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 MNET FINANCIAL, INC.

7  
 8 UNITED STATES DISTRICT COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

11 XIA CHE,	)	CASE NO. 2:11-CV-03602-DMG-MRW
12 Plaintiffs,	)	District Judge: Judge Dolly M. Gee
13 vs.	)	Magistrate Judge: Michael R. Wilner
14 MNET FINANCIAL, INC.,	)	<b>AMENDED STIPULATED</b>
15 Defendant.	)	<b>PROTECTIVE ORDER</b>

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 21 Defendant MNET FINANCIAL, INC. ("Defendant") and Plaintiff XIA CHE  
 22 ("Plaintiff"), through their respective counsel of record, hereby file this Stipulated  
 23 Protective Order as set forth below.

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1           **1.    PURPOSES AND LIMITATIONS**

2           Disclosure and discovery activity in this action are likely to involve production  
3 of confidential, proprietary, or private information for which special protection from  
4 public disclosure and from use for any purpose other than prosecuting this litigation  
5 may be warranted. Accordingly, the parties hereby stipulate to and petition the court to  
6 enter the following Stipulated Protective Order. The parties acknowledge that this Order  
7 does not confer blanket protections on all disclosures or responses to discovery and that  
8 the protection it affords from public disclosure and use extends only to the limited  
9 information or items that are entitled to confidential treatment under the applicable legal  
10 principles. The parties further acknowledge, as set forth in Section 12.3 below, that this  
11 Stipulated Protective Order does not entitle them to file confidential information under  
12 seal; Local Rule 79-5 sets forth the procedures that must be followed and the standards  
13 that will be applied when a party seeks permission from the court to file material under  
14 seal.

15           **2.    DEFINITIONS**

16           2.1    Challenging Party: a Party or Non-Party that challenges the  
17 designation of information or items under this Order.

18           2.2    "CONFIDENTIAL" Information or Items: information (regardless  
19 of how it is generated, stored or maintained) or tangible things that qualify for  
20 protection under Federal Rule of Civil Procedure 26(c).

21           2.3    Counsel (without qualifier): Outside Counsel of Record and House  
22 Counsel (as well as their support staff).

23           2.4    Designating Party: a Party or Non-Party that designates information  
24 or items that it produces in disclosures or in responses to discovery as  
25 "CONFIDENTIAL."

26           2.5    Disclosure or Discovery Material: all items or information,  
27 regardless of the medium or manner in which it is generated, stored, or maintained  
28 (including, among other things, testimony, transcripts, and tangible things), that are

1 produced or generated in disclosures or responses to discovery in this matter.

2           2.6 Expert: a person with specialized knowledge or experience in a  
3 matter pertinent to the litigation who has been retained by a Party or its counsel to serve  
4 as an expert witness or as a consultant in this action.

5           2.7 House Counsel: attorneys who are employees of a party to this  
6 action. House Counsel does not include Outside Counsel of Record or any other outside  
7 counsel.

8           2.8 Non-Party: any natural person, partnership, corporation, association,  
9 or other legal entity not named as a Party to this action.

10           2.9 Outside Counsel of Record: attorneys who are not employees of a  
11 party to this action but are retained to represent or advise a party to this action and have  
12 appeared in this action on behalf of that party or are affiliated with a law firm which has  
13 appeared on behalf of that party.

14           2.10 Party: any party to this action, including all of its officers, directors,  
15 employees, consultants, retained experts, and Outside Counsel of Record (and their  
16 support staffs).

17           2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
18 Discovery Material in this action.

19           2.12 Professional Vendors: persons or entities that provide litigation  
20 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
21 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
22 their employees and subcontractors.

23           2.13 Protected Material: any Disclosure or Discovery Material that is  
24 designated as "CONFIDENTIAL."

25           2.14 Receiving Party: a Party that receives Disclosure or Discovery  
26 Material from a Producing Party.

