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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

RICHARD B. CLARK, f/d/b/a
AUSTIN'S BARBEQUE & TAVERN;
and JJ MANAGEMENT CO., INC.,
Individually and On Behalf of All
Others Similarly Situated,

Plaintiffs,

vs.

ADVANCEME, INC., d/b/a SUPPLY
SERVICES,

Defendant.

CASE NO. CV08-3540 VBF (FFMx)

**PROTECTIVE ORDER
GOVERNING CONFIDENTIAL
INFORMATION**

1 **I. PURPOSE OF THE PROTECTIVE ORDER**

2 The purpose of this Stipulation and Protective Order Governing Confidential
3 Information (“Protective Order”) is to prevent the public disclosure of information
4 that is claimed by any party to be confidential. Any unauthorized disclosure of
5 “Confidential” or “Highly Confidential” Information as defined herein in violation
6 of this Protective Order may be subject to discipline by the contempt powers of this
7 Court.

8 **II. DEFINITION OF CONFIDENTIAL INFORMATION**

9 The term “Confidential Information” includes all documents, things,
10 testimony and information properly designated as “Confidential” or “Highly
11 Confidential” pursuant to Section III, below. “Confidential Information” includes,
12 without limitation, documents, things, responses, testimony, and information given
13 or produced in this action by any party or non-party.

14 **III. DESIGNATION OF CONFIDENTIAL INFORMATION**

15 Any party or non-party to this action may designate, subject to the terms of
16 this Protective Order, any documents, things, responses, testimony or information
17 that are produced in this action as “Confidential” or “Highly Confidential” in
18 accordance with the provisions of this section.

19 A. **Criteria For Classification**

20 1. “Confidential” Information includes, without limitation,
21 (a) trade secrets, (b) confidential research, development, business, or financial
22 information, and/or (c) information subject to a legally-protected right of privacy.

23 2. “Highly Confidential” Information includes highly sensitive
24 proprietary, financial, and/or trade secret information, such as future marketing
25 plans, customer lists, or other material the disclosure of which could cause harm to
26 the competitive position of the person, partnership, corporation or other
27 organization that is designating such information.

1 B. Time Of Designation

2 Unless otherwise agreed to by the parties, the designation of
3 “Confidential” or “Highly Confidential” Information shall be made at the following
4 times:

5 1. For documents or things, at the time of the production of the
6 documents or things;

7 2. For declarations, written discovery responses, and pleadings, at
8 the time of the service or filing, whichever occurs first;

9 3. For testimony, at the time that such testimony is given by a
10 statement designating the testimony as “Confidential” or “Highly Confidential”
11 made on the record. Within thirty (30) days after review of the transcript, any party
12 may further designate appropriate portions of the testimony as “Confidential” or
13 “Highly Confidential.”

14 4. The ability to designate information as “Confidential” or
15 “Highly Confidential” under this Protective Order is not dependent in any way on a
16 producing party or non-party’s assertion of objections in response to discovery
17 requests or demands, and shall not be limited in any way by the failure to assert
18 objections.

19 5. All subpoenas served on any non-party shall be accompanied by
20 a copy of this Protective Order.

21 C. Manner of Designation

22 The designation of “Confidential” or “Highly Confidential”
23 Information shall be made in the following manner:

24 1. For documents, by placing the notation “Confidential” or
25 “Highly Confidential” on each page of such document in a location that makes the
26 designation readily apparent;

1 2. For tangible items, by placing the notation “Confidential” or
2 “Highly Confidential” on the object or container thereof or if impracticable, as
3 otherwise agreed by the parties;

4 3. For declarations, written discovery responses, court filings or
5 pleadings, by placing the notation “Confidential” or “Highly Confidential” on the
6 face of such document; and

7 4. For testimony, by orally designating such testimony as being
8 “Confidential” or “Highly Confidential” at the time the testimony is given.
9 Thereafter, the original and all copies of the transcript containing the “Confidential”
10 or “Highly Confidential” testimony shall be bound and marked by the Court
11 Reporter with the legend “CONFIDENTIAL” (or “HIGHLY CONFIDENTIAL”)
12 INFORMATION SUBJECT TO PROTECTIVE ORDER. Such transcript and
13 testimony shall be disclosed and used only in accordance with the provisions of this
14 Protective Order. At the request of counsel for the designating party supplying the
15 “Confidential” or “Highly Confidential” Information, only persons entitled under
16 Section IV, below, to receive “Confidential” or “Highly Confidential” Information
17 shall be permitted to attend that portion of a deposition wherever or whenever any
18 such “Confidential” or “Highly Confidential” Information of such designating party
19 is used or elicited from the deponent or witness.

