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NOTE: Changes Made By The Court

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

22 | Barry Rosen,
 23 | Plaintiff,
 24 | vs.
 25 | SoftLayer Technologies, Inc., and Does 1
 26 | through 10,
 27 | Defendants.

Case No.
 12-CV-08369-PSG-VBK
**~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER**

1 Plaintiff Barry Rosen and Defendant SoftLayer Technologies, Inc. (“SoftLayer”)
2 hereby stipulate to the entry of the following Protective Order governing the disclosure
3 and discovery of confidential information. The parties acknowledge and understand that
4 nothing in this Order shall be taken as an admission that information or documents that
5 may be covered by this Order are relevant to or in any way the proper subject of
6 discovery in this litigation.

7
8 **INFORMATION SUBJECT TO THIS ORDER**

9 1. For the purposes of this Order, “Confidential Information” shall mean
10 proprietary information not generally known to the public that the designating party
11 would not disclose to competitors or third parties within the ordinary course of business,
12 which has been designated by the producing party as “CONFIDENTIAL” pursuant to the
13 terms of this Order.

14 2. Designations of “Confidential” information (hereinafter “Protected
15 Information”) may be made during depositions or other pretrial testimony: (i) by a
16 statement on the record, by counsel, during such deposition or other pretrial proceeding,
17 that the entire transcript or a portion thereof shall be designated as “CONFIDENTIAL”
18 as appropriate, hereunder; or (ii) by written notice of such designation sent by counsel to
19 all parties within 30 calendar days after the receipt of the final transcript of the
20 deposition. The parties may modify this procedure for any particular deposition or
21 proceeding through agreement on the record at such deposition or proceeding or
22 otherwise by written stipulation, without further order of the Court; provided, however,
23 that any such modification is subject to review by the Court, if appropriate. If any
24 Protected Information is disclosed during the course of a deposition, that portion of the
25 deposition record reflecting such Protected Information shall be sealed and stamped with
26 the designated degree of confidentiality, and access thereto shall be limited pursuant to
27 the other terms of this Protective Order.

28 3. With respect to any testimony elicited during any deposition, whenever

1 counsel for any party deems that any question or line of questioning calls for or has
2 resulted in disclosure of Protected Information and any person is in attendance at the
3 deposition who is not qualified to receive such information pursuant to this Order, and
4 such person is not the witness being examined, such person shall be excluded from those
5 portions of the proceeding during which disclosure of the Protected Information occurs.

6 4. Notwithstanding Paragraphs 1 through 4, the following information is not
7 Protected Information:

8 (a) any information that at the time of disclosure to a receiving party is in
9 the public domain;

10 (b) any information that, after its disclosure to a receiving party, becomes
11 part of the public domain as a result of publication not involving a violation
12 of this Order or breach of an obligation of confidentiality to the producing
13 party;

14 (c) any information known to the receiving party prior to the disclosure;
15 and

16 (d) any information obtained by the receiving party after the disclosure
17 from a source who obtained the information lawfully and under no
18 obligation of confidentiality to the producing party.

19 Nothing in this Protective Order shall preclude any party from disclosing or using,
20 in any manner or for any purpose, any information described above in subparagraphs (a)-
21 (d) of this Paragraph.

22 5. Absent a specific order by the Court, all Protected Information produced to
23 an opposing party in this litigation shall be used by the parties solely in connection with
24 and for purposes of this litigation, unless it is reasonably necessary or relevant in any
25 other litigation between any of the same parties as the parties in this action. Any other
26 use of Protected Information shall be a violation of this Order.

27
28 **DESIGNATING PROTECTED INFORMATION**

1 6. With respect to documents produced by a party, a “CONFIDENTIAL”
2 designation shall be made by the party producing the document, at the time of production
3 (or as may be agreed to by the parties), by labeling or marking the document with the
4 appropriate legend. Any response to written interrogatories or requests for admission (or
5 any portion thereof) that constitutes or contains Protected Information shall be labeled or
6 marked with the appropriate legend by the party providing the response. Documents that
7 are used as exhibits in deposition and are already designated as “CONFIDENTIAL” shall
8 keep their confidentiality designation.

