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15 **UNITED STATES DISTRICT COURT**  
 16 **CENTRAL DISTRICT OF CALIFORNIA**

18 JULIO BELLO, CARLOS RUSSO and  
 19 MARIO LOPEZ,

Plaintiff,

v.

21 DS WATERS OF AMERICA, INC.,  
 22 and DOES 1 through 10, inclusive,

Defendant.

Case No. 2:12-cv-07434 DMG (PLAx)

[Hon. Dolly M. Gee, Ctrm 7]

**JOINT [PROPOSED]  
 STIPULATED PROTECTIVE  
 ORDER**

Date Action Filed: June 13, 2012  
 Pretrial: September 17, 2013  
 Trial Date: October 15, 2013  
 Discovery Cut-Off: August 9, 2013

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**STIPULATION**

Plaintiffs Julio Bello and Carlos Russo (“Plaintiffs”) and Defendant DS Waters of America, Inc. (“Defendant”), (collectively, the “Parties”) by and through their respective counsel, submit and stipulate to this Stipulation Re Protective Order (“Stipulation”).

**I. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve the production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter an order approving the following Stipulation Re Protective Order. The parties acknowledge that this Stipulation does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section X, below, that this Stipulation creates no entitlement to file confidential information under seal; a document may not be filed under seal unless authorized by an order entered by the Court.

**II. GOOD CAUSE STATEMENT**

This stipulation is made for good cause. The July 24, 2013 Order by United States Magistrate Judge Paul L. Abrams compels information related to former employees of Defendant. The Order provides specifically allows the parties to submit a proposed stipulated protective order to protect the information compelled by the Order. Pursuant to this allowance, the Parties have stipulated to this joint proposed protective order.

The information subsumed within the Order includes confidential information DS Waters’ employees, their employment, and their personal contact information. Moreover, Defendant may also produce during discovery confidential

1 and proprietary information such as information on product pricing, employee  
2 sales commissions, sales information, information regarding employee staffing,  
3 and information on Defendant's vehicles. Public dissemination of such  
4 information could inure to Defendant's competitive detriment. Given the personal  
5 information compelled and proprietary information that will be produced in this  
6 litigation, good causes exists for this protective order.

7 **III. DEFINITIONS**

8 3.1 Party: any party to this action, including all of its officers, directors,  
9 employees, consultants, retained experts, and outside counsel (and their support  
10 staff).

11 3.2 Disclosure or Discovery Material: all items or information, regardless  
12 of the medium or manner generated, stored, or maintained (including, among other  
13 things, testimony, transcripts, or tangible things) that are produced or generated in  
14 disclosures or responses to discovery in this matter.

15 3.3 "CONFIDENTIAL" Information or Items: information (regardless of  
16 how generated, stored or maintained) or tangible things that qualify for protection  
17 under standards developed under F.R.Civ.P. 26(c), including but not limited to  
18 Defendant's standard operating policies, procedures and other trade secret  
19 information, observation reports, foundation play and personnel records of non-  
20 party current and former employees of Defendant. In agreeing to the protection of  
21 "trade secret" information, the parties incorporate the definition for that term as  
22 stated in California Civil Code section 3426.1(d).<sup>1</sup>

23 Any Party may designate any documents produced, disclosed or exchanged  
24 during discovery prior to entry of this Stipulation, which such Party considers in

25 \_\_\_\_\_  
26 <sup>1</sup> California Civil Code section 3426.1(d) provides that "Trade secret" means  
27 information, including a formula, pattern, compilation, program, device, method,  
28 technique, or process, that: (1) Derives independent economic value, actual or  
potential, from not being generally known to the public or to other persons who  
can obtain economic value from its disclosure or use; and (2) Is the subject of  
efforts that are reasonable under the circumstances to maintain its secrecy.

1 good faith to contain confidential information, as “CONFIDENTIAL” by  
2 informing all other parties to this action in writing. Such materials are covered by  
3 this Stipulation.

4 3.4 Receiving Party: a Party that receives Disclosure or Discovery  
5 Material from a Producing Party.

6 3.5 Producing Party: a Party or non-party that produces Disclosure or  
7 Discovery Material in this action.

8 3.6 Designating Party: a Party or non-party that designates information or  
9 items that it produces in disclosures or in responses to discovery as  
10 “CONFIDENTIAL.”

11 3.7 Protected Material: any Disclosure or Discovery Material that is  
12 designated as “CONFIDENTIAL.”

13 3.8 Outside Counsel: attorneys who are not employees of a Party but who  
14 are retained to represent or advise a Party in this action.

15 3.9 House Counsel: attorneys who are employees of a Party.