20 D. Subsequent Designation

21 An inadvertent failure to designate and/or mark any document, thing,
22 testimony or information as “Confidential” or “Highly Confidential” shall not
23 preclude the designating party from thereafter in good faith making such a
24 designation and requesting the receiving party to so mark and treat such documents,
25 things, testimony or information so designated. Such designation and request shall
26 be made in writing. After such designation, such documents, things, testimony or
27 information shall be fully subject to this Protective Order. The receiving party and
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1 its counsel, however, shall incur no liability for disclosures made prior to notice of
2 such designations.

3 E. Resolution of Disputes Regarding Designation

4 If a receiving party wishes to have the “Confidential” or “Highly
5 Confidential” designation removed or changed, that party shall first request,
6 through telephone calls or electronic mail, that the designating party or non-party
7 remove its designation and provide reasons for such a request within
8 twenty (20) days of the production or subsequent designation of such information.
9 Thereafter, the party challenging the designation and the designating party or non-
10 party shall make good faith efforts to resolve the dispute. If the party or non-party
11 designating the information refuses to agree to remove or change the designation,
12 then the party challenging the designation may move the Court for relief; provided,
13 however, that the designating party shall have the burden of proving that such
14 particular documents, things, testimony or information is properly designated as
15 “Confidential” or “Highly Confidential.” If such motion is made, the parties shall
16 treat the information as originally designated until the motion is decided by the
17 Court. The procedures specified in this Section III.E. are in addition to, and not in
18 lieu of, compliance with Local Rules regarding discovery motions.

19 **IV. PERSONS TO WHOM CONFIDENTIAL INFORMATION**
20 **MAY BE DISCLOSED**

21 A. Disclosure of Information Designated As “Confidential”

22 Confidential Information designated as “Confidential” shall be
23 disclosed only to the extent necessary for the prosecution and/or defense of this
24 litigation and only to:

25 1. Parties to this litigation and the employees, officers, and
26 directors of such parties who have a reasonable need to review the information in
27 connection with the litigation;
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1 2. Counsel of record in this litigation, and necessary clerical and
2 support staff employed by such counsel of record who have a reasonable need to
3 review the information in connection with the litigation;

4 3. Any non-party support services including, but not limited to,
5 outside copying services, and document imaging and database services, graphics or
6 design services, jury or trial consulting services, outside court reporting services
7 and court reporters as may be reasonably necessary in connection with the
8 litigation;

9 4. Expert witnesses or consultants who are employed, retained, or
10 consulted about retention on behalf of any of the parties or counsel of record, and
11 the employees of such experts or consultants who are assisting them in relation to
12 this litigation;

13 5. The Court, and any persons employed by the Court whose duties
14 require access to Confidential Information; and

15 6. Deponents, non-retained experts, trial witnesses, and their
16 respective counsel who have a reasonable need to review the Confidential
17 Information during the course of, or in preparation for, their testimony in the
18 litigation.

19 B. Disclosure Of Information Designated As “Highly Confidential”

20 Confidential Information designated as “Highly Confidential” shall be
21 disclosed only to those persons described in Section IV.A.2., 3., 4., and 5., as well
22 as to designated in-house counsel for the parties. Confidential Information
23 designated as “Highly Confidential” may also be disclosed to those persons
24 described in Section IV.A.1. and 6., with sufficiently reasonable prior notice to the
25 designating party under circumstances allowing the designating party to obtain
26 adequate protection with respect to “Highly Confidential” Information either by
27 agreement or by motion to the Court.
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1 C. Undertaking Required By Party Receiving “Confidential” Or “Highly
2 Confidential” Information

3 1. All persons described in Section IV.A.4. and 6. to whom
4 Confidential Information is disclosed shall be furnished with a copy of this
5 Protective Order and shall agree to be bound by it. Prior to receiving any
6 Confidential Information, each person described in Section IV.A.4. and 6. shall
7 execute a non-disclosure and confidentiality acknowledgement, in the form
8 attached hereto as Exhibit “A”, certifying that the recipient is familiar with the
9 terms of this Protective Order and agrees to be bound by its terms. The original
10 signed non-disclosure and confidentiality acknowledgment shall be retained by the
11 party disclosing such Confidential Information, and need not produce it unless such
12 copy is requested by the designating party or upon order of the Court for good
13 cause shown.

