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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHRISTINA GONZALEZ, an individual
IGNACIO C. GONZALEZ, an individual,

Plaintiffs,

vs.

CAVALRY PORTFOLIO SERVICES, LLC, a Delaware Corporation, aka CAVALRY SPV I, LLC; and DOES 1-10, inclusive,

Defendants.

CASE NO.: CV10-01876 MAN

**AMENDED ORDER RE:
STIPULATED
CONFIDENTIALITY ORDER**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties' Stipulation Re Request for Confidentiality Order, filed on August 13, 2010, the terms of the Confidentiality Order to which the parties have agreed are adopted as a protective order of the Court with the addition of Paragraph 7.3 as set forth below.

The parties are expressly cautioned that the designation of any information, document, or thing as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" does not, in and of itself, create any entitlement to file such information, document, or thing, in whole or in part, under seal. Accordingly, reference to this

AMENDED ORDER RE: STIPULATED CONFIDENTIALITY ORDER

1 Order or to the parties' designation of any information, document, or thing as
2 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" is wholly insufficient
3 to warrant a filing under seal.
4

5 There is a strong presumption that the public has a right of access to judicial
6 proceedings and records in civil cases. In connection with non-dispositive motions,
7 good cause must be shown to support a filing under seal. The parties' mere
8 designation of any information, document, or thing as "Confidential" or "Highly
9 Confidential – Attorneys' Eyes Only" does not -- without the submission of competent
10 evidence, in the form of a declaration or declarations, establishing that the material
11 sought to be filed under seal qualifies as confidential, privileged, or otherwise
12 protectible -- constitute good cause.
13

14 Further, if sealing is requested in connection with a dispositive motion or trial,
15 then compelling reasons, as opposed to good cause, for the sealing must be shown,
16 and the relief sought shall be narrowly tailored to serve the specific interest to be
17 protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010).
18 For each type of information, document, or thing sought to be filed or introduced
19 under seal in connection with a dispositive motion or trial, the party seeking protection
20 must articulate compelling reasons, supported by specific facts and legal justification,
21 for the requested sealing order. Again, competent evidence supporting the application
22 to file documents under seal must be provided by declaration.
23

24 Any document that is not confidential, privileged, or otherwise protectible in
25 its entirety will not be filed under seal if the confidential portions can be redacted. If
26 documents can be redacted, then a redacted version for public viewing, omitting only
27 the confidential, privileged, or otherwise protectible portions of the document, shall
28

1 be filed. Any application that seeks to file documents under seal in their entirety
2 should include an explanation of why redaction is not feasible.
3

4 TERMS OF STIPULATED CONFIDENTIALITY ORDER

5 6 1. PURPOSES AND LIMITATIONS

7
8 Disclosure and discovery activity in this action are likely to involve production
9 of confidential, proprietary, or private information for which special protection from
10 public disclosure and from use for any purpose other than prosecuting this litigation
11 would be warranted. This Order does not confer blanket protections on all disclosures
12 or responses to discovery and the protection that it affords extends only to the limited
13 information or items that are entitled under the applicable legal principles to treatment
14 as confidential. This Order, as set forth in Section 10, below, creates no entitlement
15 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
16 procedures that must be followed and reflects the standards that will be applied when
17 a party seeks permission from the court to file material under seal.
18

19 2. DEFINITIONS

20
21 2.1 Party: any party to this action, including all of its officers,
22 directors, employees, consultants, retained experts, and outside counsel (and their
23 support staff).
24

25 2.2 Disclosure or Discovery Material: all items or information,
26 regardless of the medium or manner generated, stored, or maintained (including,
27 among other things, testimony, transcripts, or tangible things) that are produced or
28 generated in disclosures or responses to discovery in this matter.

1 2.3 “Confidential” Information or Items: information (regardless of
2 how generated, stored or maintained) or tangible things that qualify for protection
3 under standards developed under Fed. R. Civ. P. 26(c). Counsel shall not designate
4 discovery materials as “Confidential” without first making a good faith determination
5 that protection is warranted.
6

7 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or
8 Items: extremely sensitive “Confidential Information or Items” whose disclosure to
9 another Party or non-party would create a substantial risk of serious injury that could
10 not be avoided by less restrictive means. Counsel shall not designate discovery
11 materials as “Highly Confidential” without first making a good faith determination
12 that protection is warranted.
13

14 2.5 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.
16

17 2.6 Producing Party: a Party or non-party that produces Disclosure or
18 Discovery Material in this action.
19

20 2.7 Designating Party: a Party or non-party that designates
21 information or items that it produces in disclosures or in responses to discovery as
22 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.”
23

24 2.8 Protected Material: any Disclosure or Discovery Material that is
25 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”
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27 2.9 Outside Counsel: attorneys who are not employees of a Party but
28 who are retained to represent or advise a Party in this action.