16 3.10 Counsel (without qualifier): Outside Counsel and House Counsel (as  
17 well as their support staffs).

18 3.11 Expert: a person or business entity, including its employees and  
19 subcontractors, with specialized knowledge or experience in a matter pertinent to  
20 the litigation who has been retained by a Party or its counsel to serve as an expert  
21 witness or as a consultant in this action and who is not a past or a current employee  
22 of a Party or of a competitor of a Party and who, at the time of retention, is not  
23 anticipated to become an employee of a Party or a competitor of a Party’s. This  
24 definition includes a professional jury or trial consultant retained in connection  
25 with this litigation.

26 3.12 Professional Vendors: persons or entities that provide litigation  
27 support services (e.g., photocopying; videotaping; translating; preparing exhibits or  
28 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)

1 and their employees and subcontractors.

2 **IV. SCOPE**

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

8 **V. DURATION**

9 Even after the termination of this litigation, the confidentiality obligations  
10 imposed by this Stipulation shall remain in effect until a Designating Party agrees  
11 otherwise in writing or a court order otherwise directs.

12 **VI. DESIGNATING PROTECTED MATERIAL**

13 6.1 Exercise of Restraint and Care in Designating Material for Protection.

14 Each Party or non-party that designates information or items for protection under  
15 this Stipulation must take care to limit any such designation to specific material  
16 that qualifies under the appropriate standards.

17 If it comes to a Party's or a non-party's attention that information or items  
18 that it designated for protection do not qualify for protection at all, that Party or  
19 non-party must promptly notify all other parties that it is withdrawing the mistaken  
20 designation.

21 6.2 Manner and Timing of Designations. Except as otherwise provided in  
22 this Stipulation (see, e.g., second paragraph of section 5.2(a), below), or as  
23 otherwise stipulated or ordered, material that qualifies for protection under this  
24 Stipulation must be clearly so designated before the material is disclosed or  
25 produced.

26 Designation in conformity with this Stipulation requires:

27 a. for information in documentary form (apart from transcripts of  
28 depositions or other pretrial or trial proceedings), that the Producing Party affix the

1 legend "CONFIDENTIAL" at the top or bottom of each page that contains  
2 protected material.

3 A Receiving Party may designate as "CONFIDENTIAL" documents  
4 or discovery materials produced by a non-party or another Party by providing  
5 written notice to all parties of the relevant documents to be so designated within  
6 thirty (30) days after receiving such documents or discovery materials. If that  
7 happens, the parties agree to treat the documents as "CONFIDENTIAL" for all  
8 purposes, regardless of whether the document was previously disclosed without a  
9 "CONFIDENTIAL" designation.

10 b. for testimony given in deposition or in other pretrial or trial  
11 proceedings, that the Party or non-party offering or sponsoring the testimony  
12 identify on the record, before the close of the deposition, hearing, or other  
13 proceeding, all protected testimony. When it is impractical to identify separately  
14 each portion of testimony that is entitled to protection, and when it appears that  
15 substantial portions of the testimony may qualify for protection, the Party or non-  
16 party that sponsors, offers, or gives the testimony may invoke on the record (before  
17 the deposition or proceeding is concluded) a right to have the entire testimony be  
18 protected for 4 business-days. Immediately following the 4 business-day period,  
19 the Party or non-party must identify the specific protected portions of the  
20 testimony. Only those portions of the testimony that are appropriately designated  
21 for protection immediately following the 4 business- day waiting period shall be  
22 covered by the provisions of this Stipulation.

23 Transcript pages containing Protected Material must be separately bound by  
24 the court reporter, who must affix to the top of each such page the legend  
25 "CONFIDENTIAL." This Stipulation shall not prevent the reporter from  
26 preparing an expedited transcript before the expiration of the waiting period, or the  
27 waiting period must be shortened to meet court deadlines.

28 c. for information produced in some form other than documentary.

1 and for any other tangible items, that the Producing Party affix in a prominent  
2 place on the exterior of the container or containers in which the information or  
3 item is stored the legend “CONFIDENTIAL.” If only portions of the information  
4 or item warrant protection, the Producing Party, to the extent practicable, shall  
5 identify the protected portions.

6       6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
7 failure to designate qualified information or items as “CONFIDENTIAL” does not,  
8 standing alone, waive the Designating Party’s right to secure protection under this  
9 Stipulation for such material. If material is appropriately designated as  
10 “CONFIDENTIAL” after the material was initially produced, the Receiving Party,  
11 on timely notification of the designation, must make reasonable efforts to assure  
12 that the material is treated in accordance with the provisions of this Stipulation.

