be required to provide other parties with the opportunity to object to the immediate production of the requested discovery materials to the extent permitted by law. The burden of opposing enforcement of the subpoena, demand or legal process shall fall upon the party or nonparty who produced or designated the Discovery Material as Confidential Information or Highly Confidential Information. Unless the party or nonparty who produced or designated the Confidential Information or Highly Confidential Information obtains an order or files a motion seeking an order directing that the subpoena not be complied with, and serves the order or copy of the filed motion upon the Receiving Party prior to production pursuant to the



subpoena, the Receiving Party shall be permitted to produce documents responsive to the subpoena on the subpoena response date. Compliance by the Receiving Party with any order directing production pursuant to a subpoena of any Confidential Information or Highly Confidential Information shall not constitute a violation of this Protective Order. Nothing in this Protective Order shall be construed as authorizing a party to disobey a lawful subpoena issued in another action.

29. Execution in Counterparts: This Protective Order may be signed in counterparts, and a fax or electronic signature shall have the same force and effect as an original ink signature.

30. Order Survives Termination: This Protective Order shall survive the termination of this action, and the Court shall retain jurisdiction to resolve any dispute concerning the use of information disclosed hereunder.

31. Modification of this Protective Order: This Protective Order may be modified by the Court at any time for good cause shown, or pursuant to a stipulated Order by the Parties. The entry of this Protective Order shall be without prejudice to the rights of any Party to apply for modification of this Protective Order or for additional or different protections.

DATED this 29th day of July 2020.

H1 LAW GROUP

/s/ Joel Z. Schwarz

Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com
Joel Z. Schwarz, NV Bar. No. 9181
joel@h1lawgroup.com
Moorea L. Katz, NV Bar No. 12007
moorea@h1lawgroup.com
701 N. Green Valley Parkway, Suite 200
Henderson NV 89074

Paul A. Conant, AZ Bar No. 012667
CONANT LAW FIRM, PLC
2398 East Camelback Road, #925
Phoenix, Arizona 85016
Phone: (602) 508-9010
Fax: (602) 508-9015
docket@conantlawfirm.com
Attorneys for Plaintiff

DATED this 29th day of July 2020.

KEMP JONES LLP

/s/ Ian P. McGinn

Will Kemp, NV Bar No. 1205
Nathanael R. Rulis, NV Bar No. 11259
n.rulis@kempjones.com
Ian P. McGinn, NV Bar No. 12818
i.mcgin@kempjones.com
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Attorneys for Defendant



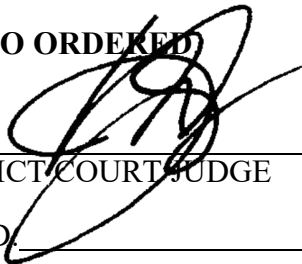
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CASE NO.: A-19-804883-C

Dated this 30th day of July, 2020

DEPT. NO.: 24

IT IS SO ORDERED



DISTRICT COURT JUDGE

DATED _____

D3A 6DC 14EE ED19
Jim Crockett
District Court Judge



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

FORM ATTACHMENT “A”
CONFIDENTIALITY AGREEMENT

I, _____ do hereby acknowledge and agree as follows:

1. I have received and read the Stipulated Confidentiality Agreement and Protective Order entered in the matter entitled *Tryke Companies SO NV, LLC v. MM Development Company, Inc. dba Planet 13*, Case No. A-19-804883-C, pending before the Eighth Judicial District Court, Clark County, Nevada, of which the form of this agreement is an attachment.

2. I understand the terms and provisions of the Stipulated Confidentiality Agreement and Protective Order and agree to be bound by and to strictly adhere to all of its terms and provisions.

3. I hereby submit to the jurisdiction of the Clark County, Nevada District Court solely for the purpose of enforcement of the Stipulated Confidentiality Agreement and Protective Order.

DATED: _____

[Signature]

[Name, Address, Telephone Number]

From: [Ian McGinn](#)
To: [Joel Schwarz](#); [Nathanael Rulis](#)
Cc: [Paul Conant](#); [Eric Hone](#); [Moorea Katz](#); [Lisa Stewart](#); [Karen Morrow](#)
Subject: RE: [External] Tryke v. Planet 13
Date: Wednesday, July 29, 2020 10:45:50 AM
Attachments: [Stipulated Protocol Governing Production of ESI - Final.docx](#)
[Joint Case Conference Report - Final.docx](#)
[Stipulated Confidentiality Agreement and Protective Order - Final.docx](#)

Joel:

Here are finalized drafts of the JCCR, Protective Order and ESI Order. I added my e-signature to all three. On the Protective Order, I noticed an error in the Exhibit A so I redlined that. It should not be an issue and you should be able to accept those revisions and final the Protective Order, but if there is an issue for any reason just let me know.

Also, just in case it is necessary, please accept this email as my authorization for you to affix my electronic signature to the Joint Case Conference Report, Stipulated Confidentiality Agreement and Protective Order, and Stipulated Protocol Governing Production of ESI.

Let me know if you have any other questions, otherwise this should be ready to file once you affix your electronic signature.

Best regards,

Ian

Ian McGinn, Esq.
3800 Howard
Hughes Pkwy., 17th Floor | Las Vegas, NV 89169
(P) 702-385-6000 | (F)
702 385-6001 | i.mcgin@kempjones.com

(profile)

(vCard)

This e-mail transmission, and any documents, files, or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to sender, or by telephone at (702) 385-6000, and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Tryke Companies SO NV, LLC,
7 Plaintiff(s)

CASE NO: A-19-804883-C

8 vs.

DEPT. NO. Department 24

9 MM Development Company,
10 Inc., Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system
to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 7/30/2020

16 Patricia Stoppard	p.stoppard@kempjones.com
17 Ian McGinn	i.mcgin@kempjones.com
18 Ali Augustine	a.augustine@kempjones.com
19 Nathanael Rulis	n.rulis@kempjones.com
20 Alisa Hayslett	a.hayslett@kempjones.com
21 Eric Hone	eric@h1lawgroup.com
22 Pamela Montgomery	p.montgomery@kempjones.com
23 Moorea Katz	moorea@h1lawgroup.com
24 Karen Morrow	karen@h1lawgroup.com
25 Joel Schwarz	joel@h1lawgroup.com

26
27
28

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

Candice Mata	lawclerk@h1lawgroup.com
Lisa Stewart	lisa@h1lawgroup.com
Judy Estrada	judy@h1lawgroup.com
Elias George	Elias@H1lawgroup.com