27           **3. SCOPE**

28           The protections conferred by this Stipulation and Order cover not only Protected

1 Material (as defined above), but also (1) any information copied or extracted from  
2 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
3 Material; and (3) any testimony, conversations, or presentations by Parties or their  
4 Counsel that might reveal Protected Material. However, the protections conferred by  
5 this Stipulation and Order do not cover the following information: (a) any information  
6 that is in the public domain at the time of disclosure to a Receiving Party or becomes  
7 part of the public domain after its disclosure to a Receiving Party as a result of  
8 publication not involving a violation of this Order, including becoming part of the  
9 public record through trial or otherwise; and (b) any information known to the  
10 Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
11 disclosure from a source who obtained the information lawfully and under no obligation  
12 of confidentiality to the Designating Party. Any use of Protected Material at trial shall  
13 be governed by a separate agreement or order.

#### 14 **4. DURATION**

15 Even after final disposition of this litigation, the confidentiality obligations  
16 imposed by this Order shall remain in effect until a Designating Party agrees otherwise  
17 in writing or a court order otherwise directs. Final disposition shall be deemed to be the  
18 later of (1) dismissal of all claims and defenses in this action, with or without prejudice;  
19 and (2) final judgment herein after the completion and exhaustion of all appeals,  
20 rehearings, remands, trials, or reviews of this action, including the time limits for filing  
21 any motions or applications for extension of time pursuant to applicable law.

#### 22 **5. DESIGNATING PROTECTED MATERIAL**

23 **5.1 Exercise of Restraint and Care in Designating Material for**  
24 **Protection:** Each Party or Non-Party that designates information or items for protection  
25 under this Order must take care to limit any such designation to specific material that  
26 qualifies under the appropriate standards. The Designating Party must designate for  
27 protection only those parts of material, documents, items, or oral or written  
28 communications that qualify – so that other portions of the material, documents, items,

1 or communications for which protection is not warranted are not swept unjustifiably  
2 within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
4 are shown to be clearly unjustified or that have been made for an improper purpose  
5 (e.g., to unnecessarily encumber or retard the case development process or to impose  
6 unnecessary expenses and burdens on other parties) will potentially expose the  
7 Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it  
9 designated for protection do not qualify for protection, that Designating Party must  
10 promptly notify all other Parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations: Except as otherwise provided  
12 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
14 under this Order must be clearly so designated before the material is disclosed or  
15 produced. Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic  
17 documents, but excluding transcripts of depositions or other pretrial or trial  
18 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each  
19 page that contains protected material. If only a portion or portions of the material on a  
20 page qualifies for protection, the Producing Party also must clearly identify the  
21 protected portion(s) (e.g., by making appropriate markings in the margins). A Party or  
22 Non-Party that makes original documents or materials available for inspection need not  
23 designate them for protection until after the inspecting Party has indicated which  
24 material it would like copied and produced. During the inspection and before the  
25 designation, all of the material made available for inspection shall be deemed  
26 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants  
27 copied and produced, the Producing Party must determine which documents, or portions  
28 thereof, qualify for protection under this Order. Then, before producing the specified

1 documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page  
2 that contains Protected Material. If only a portion or portions of the material on a page  
3 qualifies for protection, the Producing Party also must clearly identify the protected  
4 portion(s) (e.g., by making appropriate markings in the margins).

5 (b) for testimony given in deposition or in other pretrial or trial  
6 proceedings, that the Designating Party identify on the record, before the close of the  
7 deposition, hearing, or other proceeding, all protected testimony.

8 (c) for information produced in some form other than  
9 documentary and for any other tangible items, that the Producing Party affix in a  
10 prominent place on the exterior of the container or containers in which the information  
11 or item is stored the legend "CONFIDENTIAL." If only a portion or portions of the  
12 information or item warrant protection, the Producing Party, to the extent practicable,  
13 shall identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate: If timely corrected, an  
15 inadvertent failure to designate qualified information or items does not, standing alone,  
16 waive the Designating Party's right to secure protection under this Order for such  
17 material. Upon timely correction of a designation, the Receiving Party must make  
18 reasonable efforts to assure that the material is treated in accordance with the provisions  
19 of this Order.

