

DENIED WITHOUT PREJUDICE

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

STREAM SICAV, AND TODD  
MARX, INDIVIDUALLY AND ON  
BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

Plaintiffs,

v.

RINO INTERNATIONAL  
CORPORATION, DEJUN ZOU,  
JIANPING QIU, YI JENNY LIU, BEN  
WANG, KENNITH C. JOHNSON,  
XIE QUAN, WEIGUO ZHANG, LI  
YU, AND FRAZER FROST, LLP f/k/a  
MOORE STEPHENS WURTH  
FRAZER AND TORBET, LLP,

Defendants.

Case No. CV 10-8695-DDP (VBKx)

CLASS ACTION

**[PROPOSED] PROTECTIVE ORDER**

1 WHEREAS the Parties have stipulated and good cause appearing:

2 IT IS HEREBY ORDERED that:

3 1. This Order shall apply to and govern all depositions, documents,  
4 information or things disclosed or produced in response to requests for production of  
5 documents, answers to interrogatories, responses to requests for admissions and all other  
6 discovery taken under the Federal Rules of Civil Procedure, and other information which  
7 the disclosing party designates as “CONFIDENTIAL” furnished, directly or indirectly,  
8 by or on behalf of any party or any non-party in connection with the above-captioned  
9 litigation.

10 2. When used in this Order, the phrase “disclosing party” shall refer to the  
11 parties to the above-captioned litigation or to non-parties who give testimony or produce  
12 documents or other material.

13 3. When used in this Order, the word “document” encompasses, but is not  
14 limited to, any type of document or testimony, including all documents or things  
15 described in Federal Rule of Evidence 1001(1)–(4) and/or Rule 34(a)(1)(A) or (B).

16 4. The disclosing party who designates any material “CONFIDENTIAL”  
17 (sometimes referred to herein as a “designating party”) bears the burden of establishing  
18 the “CONFIDENTIAL” status of such material in any situation in which the designation  
19 is at issue, and nothing in this Order shall be construed to alter such burden. The parties  
20 enter into and stipulate to this Order without prejudice to the rights of any party to assert  
21 or contest the “CONFIDENTIAL” status of any material as set forth below.

22 5. A disclosing party may designate as “CONFIDENTIAL” any trade secret  
23 or other confidential research, design, development, financial or commercial information,  
24 as such terms are used in Rule 26(c)(1)(G) and any applicable case law interpreting Rule  
25 26(c)(1)(G). In addition, a disclosing party may designate as “CONFIDENTIAL” non-  
26 public personal information or other information for which applicable federal or state law  
27 requires confidential treatment.

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1           6.     In designating material as “CONFIDENTIAL,” a disclosing party shall  
2 make such a designation only as to material which it in good faith believes is  
3 confidential.

4           7.     Any party or non-party receiving any non-public material from a disclosing  
5 party, regardless of whether such material is designated as “CONFIDENTIAL,” shall use  
6 that material solely for the purpose of conducting this litigation and not for any other  
7 purpose whatsoever.

8           8.     In the absence of written permission from the disclosing party, or an order  
9 of the Court, material designated as “CONFIDENTIAL” may be disclosed only to the  
10 following persons:

11           a.     The named parties (which would include any proposed class  
12 representatives, but does not include unnamed putative class members) and the attorneys  
13 working on the above-captioned litigation on behalf of any party, including attorneys  
14 consulting with or advising any party to the above-captioned litigation, in-house  
15 attorneys, paralegals, and staff, stenographic and clerical employees and contractors  
16 working under the direct supervision of such counsel;

17           b.     Any expert or consultant who is expressly retained by any attorney  
18 described in Paragraph 8(a) to assist in the above-captioned litigation, with disclosure  
19 only to the extent reasonably necessary to perform such work;

20           c.     Any fact witness, including named parties, provided, however, that  
21 the witness (i) shall not retain any documents marked as “CONFIDENTIAL,” and (ii)  
22 shall be informed, prior to being shown materials marked as “CONFIDENTIAL” that  
23 he/she is being shown such materials solely for use in this Action; and

24           d.     The Court, jury, court personnel, court reporters, and other persons  
25 connected with the Court.