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2.10 House Counsel: attorneys who are employees of a Party.

2.11 Counsel: (without qualifier) Outside Counsel and House Counsel (as well as their support staffs).

2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or a competitor of a Party. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g. photocopying; videotaping; translating; class administration; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

The protections conferred by this Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing or a court order otherwise directs.
2

3 5. DESIGNATING PROTECTED MATERIAL
4

5 5.1 Exercise of Restraint and Care in Designating Material for
6 Protection: Each Party or non-party that designates information or items for
7 protection under this Order must take care to limit any such designation to specific
8 material that qualifies under the appropriate standards. A Designating Party must take
9 care to designate for protection only those parts of material, documents, items, or oral
10 or written communications that qualify -- so that other portions of the material
11 documents, items, or communications for which protection is not warranted, are not
12 swept unjustifiably within the ambit of this Order.
13

14 Mass, indiscriminate, or routinized designations are prohibited.
15 Designations that are shown to be clearly unjustified, or that have been made for an
16 improper purpose (*e.g.* to unnecessarily encumber or retard the case development
17 process, or to impose unnecessary expenses and burdens on other parties), expose the
18 Designating Party to sanctions.
19

20 If it comes to a Party's or a non-party's attention that information or
21 items that it designated for protection do not qualify for protection at all, or do not
22 qualify for the level of protection initially asserted, that Party or non-party must
23 promptly notify all other parties that it is withdrawing the mistaken designation.
24

25 5.2 Manner and Timing of Designations: Except as otherwise
26 provided in this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as
27 otherwise stipulated or ordered, material that qualifies for protection under this Order
28 must be clearly so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:
2

3 (a) for information in documentary form (apart from transcripts of
4 depositions or other pretrial or trial proceedings), that the Producing Party affix the
5 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” at the bottom of each page that contains protected material. If only a portion
7 or portions of the material on a page qualifies for protection, the Producing Party also
8 must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings
9 in the margins) and must specify, for each portion, the level of protection being
10 asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
11 ATTORNEYS’ EYES ONLY”).
12

13 A Party or non-party that makes original documents or materials
14 available for inspection need not designate them for protection until after the
15 inspecting Party has indicated which material it would like copied and produced.
16 During the inspection and before the designation, all of the material made available
17 for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’
18 EYES ONLY.” After the inspecting Party has identified the document it wants copied
19 and produced, the Producing Party must determine which documents, or portions
20 thereof, qualify for protection under this Order, then, before producing the specified
21 documents, the Producing Party must affix the appropriate legend
22 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
23 ONLY”) at the bottom of each page that contains Protected Material. If only a portion
24 or portions of the material on a page qualifies for protection, the Producing Party also
25 must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings
26 in the margins) and must specify, for each portion, the level of protection being
27 asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY”).

1 (b) for testimony given in deposition or in other pretrial or trial
2 proceedings, that the Party or non-party offering or sponsoring the testimony identify
3 on the record, before the close of the deposition, hearing, or other proceeding, all
4 protected testimony, and further specify any portions of the testimony that qualify as
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When it is
6 impractical to identify separately each portion of testimony that is entitled to
7 protection, and when it appears that substantial portions of the testimony may qualify
8 for protection, the Party or non-party that sponsors, offers, or gives the testimony may
9 invoke on the record (before the deposition or proceeding is concluded) a right to have
10 up to 20 days from the date of receipt of the transcript to identify the specific portions
11 of the testimony as to which protection is sought and to specify that level of protection
12 being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are
14 appropriately designated for protection within the 20 days shall be covered by the
15 provisions of this Protective Order.

16
17 Transcript pages containing Protected Material must be separately
18 bound by the court reporter, who must affix to the top of each such page the legend
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY,” as instructed by the Party or non-party offering or sponsoring the witness or
21 presenting the testimony.

22
23 (c) for information produced in some form other than
24 documentary, and for any other tangible items, that the Producing Party affix in a
25 prominent place on the exterior of the container or containers in which the information
26 or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant
28 protection, the Producing Party, to the extent practicable, shall identify the protected

1 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential
2 – Attorneys’ Eyes Only.”

