

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	Chapter 11
)	Case No. 12-10202 (ALG)
Reorganized Debtors.)	(Jointly Administered)
SHUTTERFLY, INC.,)	
)	
Plaintiff,)	
v.)	Adv. Proc. No. 13-01310 (ALG)
KODAK IMAGING NETWORK, INC. and)	
EASTMAN KODAK COMPANY,)	
)	
Defendants.)	

**STIPULATED CONFIDENTIALITY AGREEMENT AND
PROTECTIVE ORDER BETWEEN EASTMAN KODAK COMPANY,
KODAK IMAGING NETWORK, INC. AND SHUTTERFLY, INC.**

To expedite the exchange of discovery materials, facilitate the prompt resolution of disputes over confidentiality, protect material entitled to confidential treatment and ensure that protection is afforded only to material so entitled, Eastman Kodak Company, Kodak Imaging Network, Inc. (together with Eastman Kodak Company, “**Kodak**”) and Shutterfly, Inc. (“**Shutterfly**,” and collectively with Kodak, the “**Parties**”), through their undersigned counsel, agree and stipulate as follows:

¹ The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor’s federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Reorganized Debtors’ corporate headquarters is: 343 State Street, Rochester, NY 14650.



1. This Stipulated Confidentiality Agreement and Protective Order Between Eastman Kodak Company, Kodak Imaging Network, Inc. and Shutterfly, Inc. (the “**Protective Order**”) shall govern the production, designation and use of all documents, testimony, exhibits, transcripts and any other materials and information (the “**Materials**”) produced or provided by the Parties or anyone acting at their discretion or request (the “**Producing Party**”) in the above-captioned adversary proceeding (the “**Adversary Proceeding**”). The Materials shall only be used in the Adversary Proceeding pursuant to the terms contained herein, and shall not be used for any other purpose or in any other proceeding without the written consent of the Producing Party or an order of the Court.

2. The Parties shall jointly seek entry of this Protective Order as promptly as possible. Notwithstanding those efforts, the Protective Order shall be effective as among the Parties from the date it is executed by the Parties.

3. Counsel for a Producing Party may designate any Materials as “Confidential” when such Producing Party in good faith believes that the Materials contain, constitute or reveal what that Producing Party considers to be proprietary or confidential business information, financial information, personal information, trade secrets, or otherwise private or confidential information (“**Confidential Information**”).

4. In certain limited circumstances, described below, counsel for a Producing Party may also designate any Materials containing Confidential Information as “Highly Confidential” in the event that counsel to that Party believes in good faith that the Confidential Information constitutes or contains non-public information that is highly personal in nature or is competitively sensitive and proprietary to the Producing Party, or from which competitively sensitive and proprietary information belonging to a Producing Party could be derived (“**Highly**

Confidential Information”). A Producing Party that designates Materials as “Highly Confidential” shall provide such Highly Confidential Information only to counsel of record for the Parties in this Adversary Proceeding and not to such Parties themselves.

5. Any Materials that a Producing Party asserts contain or constitute Confidential Information or Highly Confidential Information shall be so designated by such Producing Party in writing, or orally at a deposition, conference or hearing. Documents shall be clearly and prominently marked on their face with the appropriate legend: “CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL INFORMATION.” Confidential Information and Highly Confidential Information, whether designated as such in writing or orally as set forth in this paragraph 5, shall be treated in accordance with the terms of this Protective Order.

6. Materials containing Confidential Information or Highly Confidential Information shall be used by any Party, person or entity receiving such materials (the “**Receiving Party**”) or their respective counsel solely for purposes of this Adversary Proceeding and in accordance with the provisions of this Protective Order, and shall not be disseminated or disclosed to any other person or entity except by written consent of the Producing Party or upon further order of the Court. The Receiving Party or its counsel shall permit access to Confidential Information only to persons specified in this Protective Order. Counsel for a Receiving Party shall permit access to Highly Confidential Information only to persons specified in this Protective Order.

7. A Receiving Party or its counsel may disclose Confidential Information, but not Highly Confidential Information, to the following authorized recipients only:

- i. Outside counsel or in-house counsel who represents the Receiving Party in the Adversary Proceeding, as well as stenographic, clerical and legal

assistant employees of those attorneys whose functions require access to Confidential Information;