26           9.     The persons described in Paragraphs 8(a)–(c) shall have access to  
27 “CONFIDENTIAL” material only after they have been made aware of the provisions of  
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1 this Order (including, without limitation, Paragraph 7). Counsel retaining or representing  
2 the persons described in Paragraph 8(b) shall require that such persons manifest their  
3 assent to be bound by the provisions of this Order by signing a copy of the annexed  
4 “ACKNOWLEDGMENT.” The persons described in Paragraph 8(c) shall have access to  
5 “CONFIDENTIAL” material only after Counsel retaining, representing, interviewing or  
6 deposing those persons has provided a copy of this Order to such persons for review and  
7 requests (but shall not require) those persons to manifest their assent to be bound by the  
8 provisions of this Order by signing a copy of the annexed “ACKNOWLEDGMENT.”  
9 Counsel shall retain copies of the signed “ACKNOWLEDGMENT” forms until the  
10 completion of the above-captioned litigation. Any person receiving “CONFIDENTIAL”  
11 material is enjoined from disclosing that material to any other person, except in  
12 conformance with this Order. The parties shall act in good faith to eliminate, whenever  
13 possible, the expenditure of “on the record” time to effectuate or confirm compliance  
14 with this Paragraph at any deposition.

15 10. This Court shall retain jurisdiction over this Order, including any  
16 proceedings relating to performance under or compliance with the Order. Individuals who  
17 receive “CONFIDENTIAL” material shall be subject to this Order and to the jurisdiction  
18 of this Court concerning this Order.

19 11. The recipient of any “CONFIDENTIAL” material that is provided under  
20 this Order shall maintain such material in a secure and safe area and shall exercise the  
21 same standard of due and proper care with respect to the storage, custody, use and/or  
22 dissemination of such material as is exercised by the recipient with respect to its own  
23 proprietary material. “CONFIDENTIAL” material shall not be copied, reproduced,  
24 summarized, extracted or abstracted, except to the extent that such copying, reproduction,  
25 summarization, extraction or abstraction is reasonably necessary for the conduct of this  
26 lawsuit. All such copies, reproductions, summarizations, extractions, and abstractions

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1 shall be subject to the terms of the Order and labeled in the same manner as the  
2 designated material on which they are based.

3 12. Disclosing parties shall designate “CONFIDENTIAL” material as follows:

4 a. In the case of documents, interrogatory answers, responses to  
5 requests to admit, and the information contained therein, designation shall be made, as  
6 appropriate under the terms of this Stipulation and Order, by placing the following legend  
7 on each page of any such document: “CONFIDENTIAL.” In the event that a disclosing  
8 party inadvertently fails to stamp or otherwise designate a document or other material as  
9 “CONFIDENTIAL” at the time of its production, that disclosing party may stamp or  
10 otherwise designate the document or other material as “CONFIDENTIAL” at any  
11 reasonable time thereafter. The delay in designating a document as “CONFIDENTIAL”  
12 shall not, in and of itself, be deemed to have effected a waiver of any of the protections of  
13 this Order, but such document or other material shall be treated as “CONFIDENTIAL”  
14 only beginning at the time such designation occurs, provided, however, that the foregoing  
15 provision shall not apply to any documents or material that had already been made  
16 publicly available prior to the designation.

17 b. “CONFIDENTIAL” material may be used in depositions.  
18 Designation of the portion of the deposition transcript (including exhibits) that contains  
19 “CONFIDENTIAL” material shall be made by a statement to such effect on the record in  
20 the course of the deposition or, upon review of such transcript, by the disclosing party or  
21 counsel for the disclosing party to whose “CONFIDENTIAL” material the deponent has  
22 had access, which shall be so designated within twenty-one (21) days after the deposition.  
23 During those twenty- one days, the entire deposition transcript, including exhibits, shall  
24 be deemed “CONFIDENTIAL.”