3
4 5.3 Inadvertent Failures to Designate: If timely corrected, an
5 inadvertent failure to designate qualified information or items as “Confidential” or
6 “Highly Confidential – Attorneys’ Eyes Only” does not, standing alone, waive the
7 Designating Party’s right to secure protection under this Order for such material. If
8 material is appropriately designated as “Confidential” or “Highly Confidential –
9 Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,
10 on timely notification of the designation, must make reasonable efforts to assure that
11 the material is treated in accordance with the provisions of this Order.
12

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14
15 6.1 Timing of Challenges: Unless a prompt challenge to a Designating
16 Party’s confidentiality designation is necessary to avoid foreseeable substantial
17 unfairness, unnecessary economic burdens, or a later significant disruption or delay
18 of the litigation, a Party does not waive its right to challenge a confidentiality
19 designation by electing not to mount a challenge promptly after the original
20 designation is disclosed.
21

22 6.2 Meet and Confer: A Party that elects to initiate a challenge to a
23 Designating Party’s confidentiality designation must do so in good faith and must
24 begin the process by conferring directly or in writing with counsel for the Designating
25 Party. In conferring, the challenging Party must explain the basis for its belief that the
26 confidentiality designation was not proper and must give the Designating Party an
27 opportunity to review the designated material, to reconsider the circumstances, and,
28 if no change in designation is offered, to explain the basis for the chosen designation.

1 A challenging Party may proceed to the next stage of the challenge process only if it
2 has engaged in this meet and confer process first.

3
4 6.3 Judicial Intervention: A party that elects to press a challenge to a
5 confidentiality designation after considering the justification offered by the
6 Designating Party may file and serve a motion under Civil Local Rule 37 (and in
7 compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged
8 material and sets forth in detail the basis for the challenge. Each such motion must be
9 accompanied by a competent declaration that affirms that the movant has complied
10 with the meet and confer requirements imposed in the preceding paragraph and that
11 sets forth with specificity the justification for the confidentiality designation that was
12 given by the Designating Party in the meet and confer dialogue.

13
14 The burden of persuasion in any such challenge proceeding shall be on the
15 Designating Party. Until the court rules on the challenge, all parties shall continue to
16 afford the material in question the level of protection to which it is entitled under the
17 Designating Party's designation.

18
19 To allow the challenging party adequate space to respond to the arguments
20 posed by the Designating Party in opposition to any such motion, the challenging
21 party's Reply Brief may consist of up to 25 pages in length.

22
23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24
25 7.1 Basic Principles: A Receiving Party may use Protected Material
26 that is disclosed or produced by another Party or by a non-party in connection with
27 this case only for prosecuting, defending, or attempting to settle this litigation. Such
28 Protected Material may be disclosed only to the categories of persons and under the

1 conditions described in this Order. When the litigation has been terminated, a
2 Receiving Party must comply with the provisions of section 11, below (FINAL
3 DISPOSITION).

4
5 Protected Material must be stored and maintained by a Receiving Party
6 at a location and in a secure manner that ensures that access is limited to the persons
7 authorized under this Order.

8
9 7.2 Disclosure of “CONFIDENTIAL” Information or Items: Unless
10 otherwise ordered by the court or permitted in writing by the Designating Party, a
11 Receiving Party may disclose any information or item designated CONFIDENTIAL
12 only to:

13
14 (a) the Receiving Party’s Outside Counsel of record in this action,
15 as well as employees of said Counsel to whom it is reasonably necessary to disclose
16 the information for this litigation and who have signed the “Agreement To Be Bound
17 by Protective Order” that is attached hereto as Exhibit A;

18
19 (b) the officers, directors, and employees (including House
20 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
21 litigation and who signed the “Agreement To Be Bound by Protective Order” (Exhibit
22 A);

23
24 (c) experts (as defined in this Order) of the Receiving Party to
25 whom disclosure is reasonably necessary for this litigation and who have signed the
26 “Agreement To Be Bound by Protective Order” (Exhibit A);

27
28 (d) the Court and its personnel;

1 (e) court reporters, their staffs, and professional vendors to whom
2 disclosure is reasonably necessary for this litigation and who have signed the
3 “Agreement To Be Bound by Protective Order” (Exhibit A);
4

5 (f) during their depositions, witnesses in the action to whom
6 disclosure is reasonably necessary and who have signed the “Agreement To Be Bound
7 by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or
8 exhibits to depositions that reveal Protected Material must be separately bound by the
9 court reporter and may not be disclosed to anyone except as permitted under this
10 Protective Order.
11

12 (g) the author of the document or the original source of the
13 information.
14

15 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’
16 EYES ONLY” Information or Items: Unless otherwise ordered by the court or
17 permitted in writing by the Designating Party, a Receiving Party may disclose any
18 information or item designated HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
19 ONLY only to:
20

21 (a) the Receiving Party’s Outside Counsel of record in this action,
22 as well as employees of said Counsel to whom it is reasonably necessary to disclose
23 the information for this litigation and who have signed the “Agreement To Be Bound
24 by Protective Order” that is attached hereto as Exhibit A;
25

26 (b) experts (as defined in this Order) of the Receiving Party to
27 whom disclosure is reasonably necessary for this litigation and who have signed the
28 “Agreement To Be Bound by Protective Order” (Exhibit A);

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(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement To Be Bound by Protective Order” (Exhibit A);

(e) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement To Be Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order.