14 D. Additional Authorized Disclosure Of Information Designated as
15 “Confidential” Or “Highly Confidential”

16 1. Notwithstanding anything to the contrary in Section IV.A.–B.
17 above, particular information that has been designated as “Confidential” or “Highly
18 Confidential” may be disclosed and copies may be provided:

19 (a) To persons who are explicitly named on the document as
20 the authors or recipients;

21 (b) To any other persons with the prior written consent of the
22 party or non-party that designated such particular documents, things, testimony or
23 information as “Confidential” or “Highly Confidential”; and

24 (c) To any other persons with the prior authorization of the
25 Court.

26 **V. USE OF CONFIDENTIAL INFORMATION**

27 A. All Confidential Information produced in this action shall only be used
28 for purposes of this litigation. Confidential Information shall not be used for any

1 other purpose including, without limitation, any business or commercial purpose,
2 except by consent of the designating party or non-party.

3 B. In accordance with the provisions of Section V.D., below, and Local
4 Rule 79-5.1, upon approval of an application to file Confidential Information under
5 seal, the Clerk of this Court shall maintain under seal any document, thing,
6 testimony or information subject to this Protective Order, which is submitted to the
7 Court. The Clerk shall make such documents, things, testimony or information
8 available only to the Court and to counsel of record for the parties in these
9 proceedings, unless release is ordered by this Court, or the designating party's
10 counsel agrees and approves in writing to the release of such documents, things,
11 testimony or information.

12 C. Notwithstanding the parties' designation of "Confidential" or "Highly
13 Confidential" Information, any Court hearing that refers to or describes
14 "Confidential" or "Highly Confidential" Information may be held in open court
15 with records unsealed unless the Court orders, upon its own motion or upon a
16 party's request, that the proceedings be conducted *in camera* out of the presence of
17 any unqualified persons, and any transcript relating thereto be designated as
18 "Confidential" or "Highly Confidential" and prepared in accordance with the
19 provisions of Section III, above.

20 D. In the event that a party wishes to use any "Confidential" or "Highly
21 Confidential" Information of the other party in any affidavits, briefs, memoranda of
22 law, or other papers filed in Court in this litigation, such paper containing
23 "Confidential" or "Highly Confidential" Information shall be enclosed and filed in
24 a sealed envelope or container identifying the enclosed document and bearing the
25 caption of this case and a notice substantially as follows:

26 CONFIDENTIAL (OR HIGHLY CONFIDENTIAL)
27 SUBJECT TO PROTECTIVE ORDER

28 Such "Confidential" or "Highly Confidential" Information shall be maintained

1 under seal by the Court in accordance with the provisions of Section V.B., above,
2 and Local Rule 79-5.1. Such application to file Confidential Information under seal
3 shall be filed with the Judge to whom the papers are directed, and such application
4 shall be made pursuant to the provisions of Local Rule 79-5.1.

5 E. Nothing in this Protective Order shall affect the admissibility into
6 evidence of “Confidential” or “Highly Confidential” Information, or abridge the
7 rights of any person to seek judicial review or to pursue other appropriate judicial
8 action with respect to any ruling made by the Court concerning the issue of the
9 status of “Confidential” or “Highly Confidential” Information. Agreement to this
10 Protective Order is without prejudice to any party seeking an Order from this Court
11 imposing further restrictions on the dissemination of “Confidential” or “Highly
12 Confidential” Information, or seeking to rescind, modify, alter, or amend this
13 Protective Order.

14 F. In the event that any person in receipt of “Confidential” or “Highly
15 Confidential” Information shall receive a written request, subpoena or Court Order
16 seeking disclosure of “Confidential” or “Highly Confidential” Information, such
17 person shall immediately upon receipt of such request, subpoena or Court Order,
18 notify counsel for the designating party or non-party of the request, subpoena or
19 Court Order, and shall provide counsel for the designating party with a copy of such
20 request, subpoena or Court Order. The person to whom the request, subpoena or
21 Court Order is directed shall not produce any “Confidential” or “Highly
22 Confidential” Information until the designating party seeking to maintain
23 confidentiality has had a reasonable opportunity to seek an appropriate order.
24 Absent the entry of such an appropriate order, nothing in this Section V.F. shall be
25 construed as limiting (1) the rights of third parties involved in other actions to
26 conduct discovery or (2) the subpoena power of any court.