13 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14       7.1 Timing of Challenges. Unless a prompt challenge to a Designating  
15 Party’s confidentiality designation is necessary to avoid foreseeable substantial  
16 unfairness, unnecessary economic burdens, or a later significant disruption or delay  
17 of the litigation, a Party does not waive its right to challenge a confidentiality  
18 designation by electing not to mount a challenge promptly after the original  
19 designation is disclosed.

20       7.2 Meet and Confer. A Party that elects to initiate a challenge to a  
21 Designating Party’s confidentiality designation must do so in good faith and must  
22 begin the process by conferring with counsel for the Designating Party. In  
23 conferring, the challenging Party must explain the basis for its belief that the  
24 confidentiality designation was not proper and must give the Designating Party an  
25 opportunity to review the designated material, to reconsider the circumstances,  
26 and, if no change in designation is offered, to explain the basis for the chosen  
27 designation. A challenging Party may proceed to the next stage of the challenge  
28 process only if it has engaged in this meet and confer process first.

*one*

1           7.3 Judicial Intervention. A Party that elects to press a challenge to a  
 2 confidentiality designation after considering the justification offered by the  
 3 Designating Party may file and serve a motion under Civil Local Rules <sup>37</sup> ~~71~~ and  
 4 ~~261~~ that identifies the challenged material and sets forth in detail the basis for the  
 5 challenge. Every motion filed and served under Civil Local Rule <sup>37</sup> ~~71~~ must be in  
 6 compliance with <sup>all</sup> Civil Local Rule ~~261(b)~~. Each such motion must be  
 7 accompanied by a competent declaration that affirms that the movant has complied  
 8 with the meet and confer requirements imposed in the preceding paragraph and  
 9 that sets forth with specificity the justification for the confidentiality designation  
 10 that was given by the Designating Party in the meet and confer dialogue.

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

15 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

16           8.1 Basic Principles. A Receiving Party may use Protected Material that  
 17 is disclosed or produced by another Party or by a non-party in connection with this  
 18 case only for prosecuting, defending, or attempting to settle this litigation. Such  
 19 Protected Material may be disclosed only to the categories of persons and under  
 20 the conditions described in this Stipulation. When the litigation has been  
 21 terminated, a Receiving Party must comply with the provisions of section 11,  
 22 below (FINAL DISPOSITION).

23           Protected Material must be stored and maintained by a Receiving Party at a  
 24 location and in a secure manner that ensures that access is limited to the persons  
 25 authorized under this Stipulation.

26           8.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
 27 otherwise ordered by the court or permitted in writing by the Designating Party, a  
 28 Receiving Party may disclose any information or item designated



1 CONFIDENTIAL only to:

2 a. the Receiving Party's Outside Counsel of record in this action,  
3 as well as employees of said Counsel to whom it is reasonably necessary to  
4 disclose the information for this litigation;

5 b. the Receiving Party and the officers, directors, and employees  
6 (including House Counsel) of the Receiving Party to whom disclosure is  
7 reasonably necessary for this litigation;

8 c. experts (as defined in this Stipulation) of the Receiving Party to  
9 whom disclosure is reasonably necessary for this litigation; and who have signed  
10 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

11 d. the Court and its personnel;

12 e. court reporters, their staffs, and professional vendors to whom  
13 disclosure is reasonably necessary for this litigation and who have signed the  
14 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 f. during their depositions, third-party witnesses in the action to  
16 whom disclosure is reasonably necessary and who have signed the  
17 "Acknowledgment and Agreement to Be Bound" (Exhibit A). Pages of transcribed  
18 deposition testimony or exhibits to depositions that reveal Protected Material must  
19 be separately bound by the court reporter and may not be disclosed to anyone  
20 except as permitted under this Stipulation.

21 g. the author of the document or the original source of the  
22 information.

23 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
24 **PRODUCED IN OTHER LITIGATION**

25 If a Receiving Party is served with a subpoena or an order issued in other  
26 litigation that would compel disclosure of any information or items designated in  
27 this action as "CONFIDENTIAL", the Receiving Party must so notify the  
28 Designating Party, in writing (by fax, if possible) immediately and in no event

1 more than three court days after receiving the subpoena or order. Such notification  
2 must include a copy of the subpoena or court order.

3 The Receiving Party also must immediately inform in writing the Party who  
4 caused the subpoena or order to issue in the other litigation that some or all of the  
5 material covered by the subpoena or order is the subject of this Stipulation and the  
6 Court's Order. In addition, the Receiving Party must deliver a copy of this  
7 Stipulation and the Court's Order promptly to the Party in the other action that  
8 caused the subpoena or order to issue.