(f) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who

1 caused the subpoena or order to issue in the other litigation that some or all the
2 material covered by the subpoena or order is the subject of this Protective Order. In
3 addition, the Receiving Party must deliver a copy of this Protective Order promptly
4 to the Party in the other action that caused the subpoena or order to issue.
5

6 The purpose of imposing these duties is to alert the interested parties to the
7 existence of this Protective Order to afford the Designating Party in this case an
8 opportunity to try to protect its confidentiality interests in the court from which the
9 subpoena or order issued. The Designating Party shall bear the burdens and the
10 expenses of seeking protection in that court of its confidential material -- and nothing
11 in these provisions should be construed as authorizing or encouraging a Receiving
12 Party in this action to disobey a lawful directive from another court.
13

14 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL
15

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this
18 Protective Order, the Receiving Party must immediately (a) notify in writing the
19 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
20 all copies of the Protected Material, (c) inform the person or persons to whom
21 unauthorized disclosures were made of all the terms of this Order, and (d) request such
22 person or persons to execute the “Agreement To Be Bound” by Protective Order that
23 is attached hereto as Exhibit A.
24

25 10. FILING PROTECTED MATERIAL
26

27 Without written permission from the Designating Party or a court order secured
28 after appropriate notice to all interested persons, a Party may not file in the public

1 record in this action any Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5. The documents shall be
3 submitted in an appropriate envelope conforming to the requirements of Civil Local
4 Rules 79-5.1, labeled with the case name and number and bearing instructions that the
5 document is filed pursuant to the Stipulated Protective Order and that the envelope is
6 not to be opened absent further order of the Court.

7
8 11. FINAL DISPOSITION

9
10 Unless otherwise ordered or agreed in writing by the Producing Party, within
11 sixty (60) days after the final termination of this action, each Receiving Party must
12 return all Protected material to the Producing Party. As used in this subdivision, “all
13 Protected Material” includes all copies, abstracts, compilations, summaries, or any
14 other form of reproducing or capturing any of the Protected Material. With
15 permission in writing from the Designating Party, the Receiving Party may destroy
16 some or all of the Protected Material instead of returning it. Whether the Protected
17 Material is returned or destroyed, the Receiving Party must submit a written
18 certification to the Producing Party (and, if not the same person or entity, to the
19 Designating Party) by the sixty day deadline that identifies (by category, where
20 appropriate) all the Protected material that was returned or destroyed and that affirms
21 that the Receiving Party has not retained any copies, abstracts, compilations,
22 summaries, or other forms of reproducing or capturing any of the Protected Material.
23 Notwithstanding this provision, Counsel are entitled to retain any archival copy of all
24 pleadings, motion papers, transcripts, legal memoranda, correspondence, or attorney
25 work product, even if such materials contain Protected Material. Any such archival
26 copies that contain or constitute Protected Material remain subject to this Protective
27 Order as set forth in Section 4 (DURATION), above.
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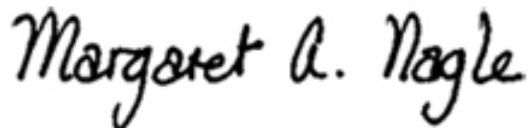
12. MISCELLANEOUS

12.1 Right to Further Relief: Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections: The entry of this Order does not affect any Party's right to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO ORDERED.

DATED: October 13, 2010



Margaret A. Nagle
United States Magistrate Judge

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EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____ (print or type full name), of _____
(print or type full address), declare under penalty of perjury that I have read in its
entirety and understand the Confidentiality Order that was issued by the United States
District Court for the Central District of California on _____ (date) in the
case of *Christina Gonzalez et al. v. Cavalry Portfolio Services, LLC*, Case No. CV10-
1876 MAN. I agree to comply with and to be bound by all the terms of this
Confidentiality Order and I understand and acknowledge that failure to so comply
could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject
to this Confidentiality Order to any person or entity except in strict compliance with
the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Confidentiality Order, even if such enforcement proceedings occur after termination
of this action.

I hereby appoint _____ (print or type full
name) of _____ (print or type full address and tel.
number) as my California agent for service of process in connection with this action
or any proceedings related to enforcement of this Confidentiality Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____