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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, Lead Plaintiffs and Defendant Frazer Frost LLP anticipate that
2 information and documents may be disclosed by and among the parties in the court of
3 discovery in the above-captioned action (“the Action”);

4 WHEREAS, the parties believe that such information and documents may contain
5 material that is of a confidential, sensitive, personal, commercial, or proprietary nature,
6 and/or may contain material, including third-party material, as to which disclosure is
7 restricted by applicable laws and regulations;

8 WHEREAS, the Parties have stipulated and good cause appearing:

9 IT IS HEREBY ORDERED that:

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

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

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

23 4. The disclosing party who designates any material “CONFIDENTIAL”
24 (sometimes referred to herein as a “designating party”) bears the burden of establishing
25 the “CONFIDENTIAL” status of such material in any situation in which the designation
26 is at issue, and nothing in this Order shall be construed to alter such burden. The parties

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1 enter into and stipulate to this Order without prejudice to the rights of any party to assert
2 or contest the “CONFIDENTIAL” status of any material as set forth below.

3 5. A disclosing party may designate as “CONFIDENTIAL” any trade secret
4 or other confidential research, design, development, financial or commercial information,
5 as such terms are used in Rule 26(c)(1)(G) and any applicable case law interpreting Rule
6 26(c)(1)(G). In addition, a disclosing party may designate as “CONFIDENTIAL” non-
7 public personal information or other information for which applicable federal or state law
8 requires confidential treatment.

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

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

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

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

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

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

5 d. The Court, jury, court personnel, court reporters, and other persons
6 connected with the Court.

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

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

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1 11. The recipient of any “CONFIDENTIAL” material that is provided under
2 this Order shall maintain such material in a secure and safe area and shall exercise the
3 same standard of due and proper care with respect to the storage, custody, use and/or
4 dissemination of such material as is exercised by the recipient with respect to its own
5 proprietary material. “CONFIDENTIAL” material shall not be copied, reproduced,
6 summarized, extracted or abstracted, except to the extent that such copying, reproduction,
7 summarization, extraction or abstraction is reasonably necessary for the conduct of this
8 lawsuit. All such copies, reproductions, summarizations, extractions, and abstractions
9 shall be subject to the terms of the Order and labeled in the same manner as the
10 designated material on which they are based.

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

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

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

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

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

24 14. Nothing contained in this Order shall be construed to limit any party’s right
25 to use or offer in Court any “CONFIDENTIAL” information, except that no
26 “CONFIDENTIAL” information shall be used or offered in Court or filed in the public
27 record absent the consent of the disclosing party or permission of the Court.

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

5 a. Any party seeking to file information or materials designated
6 CONFIDENTIAL with the Court shall lodge such material, in accordance with the
7 requirements of the United States District Court, Central District of California Local Rule
8 79-5, in a sealed envelope or other container bearing the words CONFIDENTIAL to be
9 kept in a safe and secure place and not in files open to public inspection, along with an
10 application setting forth good cause for the under seal filing. The envelope or other
11 container shall bear the title of the action and a statement substantially in the following
12 form:

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

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

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

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

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

13 18. Notwithstanding the parties’ designation of “CONFIDENTIAL” material,
14 any court hearing that refers to or describes Confidential information may be held in open
15 court 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, and any transcript relating
17 thereto be designated as “CONFIDENTIAL.” Any Party who seeks to refer to or
18 describe Confidential information at a court hearing , and/or have the records unsealed,
19 shall provide the other Party(ies) seven days advance notice to allow the other Party(ies)
20 an opportunity to seek appropriate relief to limit the publication of any Confidential
21 information.

22 19. If “CONFIDENTIAL” material is disclosed to any person other than in the
23 manner authorized by this Order, the person or party responsible for the disclosure must
24 seasonably bring all pertinent facts relating to such disclosure to the attention of counsel
25 for the disclosing party and, without prejudice to any other rights and remedies of the
26 parties or non-parties, make every effort to prevent further disclosure by it or by the
27 person who was the recipient of such material.

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1 20. Nothing in this Order shall preclude any parties or non-parties to the
2 lawsuit or their attorneys (a) from showing a document or part of a document designated
3 as “CONFIDENTIAL” to an individual who either prepared the document or is identified
4 on the face of the document as an addressee or copy addressee, or (b) from disclosing or
5 using, in any manner or for any purpose, any material or documents from the disclosing
6 party’s own files which the disclosing party itself has designated as “CONFIDENTIAL.”

7 21. In the event any receiving party having possession, custody or control of
8 any “CONFIDENTIAL” material receives a subpoena, request for production of
9 documents, or other process or order to produce such material in another, unrelated legal
10 proceeding, from a non-party to the above-captioned litigation, such receiving party shall:

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

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

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

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1 22. The inadvertent production in the course of discovery in the above-
2 captioned litigation of any documents or material (whether designated as
3 “CONFIDENTIAL” or not) shall not be deemed to waive whatever attorney-client
4 privilege, work product protection or other privilege or immunity that would otherwise
5 attach to those documents or material produced or to other documents or material, so long
6 as the disclosing party notifies the other party or parties of the claim of privilege or other
7 protection or immunity. Upon receipt of such notice, all other parties shall (regardless of
8 whether they agree with the disclosing party’s claim of privilege or protection) promptly:

9 a. destroy or segregate all copies of the inadvertently produced
10 documents or material in such party’s possession, custody, or control, and notify the
11 disclosing party that it has done so; and

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

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

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

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

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

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

9 28. No party shall produce or be requested to produce or identify any material
10 or information that the party is prohibited by law from disclosing under 31 U.S.C. §
11 5318(g), 31 CFR 103.18(e), 12 CFR 510.5 or any similar law, regulation, rule or court
12 order.

13 29. The parties will abide by all Court orders and statutory provisions
14 (including applicable law and/or court orders concerning such provisions) concerning the
15 eligibility of each party to receive documents or other material through discovery. Any
16 party that is eligible to receive such documents or material shall not provide any
17 documents or material, or information that is contained in or derived from such
18 documents or material, to any other party unless the other party also is eligible to receive
19 such documents or material. Nothing in this Paragraph, however, shall be read to prevent
20 the parties from filing documents in support of or in opposition to motions in this Court.

21 IT IS SO ORDERED.

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24 DATED: January 30, 2014

25 /s/
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27 Honorable Victor B. Kenton
28 United States Magistrate Judge

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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