25 c. Any “CONFIDENTIAL” material produced in a non-paper media  
26 (e.g., videotape, audiotape, computer disc, etc.) may be designated as such by labeling the  
27 outside of such non-paper media as “CONFIDENTIAL” and producing this material in a  
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1 sealed envelope. In the event a receiving party generates any electronic copy, “hard  
2 copy,” transcription, or printout from any such designated non-paper media, such party  
3 must treat each copy, transcription, or printout as “CONFIDENTIAL” pursuant to the  
4 terms of this Order.

5 13. Nothing in this Order shall be taken as indicating that any information is in  
6 fact “CONFIDENTIAL” or entitled to confidential treatment. No party shall be obligated  
7 to challenge the propriety of a “CONFIDENTIAL” designation at the time made, and a  
8 failure to do so shall not preclude a subsequent challenge thereto, nor shall a party that  
9 has designated materials or information as “CONFIDENTIAL” contend that any delay by  
10 another party in objecting to the designating party’s “CONFIDENTIAL” designation in  
11 any way (a) lends support to the designating party’s “CONFIDENTIAL” designation or  
12 (b) invalidates or diminishes in any way the objecting party’s challenge of the  
13 “CONFIDENTIAL” designation for any such materials or information. In the event that  
14 any party disagrees at any stage of these proceedings with such designation, counsel for  
15 such party shall notify counsel for the disclosing party in writing (the “Notice”). The  
16 objecting party shall identify each particular document bearing a designation to which it  
17 objects and shall specify the reason(s) for the objection, provided that the party  
18 challenging the “CONFIDENTIAL” designation may identify multiple documents by  
19 Bates number (whether in a range of consecutive numbers or otherwise) in its Notice  
20 when the reason or reasons for challenging the “CONFIDENTIAL” designation apply in  
21 the same manner to the documents identified in the Notice. Within seven (7) calendar  
22 days of the receipt of the Notice, counsel for the parties (and any non-party involved)  
23 shall promptly schedule a date and time to meet and confer to attempt resolve such  
24 dispute in good faith on an informal basis consistent with the requirement to confer in  
25 good faith under Rule 26(c)(1) and Rule 37(a)(1). If the dispute cannot be resolved, the  
26 party that designated the materials in question as “CONFIDENTIAL” may request  
27 appropriate relief from the Court, and the objecting party may also request any relief  
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1 from the Court that it deems appropriate (which shall have first been raised no later than  
2 during the parties' meet and confer session(s)) in its opposition to the designating party's  
3 motion or other proposed method of seeking relief from the Court. The materials in  
4 question shall retain their "CONFIDENTIAL" status until the Court rules on any such  
5 motion so long as the party that designated the materials in question as  
6 "CONFIDENTIAL" seeks relief from the Court within: (i) thirty (30) days of the date the  
7 parties initially met and conferred, if the disagreement pertains to fewer than ten  
8 documents; or (ii) forty-five (45) days of the date the parties initially met and conferred,  
9 if the disagreement pertains to ten or more documents. The parties (and any non-party  
10 involved) may agree to extend the time for the disclosing party to apply to the Court for  
11 relief. If the designating party does not apply to the Court for a ruling on the designation  
12 of discovery material as "CONFIDENTIAL" within the time period prescribed herein or  
13 agreed to by the parties, the discovery material will no longer be deemed  
14 "CONFIDENTIAL." Nothing in this Order shall alter the burden on the disclosing party  
15 to establish the "CONFIDENTIAL" status of information it has so designated.

16 14. Nothing contained in this Order shall be construed to limit any party's right  
17 to use or offer in Court any "CONFIDENTIAL" information, except that no  
18 "CONFIDENTIAL" information shall be used or offered in Court or filed in the public  
19 record absent the consent of the disclosing party or permission of the Court.

20 15. Documents containing "CONFIDENTIAL" material shall not be filed with  
21 the Court unless the filing party reasonably believes it is reasonably necessary to do so  
22 for purposes of trial, motions (including without limitation, motions for class  
23 certification, preliminary injunction or summary judgment) or other Court matters.

