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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RONDA DEMOTT, individually, and on
behalf of all others similarly situated,

Plaintiffs

v.

JILLIAN MICHAELS, an individual;
THINCARE INTERNATIONAL, a Utah
Limited Liability Company; and DOES 1-
20, Inclusive,

Defendants.

) Case No. CV10-5886 ODW (JCGx)

) Honorable Otis D. Wright II

) **DISCOVERY MATTER**

) **ORDER GRANTING
STIPULATED PROTECTIVE
ORDER REGARDING
CONFIDENTIAL MATERIAL
AND HIGHLY CONFIDENTIAL
MATERIAL**

) **NOTE CHANGES MADE BY THE COURT.**

1 The Court, having considered the Parties’ Stipulated Protective Order Regarding
2 Confidential Material and Highly Confidential Material, which stated as follows:

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4 The Parties to this action, through their undersigned counsel of record, hereby
5 stipulate, subject to the approval of the Court, to the entry of the following Protective
6 Order Regarding Confidential Material and Highly Confidential Material (the
7 “Protective Order”). The parties have agreed to stipulate to the entry of a Protective
8 Order in order to facilitate orderly and efficient discovery and to protect the parties and
9 third parties from unwarranted annoyance, embarrassment, oppression, or undue burden
10 or expense, and to prevent the unnecessary disclosure or use of certain documents and
11 information produced in the course of the above-captioned litigation (the “Litigation”),
12 whether by the Parties or third parties. Information subject to this Protective Order may
13 include information relating to trade secrets, proprietary formulas and products,
14 strategic plans, sales, financial information, marketing, manufacturing, employment, or
15 other sensitive competitive and/or confidential information. This Protective Order shall
16 not apply to any information that is publicly available other than through a breach of
17 this Protective Order or other duty of confidentiality.

18 1. Scope of Order. This Protective Order governs the use and handling of
19 documents, electronically stored information, testimony, written discovery, and other
20 information, including all copies, excerpts or summaries thereof (“Material”) that is
21 given a confidentiality designation pursuant to this Protective Order, regardless of how
22 generated, stored, or maintained, produced or given by any party to this litigation or by
23 any other person or entity (“Producing Party”) in pre-trial proceedings in the Litigation.
24 Material produced or otherwise provided in the Litigation that is designated as
25 “Confidential” or “Highly Confidential” under the provisions of this Protective Order
26 shall be used by the receiving party only for the purpose of the Litigation and not for
27 any other business, competitive, personal, public or other purpose whatsoever; provided,

1 however, that if litigation seeking attorney fees, sanctions, frivolous or malicious
2 prosecution or other litigation between the parties that arises from and relates to this
3 litigation were to be filed, the Parties may use the Material for the purposes of that
4 related litigation pursuant to the terms and provisions of this Protective Order.

5 2. Designation of Confidential Material. The Producing Party may designate
6 as “Confidential” any Material that he, she or it produces or provides in the Litigation
7 which the Producing Party reasonably and in good faith believes constitutes, contains,
8 reflects or discloses private, confidential, proprietary, trade secret or commercially
9 sensitive information for which a good faith claim of a need of protection from
10 disclosure can be made under the Federal Rules of Civil Procedure and/or other
11 applicable law (“Confidential Material”).

12 3. Designation of Highly Confidential Material. The Producing Party may
13 designate as “Highly Confidential” any non-public Material that he, she or it reasonably
14 and in good faith believes constitutes, contains, reflects or discloses extremely sensitive
15 private, confidential, proprietary, trade secret and/or commercially sensitive information
16 the disclosure of which, even if limited to the permitted disclosures for Confidential
17 Material pursuant to this Protective Order, would jeopardize or threaten to jeopardize
18 the Producing Party’s business or personal privacy interests (“Highly Confidential
19 Material”).