20 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

21 6.1 Timing of Challenges: Any Party or Non-Party may challenge a  
22 designation of confidentiality at any time. Unless a prompt challenge to a Designating  
23 Party's confidentiality designation is necessary to avoid foreseeable, substantial  
24 unfairness, unnecessary economic burdens, or a significant disruption or delay of the  
25 litigation, a Party does not waive its right to challenge a confidentiality designation by  
26 electing not to mount a challenge promptly after the original designation is disclosed.

27 6.2 Meet and Confer: A meet-and-confer process shall be conducted in  
28 accordance with Local Rule 37-1. Prior to the filing of any motion relating to a

1 confidentiality designation, counsel for the parties shall confer in a good faith effort to  
2 eliminate the necessity for hearing the motion or to eliminate as many of the disputes  
3 as possible. It shall be the responsibility of counsel for the Challenging Party to arrange  
4 for this conference. If both counsel are located within the same county of the Central  
5 District, the conference shall take place in person at the office of the Challenging Party's  
6 counsel, unless the parties agree to meet someplace else. If both counsel are not located  
7 within the same county of the Central District, the conference may take place  
8 telephonically. Unless relieved by written order of the Court upon good cause shown,  
9 counsel for the Designating Party shall confer with counsel for the Challenging Party  
10 within ten (10) days after the Challenging Party serves a letter requesting such  
11 conference. The Challenging Party's letter shall identify each designation it is  
12 challenging and describe the basis for each challenge. To avoid ambiguity as to  
13 whether a challenge has been made, the letter must also recite that the challenge to  
14 confidentiality is being made in accordance with this specific paragraph of the  
15 Protective Order.

16           6.3 Judicial Intervention: If the Parties cannot resolve a challenge  
17 through the meet-and-confer process described above, court intervention shall be sought  
18 in compliance with Local Rule 37. Local Rule 37-2 requires that a joint stipulation  
19 shall be filed and served with any motion (subject to the exceptions set forth in Local  
20 Rule 37-2.4). The joint stipulation shall be submitted in the form described in Local  
21 Rule 37-2.1 and be prepared in accordance with Local Rule 37-2.2. After the joint  
22 stipulation is filed, each party may file a supplemental memorandum under Local Rule  
23 37-2.3. The motion shall be noticed to be heard pursuant to Local Rule 37-3. The  
24 failure of any counsel to comply with Local Rule 37 or cooperate in the foregoing  
25 procedures may result in the imposition of sanctions. The parties shall continue to  
26 afford the material in question the level of protection to which it is entitled under the  
27 Producing Party's designation until the court rules on the challenge.

28

1           **7.     ACCESS TO AND USE OF PROTECTED MATERIAL**

2           7.1     Basic Principles: A Receiving Party may use Protected Material that  
3 is disclosed or produced by another Party or by a Non-Party in connection with this case  
4 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
5 Material may be disclosed only to the categories of persons and under the conditions  
6 described in this Order. When the litigation has been terminated, a Receiving Party must  
7 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

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

15                     (a)     the Receiving Party's Outside Counsel of Record in this  
16 action, as well as employees of said Outside Counsel of Record to whom it is  
17 reasonably necessary to disclose the information for this litigation and who have signed  
18 the "Acknowledgment and Agreement to Be Bound" attached hereto as Exhibit A;

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 have signed the "Acknowledgment and Agreement to Be Bound"  
22 (Exhibit A);

23                     (c)     Experts (as defined in this Order) of the Receiving Party to  
24 whom disclosure is reasonably necessary for this litigation and who have signed the  
25 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26                     (d)     the court and its personnel;

27                     (e)     court reporters and their staff, professional jury or trial  
28 consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably

1 necessary for this litigation and who have signed the "Acknowledgment and Agreement  
2 to Be Bound" (Exhibit A);

3 (f) during their depositions, witnesses in the action to whom  
4 disclosure is reasonably necessary and who have signed the "Acknowledgment and  
5 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party  
6 or ordered by the court. Pages of transcribed deposition testimony or exhibits to  
7 depositions that reveal Protected Material must be separately bound by the court  
8 reporter and may not be disclosed to anyone except as permitted under this Stipulated  
9 Protective Order.