- ii. Any person indicated on the face of a document to be the author, addressee, or an actual or intended recipient of the document; provided, however, that such person shall first read the Protective Order and sign the Confidentiality Agreement Acknowledgment annexed hereto as Exhibit A, and counsel shall retain in his his/her file a copy of such signed Confidentiality Agreement Acknowledgement;
- iii. Outside experts or consultants for the Receiving Party whose advice and consultation are being or will be used by the Receiving Party in connection with the Adversary Proceeding, including their clerical personnel; provided, however, that counsel desiring to disclose Confidential Information to such experts or consultants and their clerical personnel shall first obtain a signed Confidentiality Agreement Acknowledgment from such persons, and counsel shall retain in his/her file an original or copy of each such signed Confidentiality Agreement Acknowledgment;
- iv. The Court and its authorized staff, including official and freelance court reporters and videotape operators hired by the Receiving Party;
- v. Officers, directors, or employees of the Receiving Party assisting the Receiving Party's attorneys in matters related to the Adversary Proceeding;
- vi. To the extent not otherwise covered by this paragraph 7, any witness or deponent (and counsel of such witness or deponent), during the course of, or to the extent necessary for, preparation for deposition or testimony relating to this Adversary Proceeding. Prior to when the Confidential Information is first exhibited to such person, counsel desiring to disclose Confidential Information to such person shall first obtain a signed Confidentiality Agreement Acknowledgment from such person, and counsel for the Receiving Party shall retain a copy of each executed Confidentiality Agreement Acknowledgment;
- vii. Any other person upon agreement among the Producing Party and the Receiving Party, provided that such person shall first read the Protective Order and sign the Confidentiality Agreement Acknowledgment, a copy of which shall be retained by counsel for the Receiving Party; and
- viii. Any other person, only upon order of the Court or express agreement among the Parties.

8. Counsel to a Receiving Party may disclose Highly Confidential

Information to the following authorized recipients only:

- i. Outside counsel who represents the Receiving Party in this Adversary Proceeding, as well as stenographic, clerical and legal assistant employees of those attorneys whose functions require access to Highly Confidential Information. For the avoidance of doubt, Highly Confidential Information shall not be disclosed to in-house counsel for a Receiving Party;
- ii. Any person indicated on the face of a document to be the author, addressee or an actual or intended recipient of the document; provided, however, that such person shall first read the Protective Order and sign the Confidentiality Agreement Acknowledgment, a copy of which shall be retained by counsel for the Receiving Party;
- iii. Outside experts or consultants for the Receiving Party whose advice and consultation are being or will be used by the Receiving Party in connection with this Adversary Proceeding, including their clerical personnel; provided, however, that counsel desiring to disclose Highly Confidential Information to such experts or consultants and their clerical personnel shall first obtain a signed copy of the Confidentiality Agreement Acknowledgment from each such expert or consultant and each of his/her personnel who would require access to Highly Confidential Information, and counsel shall retain in his/her file an original or copy of each such signed Confidentiality Agreement Acknowledgment;
- iv. The Court and its authorized staff, including official and freelance court reporters and videotape operators hired by the Receiving Party;
- v. Any other person upon agreement among the Producing Party and the Receiving Party, provided that such person shall first read the Protective Order and sign the Confidentiality Agreement Acknowledgment, a copy of which shall be retained by counsel for the Receiving Party; and
- vi. Any other person, only upon order of the Court or express agreement among the Parties.

9. In the event that any of the Parties intends to submit Confidential

Information or Highly Confidential Information to the Court, that Party shall file any pages containing or referencing Confidential Information or Highly Confidential Information under

seal and seek an order from the Court for the Confidential Information or Highly Confidential Information, as applicable, to remain under seal. All Materials filed under seal shall be available to the Court and counsel for the Parties for viewing and copying. When feasible, a non-confidential version of the filing shall be made with redacted pages and then filed in the public record. The Parties, through counsel, are expected to negotiate in good faith to limit the amount of Material filed under seal with the Court.

10. Any deposition or other testimony may be designated as Confidential Information or Highly Confidential Information subject to the provisions of this Protective Order. Such designation shall be made orally on the record at the deposition or by providing notice to the other Parties within five (5) business days following the date counsel for the Parties has received the final transcript of the hearing from the court reporter (the last day of this five (5) day period being the “**Designation Deadline**”). If no designation is made on the record at the deposition, then the entire transcript and all exhibits shall be treated as Highly Confidential Information until after the Designation Deadline.

11. A Party or the deponent shall have the right to exclude from attendance at any deposition during such time as Confidential Information or Highly Confidential Information is to be disclosed, any person other than counsel for the Designating Party, any Party’s expert witness or consultant, the deponent or fact witness and its counsel, the court reporter, stenographer or videographer; provided, however, that any such expert witness or consultant, fact witness or deponent execute a Confidentiality Agreement Acknowledgment as set forth in paragraphs 7 and 8 above.

12. If counsel for one of the Parties disagrees with a Producing Party’s designation of Materials as Confidential Information or Highly Confidential Information, in full

or in part, it shall notify counsel for the Producing Party in writing, and they will thereupon confer as to the status of the subject information. If prior to, or at the time of such a conference, the Producing Party withdraws its Confidential Information or Highly Confidential Information designation of such Materials, such Producing Party shall express such withdrawal, in writing, and serve such withdrawal upon all of the Parties. If the Party challenging the Confidential Information or Highly Confidential Information designation and the Producing Party are unable to concur upon the status of the subject Materials designated as Confidential Information or Highly Confidential Information within five (5) days from the date of notification of such disagreement, any of the Parties may raise the issue of the Confidential Information or Highly Confidential Information designation to the Court by such means as will allow the Court to rule upon the matter. While any such issue is pending, the Materials subject to the disagreement will be treated as though they were designated as Confidential Information or Highly Confidential Information by the Producing Party until the Court rules otherwise. Nothing in this Protective Order shall be construed as preventing any Party from objecting to the designation of any Materials as Confidential Information or Highly Confidential Information, or preventing any Producing Party from seeking further protection for any Materials it produces in discovery.