20 4. Manner of Marking and Production of Confidential and Highly
21 Confidential Material. The designation of Confidential Material and Highly
22 Confidential Material pursuant to this Protective Order shall be made by marking each
23 page or other material containing any Confidential Material or Highly Confidential
24 Material with the appropriate term, “Confidential” or “Highly Confidential,” and also by
25 marking the cover and/or first page to which the Material is bound with the same
26 designations as apply to any Material bound therein. In the case of electronically stored
27 information (“ESI”), the designation may be made by designating the ESI as

1 “Confidential” or “Highly Confidential” in a cover letter accompanying production of
2 the ESI. Where feasible, counsel for the Producing Party shall also mark the disk, or
3 other electronic media, including any copies, as “Confidential” or “Highly
4 Confidential.” In the case of depositions or pre-trial testimony, all transcripts shall be
5 treated as Highly Confidential for fourteen (14) business days after receipt of the
6 transcript of the deposition unless the parties agree to an extension of this time period
7 for the designation. On the record during the deposition or within this 14-day period,
8 either party may designate as Confidential or as Highly Confidential, as appropriate,
9 portions of the deposition transcript or exhibits to the transcript.

10 5. Inadvertent Failure to Designate Material Confidential or Highly
11 Confidential. The inadvertent failure to designate Material as Confidential or Highly
12 Confidential shall not be deemed a waiver of a claim of confidentiality. Within ten (10)
13 days of the discovery of an inadvertent failure to designate Material as Confidential or
14 Highly Confidential, the Producing Party shall provide written notification to all other
15 parties to the Litigation of the designation. The Producing Party shall provide
16 replacement copies of the Material with the Confidential or Highly Confidential
17 designation, consistent with Paragraph 3 governing the manner of marking Material.
18 Regardless of whether or when replacement copies are provided, however, all parties
19 shall treat, and shall notify any persons to whom they have provided copies of the
20 Material to treat, the Material as Confidential or Highly Confidential upon receipt of the
21 written notification provided pursuant to this paragraph.

22 6. Persons Who May Access Confidential Material. Except as provided in
23 Paragraph 7, absent written consent from the Producing Party or an Order from the
24 Court, Confidential Material may be disclosed only to the following persons:

25 (a) outside counsel for the Parties and in-house counsel for the Parties,
26 including associate attorneys, paralegal, clerical, secretarial, and other staff employed by
27 such counsel;

1 (b) the Defendants, including officers, directors, or employees of the
2 Defendants who are participating in the preparation, prosecution, defense, or settlement
3 of this Litigation, and the Named Plaintiff, provided that she is participating actively in
4 the preparation of this litigation;

5 (c) experts or consultants retained by the Parties or their counsel to assist in the
6 preparation, prosecution, defense or settlement of this Litigation, provided that they
7 review and agree to be bound by the Protective Order and execute the form attached as
8 Exhibit A;

9 (d) the author of the document or the original source of the information, and
10 any person the document or information on its face indicates had previously received or
11 reviewed it independently of discovery in this action;

12 (e) court reporter(s), videographers, stenographers, and court personnel;

13 (f) photocopying, graphic production, computer service personnel, or litigation
14 support services employed by the Parties or their counsel to assist in the litigation;

15 (g) the Court in this action or any court hearing an appeal in this action;

16 (h) actual or potential fact witnesses who are currently employed by the
17 Producing Party, or who created the Material, or who were employed by the Producing
18 Party at the time the Material was created, or received the Material outside the context
19 of this litigation.

20 7. Persons Who May Access Highly Confidential Material. Except as
21 provided in Paragraph 6, absent written consent from the Producing Party or an Order
22 from the Court, Highly Confidential Material may be disclosed only to the following
23 persons:

24 (a) outside counsel for the Parties, including associate attorneys, paralegal,
25 clerical, secretarial, other staff employed by such counsel, and in-house counsel for the
26 Parties, including paralegal, clerical, secretarial, other staff employed by such counsel,
27 so long as in-house counsel (including in-house counsel's paralegal, clerical, secretarial,
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1 and other staff): (i) has responsibility for the preparation, prosecution, defense, or
2 settlement of this action; (ii) shall agree in writing to be bound by the terms of this
3 Agreement as set forth in Exhibit “A” hereto; and (iii) does not have business duties or
4 responsibilities related to the subject matter contained in any documents to which they
5 are provided access that are covered by this paragraph;

6 (b) the author of the document or the original source of the information, and
7 any person the document or information on its face indicates had previously received or
8 reviewed it independently of discovery in this action;