9
10 **CHALLENGES TO CONFIDENTIALITY DESIGNATIONS**

11 7. The parties shall use reasonable care when designating documents or
12 information as Protected Information. The acceptance by a party of documents or
13 information designated as Protected Information shall not constitute an agreement,
14 admission, or concession, or permit an inference, that the materials are in fact properly
15 subject to protection under Federal Rule of Civil Procedure 26(c) or on any other basis.
16 Nothing in this Order shall be construed to prevent any party from objecting to any
17 “CONFIDENTIAL” designation as outside the scope of this Order or Federal Rule of
18 Civil Procedure 26(c).

19 8. A party shall not be obliged to challenge the propriety of a designation of
20 Protected Information at the time made, and failure to do so shall not preclude a
21 subsequent challenge thereto. If after receiving information designated as Protected
22 Information a Receiving Party believes that such information does not meet the
23 requirements for such designation, the Receiving Party shall notify the Producing Party in
24 writing and request that the designation be removed. Within 10 days after receipt of such
25 notice, the Producing Party shall advise the receiving party in writing whether it will or
26 will not treat the subject information as requested. The Receiving Party shall seek to
27 reach agreement with the Producing Party to withdraw the designation; if agreement
28 cannot be reached between counsel, a written motion may be made to this Court by the

1 Producing Party for an Order maintaining the designation as to specified documents or
2 testimony. If such motion is not made by the Producing Party within 20 days after
3 receipt of the notice requesting that the designation be removed, such designation shall be
4 deemed to have been removed. Any documents or information designated as Protected
5 Information and any filing made under seal to which an objection has been made shall
6 not be disclosed in any manner inconsistent with this Order until such matter has been
7 resolved by agreement of the parties or by Court Order. The mis-designation of
8 information shall not, in any way, affect the Court's determination as to whether or not
9 the information is entitled to the requested status.

10 Frivolous challenges, and those made for an improper purpose (e.g., to harass or
11 impose unnecessary expenses and burdens on other parties) may expose the party
12 challenging the designation to sanctions under Fed.R.Civ.P. 37 and any applicable Local
13 Rules and Court Orders. All parties shall continue to afford the material in question the
14 level of protection to which it is entitled under the Producing Party's designation until the
15 court rules on the challenge.

16 **PERSONS QUALIFIED TO RECEIVE PROTECTED INFORMATION**

17 9. Materials designated as CONFIDENTIAL and filings made under seal with
18 such material may be inspected by and disclosed only to the following persons and only
19 for the purpose of conducting this litigation:

- 20
- 21 (a) the parties;
 - 22 (b) the Court and its employees;
 - 23 (c) any person who authored or received the information or document in
24 the ordinary course of business;
 - 25 (d) outside counsel of record for the parties and their employees,
26 including supporting personnel employed or retained by such counsel, such
27 as paralegals, consultants, translators, interpreters, secretaries, clerks,
28 stenographers or videographers, document copying or scanning services, and

1 data entry or data processing staff;

2 (e) outside expert witnesses or consultants with whom counsel may deem
3 it necessary to consult concerning technical, financial, or other aspects of
4 this case for the preparation or trial thereof, and their respective secretarial,
5 clerical, and supporting personnel, subject to the conditions set forth in
6 Paragraphs 12 and 13;

7 (f) third-party court reporting services, third-party duplicating, document
8 handling and/or imaging services;

9 (g) persons who have been retained by the receiving party or its counsel
10 of record specifically to prepare demonstrative or other exhibits for
11 deposition, trial or other court proceedings in this matter (collectively
12 referred to as “Graphic Designers”), and persons regularly employed by
13 them, to the extent necessary when working under the supervision of such a
14 Graphic Designer in connection with this matter; and

15 (h) any other persons upon such terms and conditions as the parties may
16 agree or as the Court by order directs.

17 10. Any person who makes any disclosure in confidence of documents,
18 responses, testimony or filings made under seal that are designated as Protected
19 Information shall advise each person to whom such disclosure is made of this Order. The
20 persons described in Paragraph 10 above are enjoined from disclosing Protected
21 Information to any other person except in conformance with this Order.

22 11. Before materials designated “CONFIDENTIAL” and filings made under
23 seal with such material may be disclosed to persons identified in Paragraphs 10(e) and
24 10(g), the person to whom the disclosure is to be made shall first complete and sign the
25 Declaration attached hereto as Attachment A stating that he or she has read and
26 understands this Order and agrees to be bound by its terms. A copy of the completed and
27 signed Declaration shall then be immediately sent to counsel for the party producing the
28 Confidential Information.