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

17 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

26 **XI. FILING PROTECTED MATERIAL.**

27 11.1 In the event that a Party seeks to file any Protected Material, that Party  
28 must meet and confer with the Designating Party regarding whether it is necessary

1 to file the Protected Material under seal and to inform the Designating Party that  
2 the Party intends to file Protected Material. With the exception of papers related to  
3 Plaintiffs' oppositions to Defendant's motions for summary judgment, the Party  
4 must meet and confer at least twenty days before the filing of the Protected  
5 Material. With the exception of materials described in section 11.3, the Party  
6 asserting that the Protected Material should be filed under seal shall apply for an  
7 order requesting authorization from the Court, *which must show good*

8 If the Designating Party does not file an application within twenty days, the *cause for the under seal*  
9 Protected Material shall be filed in the public record in this action, with the *filing.*  
10 exception of materials described in section 11.3,. If a Party that seeks to file any *pa*  
11 Protected Material does not meet and confer with the Designating Party, that Party  
12 shall seek to file the Protected Material under seal.

13 11.2 With respect to Plaintiffs' oppositions to Defendant's motions for  
14 summary judgment, Plaintiff must also meet and confer with Defendant regarding  
15 whether it is necessary to file the Protected Material under seal and to inform  
16 Defendant that Plaintiffs intend to file Protected Material. With respect to  
17 Plaintiffs' oppositions to Defendant's motions for summary judgment only,  
18 Plaintiffs must meet and confer with Defendant at least two business days before  
19 filing their oppositions to Defendant's motions for summary judgment. ~~With the~~  
20 ~~exception of materials described in section 11.3 below,~~ if Defendant asserts that  
21 any Protected Material should be filed under seal, it shall apply for an order  
22 requesting authorization from the Court. ~~With the exception of materials described~~  
23 ~~in paragraph 11.3 below,~~ if Defendant does not file an application by midnight on  
24 August 15,2013, the Protected Material shall be filed in the public record in this  
25 action. If Plaintiff seeks to file any Protected Material does not meet and confer  
26 with Defendant, Plaintiff shall seek to file the Protected Material under seal.

*B*  
27 ~~11.3 It shall not be necessary for a Designating Party to file an application~~  
28 ~~for an order seeking to file Protected Material under seal as long as that~~

1 information relates to the employment of former or current DS Waters employees  
2 other than Plaintiffs and also relates to disciplinary actions, employment decisions,  
3 employment-related investigations, termination, or any other private and sensitive  
4 information.

5 11.4 None of the language in sections 11.1 and 11.2 shall restrict a  
6 Designating Party from seeking an order to file Protected Material under seal.  
7 None of the language in sections 11.1 and 11.2 shall be interpreted to require a  
8 Designating Party to meet and confer with the other party prior to seeking an order  
9 to file Protected Material under seal.

10 **XII. FINAL DISPOSITION.**

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

1 **XIII. MISCELLANEOUS**

2 13.1 Right to Further Relief. Nothing in this Stipulation abridges the right  
3 of any person to seek its modification by the Court in the future.

4 13.2 Right to Assert Other Objections. By stipulating to the entry of this  
5 Stipulation no Party waives any right it otherwise would have to object to  
6 disclosing or producing any information or item on any ground not addressed in  
7 this Stipulation. Similarly, no Party waives any right to object on any ground to  
8 use in evidence any of the material covered by this Stipulation.

9 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

10 Pursuant to Local Rule 5-4.3.4(2)(ii), all signatories listed below concur in  
11 the filing contents and have authorized the filing.

12 DATED: August 2, 2013

SEYFARTH SHAW LLP

13  
14  
15 By: /s/ Rishi Puri  
Candice T. Zee  
Rishi Puri  
16 Jennifer J. Wiegley  
17 Attorneys for Defendant  
DS WATERS OF AMERICA, INC.

18 DATED: August 2, 2013

19 Robert S. Brown (SBN 187845)  
Rstanfordbrown@earthlink.net  
20 ROBERT STANFORD BROWN, APC

21  
22 By: /S/ Robert S. Brown  
23 Robert S. Brown  
Attorneys for Plaintiffs  
24 JULIO BELLO AND CARLOS  
25 RUSSO  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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 Stipulation Re Protective  
Order that was issued by the United States District Court for the Central District of  
California in the case of *Julio Bello v. DS Waters of America, Inc.*, Case No. 2:12-  
cv-07434 DMG (PLA). I agree to comply with and to be bound by all the terms of  
this Stipulation Re Protective 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 Stipulation Re Protective 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 Stipulated Protective Order, even if such enforcement proceedings occur  
after termination of this action.

Date: \_\_\_\_\_

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

Printed name: \_\_\_\_\_

[Print Name]

Signature: \_\_\_\_\_

[Signature]