9 (c) experts or consultants retained on behalf of the Parties or their counsel to
10 assist in the preparation of the case, provided that they review the Protective Order and
11 execute the form attached as Exhibit A;

12 (d) photocopying, graphic production, computer service personnel, or litigation
13 support services employed by the Parties or their counsel to assist in the litigation

14 (e) court reporter(s), videographers, stenographers, and court personnel;

15 (f) the Court in this action or any court hearing an appeal in this action;

16 (g) actual or potential fact witnesses who are currently employed by the
17 Producing Party, or who created the Material, or who were employed by the Producing
18 Party at the time the Material was created, or received the Material outside the context
19 of this litigation;

20 (h) Each Party will maintain a list of persons to whom access is given with
21 respect to Highly Confidential Material. The list will be made available to the
22 Producing Party only upon Court order, and only with good cause for that Party to need
23 such information being shown.

24 8. Application of this Protective Order to Persons with Access to Confidential
25 or Highly Confidential Material.

26 (a) Each person given access to Confidential Material or Highly Confidential
27 Material shall be advised that the Confidential Material or Highly Confidential Material

1 is being disclosed subject to the terms of the Protective Order and may not be disclosed
2 or used other than subject to the terms of the Protective Order;

3 (b) All persons allowed access to Confidential Material or Highly Confidential
4 Material under this Protective Order shall take all necessary steps to insure that access
5 to such Material is restricted to those persons who, by the terms of this Protective Order,
6 are allowed access to the Material;

7 (c) Before any person listed above in paragraphs 6(c) or 7(c) is given access to
8 Confidential Material or Highly Confidential Material, that person must read and agree
9 in writing, by signing the acknowledgement form in Exhibit A attached hereto, to be
10 bound by the provisions of the Protective Order;

11 (d) Before any other person described in paragraphs 6 or 7 is shown any
12 Confidential Material or Highly Confidential Material, that person must be shown a
13 copy of the Protective Order and instructed that he or she is bound by its provisions.
14 This requirement does not apply to those individuals identified in paragraph 6(a) or 7(a),
15 or to the Court in this action or any court hearing an appeal from a judgment or order
16 issued by the Court in this action.

17 9. Filing Documents Containing Confidential Material or Highly Confidential
18 Material. In the event any Party wishes to use any Confidential Material or Highly
19 Confidential Material, or any papers making reference to Confidential Material or
20 Highly Confidential Material, in any pleading or document filed with the Court, such
21 pleading or document shall be filed pursuant to Local Rule 79-5 *et seq.* and any other
22 applicable rules governing the filing of Confidential Material.

23 10. Use of Confidential Material or Highly Confidential Material at
24 Depositions. Counsel for any party wishing to use Confidential Material or Highly
25 Confidential Material to examine a deposition fact witness who is not currently
26 employed by the Producing Party, who was not employed by the Producing Party at the
27 time the Material was created, or who did not create or receive the Material shall, prior
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1 to showing any such Material to the witness during deposition, provide a copy of the
2 Protective Order to the witness and obtain a signed acknowledgement form attached as
3 Exhibit A to this Order that the witness has reviewed the Order and agrees to be bound
4 by its provisions.

5 11. Use of Confidential or Highly Confidential Material at Hearings or Trial.

6 The restrictions, if any, that will govern the use of Confidential Material or Highly
7 Confidential Material at hearings or trial will be determined at a later date by the Court,
8 in consultation with the Parties.

9 12. No Waiver of Privilege. This Order will not prejudice the right of any

10 Party to oppose production of any information on the ground of attorney-client
11 privilege, work product doctrine, or any other objection, privilege, protection, or ground
12 provided under the law.

13 13. Challenge to Confidential Designation. Any party may challenge or

14 dispute the designation of material as “Confidential” or “Highly Confidential” by
15 providing written notice to counsel for the Producing Party (or the Producing Party
16 directly if not represented by counsel) that it objects to the designation. The notice shall
17 specifically identify the Material in dispute and the reasons for the challenge to the
18 designation. Within ten (10) business days, the parties shall meet and confer in good
19 faith in an attempt to resolve the dispute. If the parties are unable to resolve the dispute,
20 the objecting party may make a motion to the Court to challenge the designation, with
21 notice to the Producing Party, and such application shall strictly comply with the local
22 Rules, including the joint stipulation requirement. Until the Court rules on the motion,
23 the material shall be treated as Confidential or Highly Confidential pursuant to this
24 Protective Order.