24 a. Any party seeking to file information or materials designated  
25 CONFIDENTIAL with the Court shall lodge such material, in accordance with the  
26 requirements of the United States District Court, Central District of California Local Rule  
27 79-5, in a sealed envelope or other container bearing the words CONFIDENTIAL to be  
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1 kept in a safe and secure place and not in files open to public inspection, along with an  
2 application setting forth good cause for the under seal filing. The envelope or other  
3 container shall bear the title of the action and a statement substantially in the following  
4 form:

5 **“This envelope contains documents and/or information which are**  
6 **subject to a Protective Order. This envelope is not to be opened except**  
7 **by the Court.”**

8 b. If the disclosing party is not the party filing the motion to seal, then  
9 the disclosing party shall make the showing required in its response to the motion.

10 c. Any motion to seal filed under any subsection of this Paragraph 16  
11 shall be noted for consideration no earlier than the fourth Friday after filing and service  
12 of the motion. The Clerk of the Court shall maintain the “CONFIDENTIAL” materials  
13 under seal until the Court rules on the motion to seal, subject to the provisions of the  
14 following Paragraph 17.

15 16. In the event the Court denies a motion to seal documents labeled  
16 “CONFIDENTIAL,” the Clerk of the Court shall leave the documents under seal for a  
17 period of three (3) business days after the date of the Court’s denial of the motion to seal.  
18 If the filing party initially designated the documents “CONFIDENTIAL,” then within  
19 that three (3) day period, the filing party may, at its option, file replacement documents  
20 that do not contain “CONFIDENTIAL” material or any reference to “CONFIDENTIAL”  
21 material, in which case the documents initially filed under seal shall not be considered by  
22 the Court and shall remain under seal. If the filing party does not file replacement  
23 documents within the time period prescribed by this Paragraph, the material shall be filed  
24 unsealed in the Court file.

25 17. In the event that any “CONFIDENTIAL” material is used in any Court  
26 proceeding in connection with this litigation, it shall not lose its “CONFIDENTIAL”  
27 status through such use, and the parties shall take all steps reasonably required to protect  
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1 its confidentiality during such use. In particular, while a motion to seal is pending and  
2 before the Court has ruled, no party shall make use in open court of any documents that  
3 are subject to that motion to seal without the consent of the designating party or the  
4 permission of the Court.

5 18. Notwithstanding the parties' designation of "CONFIDENTIAL" material,  
6 any court hearing that refers to or describes Confidential information may be held in open  
7 court with records unsealed unless the Court orders, upon its own motion or upon a  
8 Party's request, that the proceedings be conducted in camera, and any transcript relating  
9 thereto be designated as "CONFIDENTIAL." Any Party who seeks to refer to or  
10 describe Confidential information at a court hearing , and/or have the records unsealed,  
11 shall provide the other Party(ies) seven days advance notice to allow the other Party(ies)  
12 an opportunity to seek appropriate relief to limit the publication of any Confidential  
13 information.

14 19. If "CONFIDENTIAL" material is disclosed to any person other than in the  
15 manner authorized by this Order, the person or party responsible for the disclosure must  
16 seasonably bring all pertinent facts relating to such disclosure to the attention of counsel  
17 for the disclosing party and, without prejudice to any other rights and remedies of the  
18 parties or non-parties, make every effort to prevent further disclosure by it or by the  
19 person who was the recipient of such material.

20 20. Nothing in this Order shall preclude any parties or non-parties to the  
21 lawsuit or their attorneys (a) from showing a document or part of a document designated  
22 as "CONFIDENTIAL" to an individual who either prepared the document or is identified  
23 on the face of the document as an addressee or copy addressee, or (b) from disclosing or  
24 using, in any manner or for any purpose, any material or documents from the disclosing  
25 party's own files which the disclosing party itself has designated as "CONFIDENTIAL."