27 **VI. INFORMATION EXCLUDED FROM PROTECTIVE ORDER**

28 The obligations relating to any Confidential Information subject to this

1 Protective Order shall not apply to any information which (a) was lawfully in the
2 receiving party's possession prior to the receipt from the designating party,
3 (b) became public knowledge by means not in violation of the provisions of this
4 Protective Order, (c) is discovered independently by the receiving party or (d) is
5 exempted from the provisions of this Protective Order by written consent of the
6 party designating such "Confidential" or "Highly Confidential" Information.

7 **VII. RETURN OF CONFIDENTIAL INFORMATION**

8 Within sixty (60) days after final termination of this litigation, each receiving
9 party or other individual subject to this Protective Order shall be under an
10 obligation to (1) assemble and return to the designating party or (2) to destroy any
11 information subject to this Protective Order and all copies thereof, except for any
12 copy containing notes of counsel. Notice of the return or destruction of any such
13 document, testimony or information shall be made in writing, and notice of receipt
14 thereof shall be acknowledged in writing. Final termination of this litigation is
15 defined as the date on which all appeals have been exhausted, or disposition by
16 settlement of the parties. Notwithstanding the foregoing provisions of this section,
17 counsel shall be entitled to retain all memoranda or reports prepared by them or any
18 expert witness or consultant which contain "Confidential" or "Highly Confidential"
19 Information, and litigation documents containing "Confidential" or "Highly
20 Confidential" Information which become part of the record of this action, including
21 pleadings, briefs, and exhibits. But such litigation documents shall be used only for
22 the purpose of preserving a record of the action.

23 **VIII. SURVIVAL**

24 All obligations and duties arising under this Protective Order shall survive
25 the termination of this action. The Court retains jurisdiction over the parties hereto
26 indefinitely with respect to any dispute regarding the improper use of
27 "Confidential" or "Highly Confidential" Information disclosed under protection of
28 this Protective Order.

1 **IX. MISCELLANEOUS PROVISIONS**

2 A. This Protective Order augments and does not supersede any written
3 non-disclosure agreement, confidentiality agreement, or confidentiality provision
4 existing between the parties.

5 B. All parties participated in drafting this Protective Order. Thus, no
6 specific party can be designated as the drafting party against whom any language
7 should be uniquely construed.

8 C. In the event that additional persons become parties to this action, they
9 shall not have access to Confidential Information until the newly-joined party or
10 their counsel of record confirms in writing to all other parties that they have read
11 this Protective Order and agree to be bound by its terms.

12 **IT IS SO ORDERED.**

13 **DATED:** November 17, 2008

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15 / S / FREDERICK F. MUMM
16 **UNITED STATES MAGISTRATE JUDGE**

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EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

RICHARD B. CLARK, f/d/b/a
AUSTIN'S BARBEQUE & TAVERN;
and JJ MANAGEMENT CO., INC.,
Individually and On Behalf of All
Others Similarly Situated,

Plaintiffs,

vs.

ADVANCEME, INC., d/b/a SUPPLY
SERVICES,

Defendant.

CASE NO. CV08-3540 VBF (FFM_x)

**NON-DISCLOSURE AND
CONFIDENTIALITY
ACKNOWLEDGMENT**

I hereby declare and state that:

1. I have carefully read and understood and agree to comply with and to be bound by all of the provisions of the Protective Order in the above captioned action signed by the Honorable Frederick F. Mumm, United States Magistrate Judge for the Central District of California.

2. I will not disclose any "Confidential" or "Highly Confidential" Information to anyone not qualified under the terms of the Protective Order to receive such information.

3. I agree to use "Confidential" or "Highly Confidential" Information only in connection with this litigation, and not for any other purpose including, without limitation, any business or commercial purpose. I understand

1 that my use of “Confidential” or “Highly Confidential” Information is governed by
2 the terms and conditions of this Protective Order, and I hereby certify and agree that
3 I will comply fully with those terms and conditions.

4 4. I will return (or destroy if permitted by the disclosing party) all
5 “Confidential” and “Highly Confidential” Information in my possession to the
6 outside counsel designating me to receive such materials upon request of such
7 counsel or at the termination of this litigation.

8 5. I submit to the jurisdiction of this Court for purposes of
9 enforcement of the Protective Order and fully understand that violation of the
10 Protective Order is punishable by contempt of Court.

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Dated: _____ (Signature)

Name: _____

Position: _____

Address: _____

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