25 14. Third Party Requests for Information. If any person receiving Confidential

26 Material or Highly Confidential Material covered by this Protective Order is
27 subpoenaed, or issued a document demand, or otherwise requested to provide

1 Confidential Material or Highly Confidential in another proceeding, the person or
2 counsel for the person who received the request shall promptly notify counsel for the
3 Producing Party and, if possible, at least 5 court days prior to the date designated for
4 production, and shall, to the extent permitted by law, withhold production of the
5 Confidential Material or Highly Confidential Material until any dispute relating to the
6 production of the Confidential Material or Highly Confidential Material can be
7 resolved.

8 15. No Waiver or Admission. Nothing in this Agreement, nor any failure by
9 any Party to challenge the designation by another Party of any information as
10 Confidential Material or Highly Confidential Material shall be construed as a waiver,
11 admission or agreement that any specific information is or is not confidential,
12 proprietary or a trade secret, or is or is not subject to discovery, or is or is not admissible
13 in evidence.

14 16. Unauthorized Disclosure of Confidential Material or Highly Confidential
15 Material. If any person subject to this Protective Order becomes aware that he/she or
16 any other person has, whether intentionally or inadvertently, disclosed Confidential
17 Material or Highly Confidential Material to someone not authorized to have access to
18 Confidential Material or Highly Confidential Material under this Protective Order,
19 counsel of record for the party involved should immediately notify counsel of record for
20 the Producing Party about the unauthorized disclosure and should use his/her best
21 efforts to obtain the return of the Confidential Material or Highly Confidential Material
22 (and any copies or documents generated that contain the Confidential Material or
23 Highly Confidential Material) and to prevent any further improper dissemination of the
24 Material.

25 17. Court Retains Jurisdiction. This Protective Order shall survive the
26 termination of this litigation. This Court expressly retains jurisdiction for enforcement
27 of the provisions of this Protective Order following the final resolution of this litigation.

1 18. Return or Destruction of Confidential Material and Highly Confidential
2 Material. Within sixty (60) days of the termination of this action, including all appeals,
3 all Confidential Material and Highly Confidential Material provided by any party,
4 including all copies thereof, or any documents containing any such material, shall be
5 returned to the Producing Party or shall be destroyed, unless otherwise agreed to in
6 writing by the parties and the Producing Party, if not a party hereto. A written
7 certification of return and/or destruction shall be provided to the Producing Party upon
8 request. If copies of any Material are stored on any back-up tapes of a party, then such
9 copies do not need to be destroyed or returned, but shall remain subject to the terms of
10 this Protective Order indefinitely. This paragraph 18 is not applicable to the Court.

11 21. Parties May Use Their Own Confidential Material or Highly Confidential
12 Material. Nothing in this Protective Order shall affect a party's right to use or disclose
13 its own Confidential Material or Highly Confidential Material in any way for any
14 purpose whatsoever.

15
16 IT IS SO ORDERED.

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19 DATED: December 2, 2010


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23 _____
24 Hon. Jay C. Gandhi
25 United States District Court Magistrate Judge

EXHIBIT A

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Ronda DeMott, individually, and on behalf of all others similarly situated,

Plaintiffs

v.

JILLIAN MICHAELS, an individual;
THINCARE INTERNATIONAL, a Utah
Limited Liability Company; and DOES 1-
20, Inclusive,

Defendants.

) Case No. CV10-5886 ODW (JCGx)

) Honorable Otis D. Wright II

) **EXHIBIT A TO STIPULATED
PROTECTIVE ORDER
REGARDING CONFIDENTIAL
MATERIAL AND HIGHLY
CONFIDENTIAL MATERIAL**

I, _____ (print or type name), in connection with the above-entitled action, hereby acknowledge that I have received a copy of the Stipulated Protective Order Regarding Confidential Material and Highly Confidential Material, entered into between and among the parties, which is attached hereto as Exhibit 1, have read and understood the same, and agree to be bound by all of the provisions thereof.

I hereto agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcement of the undertaking made herein.

Dated: _____

Signature: _____

Print Name: _____