1 12. Five business days' written notice must be given to the designating party
2 before materials designated "CONFIDENTIAL" and filings made under seal with such
3 material may be disclosed to persons identified in Paragraphs 10(d) and 10(e). The
4 notice shall include identification of the expert witness or consultant, a copy of the
5 curriculum vitae for that expert witness or consultant, and a completed and signed
6 Declaration attached hereto as Attachment A stating that he or she has read and
7 understands this Order and agrees to be bound by its terms. In addition, any non-clerical
8 persons who will assist the persons identified in Paragraphs 10(e) and 10(g) and have
9 access to Protected Information shall first complete and sign the Declaration attached
10 hereto as Attachment A stating that he or she has read and understands this Order and
11 agrees to be bound by its terms. A copy of the completed and signed Declarations shall
12 then be sent via email, with confirmation by mail, to counsel for the party producing the
13 Protected Information.

14 13. Nothing in this Order shall be construed to require execution of the
15 Declaration, or to prevent disclosure of its own Protected Information by the Producing
16 Party or by any employee of such party.

17
18 **OBJECTIONS TO DISCLOSURE OF CONFIDENTIAL INFORMATION**

19 14. If an objection to disclosure of Protected Information is made, the parties
20 shall attempt to informally resolve the objection before the party proposing disclosure
21 seeks relief from the Court.

22 15. If the party proposing disclosure of Protected Information to persons
23 identified in Paragraphs 10(e) and 10(g) receives an objection to such disclosure during
24 the five-day notice period under Paragraph 14, there shall be no disclosure to the
25 proposed receiving party until such objection is resolved. If the parties cannot informally
26 resolve an objection to the disclosure of Protected Information, the objecting party must
27 file a motion with the Court objecting to the disclosure within 10 business days after
28 identification of the person to whom disclosure is sought, or the objection to disclosure is

1 waived, unless the parties first agree in writing to extend said time period beyond ten
2 business days.

3 16. No Protected Information shall be disclosed to such person until the matter
4 has been ruled upon by the Court or otherwise resolved.
5

6 **INADVERTENT DISCLOSURE**

7 17. If a party inadvertently produces or provides discovery of any Protected
8 Information without designating, labeling or marking it with the appropriate legend as
9 provided in this Order, the producing party may give written notice to the receiving party
10 or parties that the document, or other information, response or testimony is confidential
11 and should be treated in accordance with the provisions of this Order. The receiving
12 party or parties must treat such documents, information, responses and testimony as
13 designated from the date that such notice is received. Disclosure of such documents,
14 information, responses or testimony prior to receipt of such notice to persons not
15 authorized to receive Protected Information shall not be deemed a violation of this Order;
16 however, those persons to whom disclosure was made are to be advised that the material
17 disclosed is Protected Information and must be treated in accordance with this Order.

18 18. If Protected Information is disclosed to anyone not authorized to receive it
19 under this Order, the party responsible for such disclosure must immediately bring all
20 pertinent facts relating to such disclosure to the attention of the Producing Party and
21 make every effort to prevent further disclosure.

22 19. If a party through inadvertence produces or provides discovery that it
23 believes is subject to a claim of attorney-client privilege or work product immunity, the
24 Producing Party may give written notice to the receiving party or parties that the
25 document is subject to a claim of attorney-client privilege or work product immunity and
26 request that the document be returned to the producing party. The inadvertent disclosure
27 of information shall not constitute a waiver of attorney-client privilege or work-product
28 immunity. The receiving party or parties shall return to the producing party such

1 document. Return of the document by the receiving party shall not constitute an
2 admission or concession, or permit any inference, that the returned document is, in fact,
3 properly subject to a claim of attorney-client privilege or work product immunity, nor
4 shall it foreclose any party from moving the Court for an Order that such document has
5 been improperly designated or should be produced for other reasons than a waiver caused
6 by the inadvertent production. The improper designation of information shall not, in any
7 way, affect the Court's determination as to whether or not the information is entitled to
8 the requested status.

9
10 **THIRD PARTIES AND ADDITIONAL PARTIES**

11 20. It is expressly contemplated, agreed and ordered that third parties, including
12 witnesses, who provide discovery in this action may invoke all provisions of this Order as
13 to that discovery, and that the parties to this Order will treat all material designated by
14 such third parties as Protected Information in accordance with the terms of this Order. A
15 third party's use of this Order to protect its Protected Information does not entitle that
16 third party access to Protected Information produced by any party in this case.