10 (g) the author or recipient of a document containing the  
11 information or a custodian or other person who otherwise possessed or knew the  
12 information.

13 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
14 **PRODUCED IN OTHER LITIGATION**

15 If a Party is served with a subpoena or a court order issued in other litigation that  
16 compels disclosure of any information or items designated in this action as  
17 "CONFIDENTIAL," that Party must:

18 (a) promptly notify in writing the Designating Party. Such  
19 notification shall include a copy of the subpoena or court order;

20 (b) promptly notify in writing the party who caused the subpoena  
21 or order to issue in the other litigation that some or all of the material covered by the  
22 subpoena or order is subject to this Protective Order. Such notification shall include a  
23 copy of this Stipulated Protective Order; and

24 (c) cooperate with respect to all reasonable procedures sought to  
25 be pursued by the Designating Party whose Protected Material may be affected.

26 If the Designating Party timely seeks a protective order, the Party served with the  
27 subpoena or court order shall not produce any information designated in this action as  
28 "CONFIDENTIAL" before a determination by the court from which the subpoena or

1 order issued, unless the Party has obtained the Designating Party's permission. The  
2 Designating Party shall bear the burden and expense of seeking protection in that court  
3 of its confidential material – and nothing in these provisions should be construed as  
4 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive  
5 from another court.

6 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**  
7 **PRODUCED IN THIS LITIGATION**

8 (a) The terms of this Order are applicable to information produced by  
9 a Non-Party in this action and designated as "CONFIDENTIAL." Such information  
10 produced by Non-Parties in connection with this litigation is protected by the remedies  
11 and relief provided by this Order. Nothing in these provisions should be construed as  
12 prohibiting a Non-Party from seeking additional protections.

13 (b) In the event that a Party is required, by a valid discovery request, to  
14 produce a Non-Party's confidential information in its possession, and the Party is  
15 subject to an agreement with the Non-Party not to produce the Non-Party's confidential  
16 information, then the Party shall:

17 1. promptly notify in writing the Requesting Party and the  
18 Non-Party that some or all of the information requested is subject to a confidentiality  
19 agreement with a Non-Party;

20 2. promptly provide the Non-Party with a copy of the Stipulated  
21 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
22 specific description of the information requested; and

23 3. make the information requested available for inspection by  
24 the Non-Party.

25 (c) If the Non-Party fails to object or seek a protective order from this  
26 court within 14 days of receiving the notice and accompanying information, the  
27 Receiving Party may produce the Non-Party's confidential information responsive to  
28 the discovery request. If the Non-Party timely seeks a protective order, the Receiving

1 Party shall not produce any information in its possession or control that is subject to the  
2 confidentiality agreement with the Non-Party before a determination by the court.<sup>1</sup>  
3 Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
4 of seeking protection in this court of its Protected Material.

5 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
7 Protected Material to any person or in any circumstance not authorized under this  
8 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
9 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
10 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
11 whom unauthorized disclosures were made of all the terms of this Order, and (d) request  
12 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"  
13 that is attached hereto as Exhibit A.

14 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
15 **OTHERWISE PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain  
17 inadvertently produced material is subject to a claim of privilege or other protection, the  
18 obligations of the Receiving Parties are those set forth in FRCP 26(b)(5)(B). This  
19 provision is not intended to modify whatever procedure may be established in an  
20 e-discovery order that provides for production without prior privilege review. Pursuant  
21 to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement  
22 on the effect of disclosure of a communication or information covered by the  
23 attorney-client privilege or work product protection, the parties may incorporate their  
24 agreement in the stipulated protective order submitted to the court.