26 21. In the event any receiving party having possession, custody or control of  
27 any "CONFIDENTIAL" material receives a subpoena, request for production of  
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1 documents, or other process or order to produce such material in another, unrelated legal  
2 proceeding, from a non-party to the above-captioned litigation, such receiving party shall:

3 a. give prompt written notice of the subpoena, request for production of  
4 documents, or other process or order to counsel for the disclosing party that designated  
5 the material as “CONFIDENTIAL”;

6 b. furnish counsel for that disclosing party with a copy of said  
7 subpoena, request for production of documents, or other process or order; and

8 c. cooperate with respect to all reasonable and legitimate procedures  
9 sought to be pursued by the disclosing party whose interests may be affected. The  
10 disclosing party asserting the “CONFIDENTIAL” treatment shall have the burden of  
11 defending against such subpoena, process or order. The party receiving the subpoena,  
12 request for production of documents, or other process or order shall be entitled to comply  
13 with it except to the extent the disclosing party asserting the “CONFIDENTIAL”  
14 treatment is successful in obtaining an order modifying or quashing the subpoena, request  
15 for production of documents, or other process or order, provided, however, that the party  
16 receiving the subpoena, request for production of documents, or other process shall await  
17 the disposition of any motion to quash or motion for a protective order timely filed by the  
18 disclosing party before producing any “CONFIDENTIAL” information in response to the  
19 subpoena, request for production of documents, or other process or order.

20 22. The inadvertent production in the course of discovery in the above-  
21 captioned litigation of any documents or material (whether designated as  
22 “CONFIDENTIAL” or not) shall not be deemed to waive whatever attorney-client  
23 privilege, work product protection or other privilege or immunity that would otherwise  
24 attach to those documents or material produced or to other documents or material, so long  
25 as the disclosing party notifies the other party or parties of the claim of privilege or other  
26 protection or immunity. Upon receipt of such notice, all other parties shall (regardless of  
27 whether they agree with the disclosing party’s claim of privilege or protection) promptly:  
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1           a.     destroy or segregate all copies of the inadvertently produced  
2 documents or material in such party’s possession, custody, or control, and notify the  
3 disclosing party that it has done so; and

4           b.     notify the disclosing party that reasonable steps have been taken to  
5 retrieve and/or destroy the inadvertently produced documents or material from other  
6 persons to whom such documents or material have been provided, if any, consistent with  
7 Rule 26(b)(5)(B). Compliance with this Paragraph 22 does not, and shall not be deemed  
8 to, constitute agreement that the claimed document or material is in fact privileged or  
9 entitled to protection or immunity.

10          23.    The parties shall comply with their ethical and legal obligations concerning  
11 the actual or apparent inadvertent production of privileged or protected information,  
12 including by notifying promptly a disclosing party when appropriate.

13          24.    After the conclusion of the above-captioned litigation, including final  
14 appellate action or the expiration of time to appeal or seek further review, all non-public  
15 material produced by any disclosing party, regardless of whether it has been designated  
16 “CONFIDENTIAL,” and all copies thereof, shall be maintained in a manner which will  
17 prevent the disclosure of such documents to persons not authorized to see them under the  
18 terms of this Order. Documents filed under seal on ECF shall remain under seal unless or  
19 until they are destroyed pursuant to the Court’s document retention policy.

20          25.    Except as specifically provided herein, the terms, conditions, and  
21 limitations of this Order shall survive the termination of the above-captioned litigation.

22          26.    This Order is without prejudice to the right of any party or non-party to  
23 seek relief from the Court from any of the provisions contained herein.

24          27.    This Order shall not be construed as waiving any right to assert a claim of  
25 privilege, relevance, overbreadth, burdensomeness or other grounds for not producing  
26 material called for, and access to all material (whether designated as “CONFIDENTIAL”  
27 or not) shall be only as provided by the discovery rules and other applicable law.

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**EXHIBIT A**

I have read and understand the Protective Order entered in the matter of *Stream SICAV v. RINO International Corp., et al.*, Case No. 10-CV-8695 DDP (VBK), and agree to be bound by and abide fully with the terms of such order. I further understand that failure to ABIDE fully with the terms of such Protective Order may lead to sanctions being imposed by the court. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Date