17 21. In the event that one or more parties are added or substituted into this action
18 by any means including consolidation with another action, this Order shall be binding on
19 and shall inure to the benefit of such new parties, subject to the right of such new parties
20 (other than a subsidiary of a party who is already bound by this Order) to seek relief from
21 or modification of this Order. Said parties who join or are added or substituted into this
22 action shall not have access to Protected Information until the newly joined party or its
23 counsel has executed, and filed with the Court, its agreement to be bound by this Order.

24
25 **MISCELLANEOUS PROVISIONS**

26 22. This Order has no effect upon, and its scope shall not extend to, any party's
27 use of its own Protected Information.

28 23. Nothing herein shall be construed to affect or limit in any way the

1 admissibility of any document, testimony or other evidence at trial.

2 24. Within thirty (30) days after the final termination of this litigation, all
3 Protected Information produced by any party and any copies of all such documents shall,
4 upon request by the Producing Party, be returned by counsel of record for the Receiving
5 Party, or be destroyed at the Receiving Party's option. If the Receiving Party destroys
6 the documents, it shall provide written certification of the destruction to the producing
7 party. Receiving outside counsel may retain file copies of any document that has been
8 filed with the Court under seal, any documents served on the Producing Party containing
9 Protected Information (such as discovery responses or expert reports) and may retain
10 other documents, things, copies and samples to the extent they include or reflect the
11 receiving attorneys' work product. The parties agree to cooperate in the removal of
12 Protected Information from the Court's files upon final termination of this action.

13 25. All obligations and duties arising under this Order shall survive the
14 termination of this action. This Court shall retain jurisdiction indefinitely with respect to
15 any dispute regarding the improper use of designated Protected Information, to modify
16 the terms of this Order, or to enter further Orders respecting confidentiality, as may be
17 necessary.

18 26. No part of the restrictions imposed by this Order may be waived or
19 terminated, except by the written stipulation executed by counsel of record for each party,
20 or by an order of the Court for good cause shown. The restrictions provided herein shall
21 not terminate upon the conclusion of this lawsuit, but shall continue until further order of
22 this Court.

23 Accordingly, pursuant to Federal Rule of Civil Procedure 26(c), IT IS SO
24 STIPULATED, THROUGH COUNSEL OF RECORD:

1 Dated: May 29, 2013

2 **THE DION KINDEM LAW FIRM**

3 By: /s/ Peter Dion-Kindem
4 Peter Dion-Kindem, P.C.
5 Attorneys for Plaintiff
6 Barry Rosen.

7
8 Dated: May 29, 2013

9 **DLA PIPER LLP (US)**

10 By: /s/ Patrick S. Park
11 Joshua Briones
12 Patrick S. Park
13 Attorneys for Defendant
14 SoftLayer Technologies, Inc.

15 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

16
17 **Court addition: LR 79-5 to be scrupulously followed**

18 Dated: June 11, 2013

19
20
21 Hon. Philip S. Gutierrez Victor B. Kenton
22 United States District Magistrate Judge

ATTACHMENT A

I, _____, state the following:

1. I reside at

_____.

2. My present employer is

_____.

3. My present occupation or job description is

_____.

4. I have read the Protective Order in this action and understand its provisions.

I hereby promise and agree to be bound by its terms, and promise and agree to maintain, pursuant thereto, the confidentiality of all information furnished to me which has been designated as such under that Order. I understand that these promises are conditions precedent to my receipt of any such information.

5. I understand that I am to retain all copies of any documents designated as "CONFIDENTIAL" in a secure manner, and that all copies are to remain in my personal custody until I have completed my assigned duties, whereupon the copies and any writings prepared by me containing any Confidential Information are to be destroyed or returned to counsel who provided me with such material.

6. I will not divulge to persons other than those specifically authorized by the Protective Order, and will not copy or use except solely for the purpose of this action, any information obtained pursuant to said Order, except as provided in said Order. I also agree to notify any secretarial, clerical or supporting personnel who are required to assist me of the terms of said Order and to take steps to ensure their compliance with the terms of the Protective Order.

7. I agree to submit myself to the jurisdiction of the United States District Court for the Central District of California, for the purpose of enforcing the terms of this Acknowledgment and Declaration.

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8. I understand that if I violate the provisions of the Protective Order, I will be in violation of a Court order and subject to sanctions or other remedies that may be imposed by the Court and potentially liable in a civil action for damages.

9. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____, 20__.