25 **12. MISCELLANEOUS**

26  
27  
28 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in  
this court.

1           12.1 Right to Further Relief: Nothing in this Order abridges the right of  
2 any person to seek its modification by the court in the future.

3           12.2 Right to Assert Other Objections: By stipulating to the entry of this  
4 Protective Order no Party waives any right it otherwise would have to object to  
5 disclosing or producing any information or item on any ground not addressed in this  
6 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
7 ground to use in evidence of any of the material covered by this Protective Order.

8           12.3 Filing Protected Material: Without written permission from the  
9 Designating Party or a court order secured after appropriate notice to all interested  
10 persons, a Party may not file in the public record in this action any Protected Material.  
11 A Party that seeks to file any Protected Material under seal must comply with Local  
12 Rule 79-5. If a Receiving Party's request to file Protected Material under seal pursuant  
13 to Local Rule 79-5 is denied by the court, then the Receiving Party may file the  
14 information in the public record unless otherwise instructed by the court.

15           **13. FINAL DISPOSITION**

16           Within 60 days after the final disposition of this action, as defined in paragraph  
17 4, each Receiving Party must return all Protected Material to the Producing Party or  
18 destroy such material. As used in this subdivision, "all Protected Material" includes all  
19 copies, abstracts, compilations, summaries, and any other format reproducing or  
20 capturing any of the Protected Material. Whether the Protected Material is returned or  
21 destroyed, the Receiving Party must submit a written certification to the Producing  
22 Party (and, if not the same person or entity, to the Designating Party) by the 60 day  
23 deadline that (1) identifies (by category, where appropriate) all the Protected Material  
24 that was returned or destroyed and (2) affirms that the Receiving Party has not retained  
25 any copies, abstracts, compilations, summaries or any other format reproducing or  
26 capturing any of the Protected Material. Notwithstanding this provision, Counsel are  
27 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and  
28 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,

1 expert reports, attorney work product, and consultant and expert work product, even if  
2 such materials contain Protected Material. Any such archival copies that contain or  
3 constitute Protected Material remain subject to this Protective Order as set forth in  
4 Section 4 (DURATION).

5  
6 **IT IS SO STIPULATED.**

7 Dated: November 8, 2011

8 Respectfully submitted by:

9  
10 CARLSON & MESSER LLP

LAW OFFICES OF TODD M. FRIEDMAN

11  
12 /s/ Martin Schannong  
Jeffery J. Carlson  
13 Martin Schannong  
Attorneys for Defendant  
14 MNET FINANCIAL, INC.

/s/ Todd M. Friedman  
Todd M. Friedman  
Darin Shaw  
Attorneys for Plaintiff  
XIA CHE

15  
16  
17  
18 **IT IS SO ORDERED.**

19  
20 Dated: November 9, 2011

/s/ Judge Wilner  
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3  
4 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print  
5 or type full address], declare under penalty of perjury that I have read in its entirety and understand  
6 the Stipulated Protective Order that was issued by the United States District Court for the Central  
7 District of California on \_\_\_\_\_ [date] in the case of *Xia Che v. Mnet Financial, Inc.*, Case No.  
8 2:11-CV-03602-DMG-MRW. I agree to comply with and to be bound by all the terms of this  
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose  
10 me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose  
11 in any manner any information or item that is subject to this Stipulated Protective Order to any person  
12 or entity except in strict compliance with the provisions of this Order.

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

16 I hereby appoint \_\_\_\_\_ [print or type full name] of  
17 \_\_\_\_\_ [print or type full address and telephone number] as my  
18 California agent for service of process in connection with this action or any proceedings related to  
19 enforcement of this Stipulated Protective Order.

20  
21 Date: \_\_\_\_\_

22  
23 City and State where sworn and signed: \_\_\_\_\_

24  
25 Printed name: \_\_\_\_\_

26  
27 Signature: \_\_\_\_\_

28