13. The failure of any of the Parties to designate or withhold any Materials as Confidential Information or Highly Confidential Information, or subject to the attorney-client privilege, the attorney work product doctrine or other applicable immunity or exemption from discovery (“**Privileged Information**”) will not be deemed, in accordance with applicable rules, including Federal Rule of Evidence 502(d), to waive a later claim as to its appropriate confidential or privileged nature, or to stop the Producing Party from designating such Materials as Confidential Information, Highly Confidential Information or Privileged Information at a later

date in writing with particularity. Newly designated Confidential Information or Highly Confidential Information shall be treated as such by the Parties from the time they are notified in writing of the change in the designation. Parties notified that Privileged Information was inadvertently produced shall destroy or return such inadvertently produced Privileged Information, including all copies, within five (5) days of receiving written notice from the Producing Party. Deposition testimony may be retroactively designated as Confidential Information or Highly Confidential Information (i) under the terms specified in this paragraph 13 if retroactively designated within ten (10) days of service, (ii) if the Parties consent, or (iii) if the Court so orders.

14. If at any time Confidential Information or Highly Confidential Information is subpoenaed or requested by any court, administrative or legislative body, or by any other person or entity purporting to have authority to require the production thereof, the Party to whom the subpoena or request is directed shall promptly, to the extent permitted by law, give written notice and include a copy of the subpoena or request to counsel for the Producing Party. The Party to whom the subpoena or request is directed shall also make all reasonable good faith efforts to provide the Producing Party with a reasonable period of time in which to seek to quash the subpoena or request, or to move for any protection of the Confidential Information or Highly Confidential Information, before the Party to whom the subpoena or request is directed takes any action to comply with the subpoena or request.

15. Subject to any further orders of the Court or agreement in writing by the Parties, the provisions of this Protective Order shall remain in effect through the final conclusion of the Adversary Proceeding (the “**Final Resolution**”). The Parties shall use commercially reasonable efforts to ensure that all Materials and copies thereof are returned to the Producing

Party or certify in writing that all Materials have been destroyed within forty-five (45) days after the Final Resolution, except counsel for a Party may retain (i) one (1) copy of all submissions to the Court that contain any Materials and (ii) all notes, summaries or other documents prepared by or at the direction of counsel for that Party that contain Materials or information derived from Materials.

16. The restrictions set forth in any of the preceding paragraphs shall not apply to Materials or information contained therein that: (i) was, is or becomes public knowledge through a manner not in violation of this Protective Order; (ii) is acquired by one of the Parties or its counsel from a third party having the right to disclose such information or Materials; or (iii) was lawfully possessed without restriction by the Parties or their counsel prior to entry by the Court of this Protective Order.

17. This Protective Order shall not be construed to effect in any way the admissibility of any document, testimony or other evidence in this Adversary Proceeding.

18. This Protective Order shall not prevent any of the Parties from applying to the Court for further or additional protective orders, for the modification of this Protective Order or from agreeing with the other Parties to modify this Protective Order subject to approval of the Court.

Dated: December 13, 2013
New York, New York

/s/ Brian D. Glueckstein
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- and -

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Counsel to Eastman Kodak Company
and Kodak Imaging Network, Inc.

IT IS SO ORDERED:

Dated: December 23, 2013

s/Allan L. Gropper
Allan L. Gropper
United States Bankruptcy Judge

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	Chapter 11
)	Case No. 12-10202 (ALG)
Reorganized Debtors.)	(Jointly Administered)
SHUTTERFLY, INC.,)	
)	
Plaintiff,)	
v.)	
KODAK IMAGING NETWORK, INC. and)	Adv. Proc. No. 13-01310 (ALG)
EASTMAN KODAK COMPANY,)	
)	
Defendants.)	

CONFIDENTIALITY AGREEMENT ACKNOWLEDGMENT

I, _____, hereby acknowledge and declare that I:

(1) have read the Protective Order, dated December 2, 2013, entered in the United States Bankruptcy Court for the Southern District of New York in the above-captioned adversary proceeding; (2) understand the terms thereof; (3) agree to be bound thereby, as if an original signatory thereto, and to comply with all of the requirements therein; and (4) consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Protective Order.

¹ The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Reorganized Debtors' corporate headquarters is: 343 State Street, Rochester, NY 14650.

Name: _____

Relationship to this Action: _____

Employer: _____

Business Address: _____

Date: _____

Signature