

1 KEVIN S. ROSEN, SBN 133304
 krosen@gibsondunn.com
 2 MATTHEW S. KAHN, SBN 261679
 mkahn@gibsondunn.com
 3 AMRUTA S. GODBOLE, SBN 296131
 agodbole@gibsondunn.com
 4 GIBSON, DUNN & CRUTCHER LLP
 333 South Grand Avenue, 45th Floor
 5 Los Angeles, CA 90071-3197
 Telephone: 213.229.7000
 6 Facsimile: 213.229.7520

JACK I. SIEGAL (Bar No. 218088)
 jsiegel@nbparis.com
 WILLIAM C. NYSTROM (admitted pro
 hac vice)
 wnystrom@nbparis.com
 MICHAEL PARIS (admitted pro hac vice)
 mparis@nbparis.com
 NYSTROM, BECKMAN & PARIS LLP
 One Marina Drive, 15th Floor
 Boston, Massachusetts 02210
 Telephone: (617) 778-9100
 Facsimile: (617) 778-9110

7 Attorneys for Defendant Venable LLP

Attorneys for Plaintiffs

9 DAVID K. WILLINGHAM, SBN
 willingham@caldwell-leslie.com
 10 ARWEN R. JOHNSON
 johnson@caldwell-leslie.com
 11 CALDWELL LESLIE & PROCTOR, PC
 725 Figueroa St., 31st Floor
 12 Los Angeles, CA 900017
 Telephone: 213.629.9040

13 Attorneys for Defendant David Meyer

15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA

18 ESG CAPITAL PARTNERS, LP, a
 Delaware Limited Partnership and
 19 LIMITED PARTNERS,

20 Plaintiffs,

21 v.

22 TROY STRATOS, a/k/a "Ken Dennis,"
 VENABLE LLP; and DAVID MEYER,
 23 and DOES 1-10, inclusive,

24 Defendants.

CASE NO. CV 13-01639 ODW (AGR_x)

Hon. Otis D. Wright II

STIPULATED PROTECTIVE ORDER

Amended Complaint filed: July 8, 2013

1 Pursuant to Fed. R. Civ. P. 26(c), Plaintiffs ESG Capital Partners LP et al. and
2 Defendants Venable LLP and David Meyer (“Defendants”) (collectively, the “Parties”)
3 hereby submit this Stipulated Protective Order for the purpose of ensuring that
4 confidential or other non-public information produced by the Parties or any third
5 parties in connection with this proceeding, whether pursuant to compulsory process or
6 voluntarily, is not improperly used or disclosed.

7 **I. A. PURPOSES AND LIMITATIONS**

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

21 **B. GOOD CAUSE STATEMENT**

22 This action is likely to involve sensitive commercial, financial, and/or
23 proprietary information for which special protection from public disclosure and from
24 use for any purpose other than prosecution of this action is warranted. Such
25 confidential and proprietary materials and information consist of, among other things,
26 confidential business or financial information, information regarding confidential
27 business practices, or other confidential commercial information (including
28 information implicating privacy rights of third parties), information otherwise

1 generally unavailable to the public, or which may be privileged or otherwise protected
2 from disclosure under state or federal statutes, court rules, case decisions, or common
3 law. Accordingly, to expedite the flow of information, to facilitate the prompt
4 resolution of disputes over confidentiality of discovery materials, to adequately protect
5 information the parties are entitled to keep confidential, to ensure that the parties are
6 permitted reasonable necessary uses of such material in preparation for and in the
7 conduct of trial, to address their handling at the end of the litigation, and serve the ends
8 of justice, a protective order for such information is justified in this matter. It is the
9 intent of the parties that information will not be designated as confidential for tactical
10 reasons and that nothing be so designated without a good faith belief that it has been
11 maintained in a confidential, non-public manner, and there is good cause why it should
12 not be part of the public record of this case.

13 **II. DEFINITIONS**

14 2.1 Action: *ESG Capital Partners LP et al. v. Troy Stratos et al.*, CV 13-
15 01639 ODW (SHx) (C.D. Cal.).

16 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
17 information or items under this Order.

18 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
19 it is generated, stored or maintained) or tangible things that qualify for protection
20 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
21 Statement.

22 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
23 support staff).

24 2.5 Designating Party: a Party or Non-Party that designates information or
25 items that it produces in disclosures or in responses to discovery as
26 “CONFIDENTIAL.”

27 2.6 Disclosure or Discovery Material: all items or information, regardless of
28 the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
5 expert witness or as a consultant in this Action.

6 2.8 House Counsel: attorneys who are employees of a party to this Action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 Counsel.

9 2.9 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
12 this Action but are retained to represent or advise a party to this Action and have
13 appeared in this Action on behalf of that party or are affiliated with a law firm which
14 has appeared on behalf of that party, and includes support staff.

15 2.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
23 their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL.”

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
27 from a Producing Party.
28

1 **III. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only Protected
3 Material (as defined above), but also (1) any information copied or extracted from
4 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
5 Material; and (3) any testimony, conversations, or presentations by Parties or their
6 Counsel that might reveal Protected Material. Any use of Protected Material at trial
7 shall be governed by the orders of the trial judge. This Order does not govern the use
8 of Protected Material at trial.

9 **IV. DURATION**

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

17 **V. DESIGNATING PROTECTED MATERIAL**

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.

19 Each Party or Non-Party that designates information or items for protection under this
20 Order must take care to limit any such designation to specific material that qualifies
21 under the appropriate standards. The Designating Party must designate for protection
22 only those parts of material, documents, items, or oral or written communications that
23 qualify so that other portions of the material, documents, items, or communications for
24 which protection is not warranted are not swept unjustifiably within the ambit of this
25 Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations
27 that are shown to be clearly unjustified or that have been made for an improper
28 purpose (e.g., to unnecessarily encumber the case development process or to impose

1 unnecessary expenses and burdens on other parties) may expose the Designating Party
2 to sanctions.

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

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this
7 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
8 or ordered, Disclosure or Discovery Material that qualifies for protection under this
9 Order must be clearly so designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic
12 documents, but excluding transcripts of depositions or other pretrial or trial
13 proceedings), that the Producing Party affix at a minimum, the legend
14 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
15 contains protected material. If only a portion or portions of the material on a page
16 qualifies for protection, the Producing Party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins).

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

1 (b) for testimony given in depositions that the Designating Party
2 identify the Disclosure or Discovery Material on the record, before the close of the
3 deposition all protected testimony.

4 (c) for information produced in some form other than documentary and
5 for any other tangible items, that the Producing Party affix in a prominent place on the
6 exterior of the container or containers in which the information is stored the legend
7 “CONFIDENTIAL.” If only a portion or portions of the information warrants
8 protection, the Producing Party, to the extent practicable, shall identify the protected
9 portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive the
12 Designating Party’s right to secure protection under this Order for such material.
13 Upon timely correction of a designation, the Receiving Party must make reasonable
14 efforts to assure that the material is treated in accordance with the provisions of this
15 Order.

16 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court’s Scheduling
19 Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37.1 et seq.

22 6.3 The burden of persuasion in any such challenge proceeding shall be on the
23 Designating Party. Frivolous challenges, and those made for an improper purpose
24 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
25 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
26 withdrawn the confidentiality designation, all parties shall continue to afford the
27 material in question the level of protection to which it is entitled under the Producing
28 Party’s designation until the Court rules on the challenge.

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

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 Action only for prosecuting, defending, or attempting to settle this Action. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the Action has been terminated, a Receiving
7 Party must 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 Action, as
16 well as employees of said Outside Counsel of Record to whom it is reasonably
17 necessary to disclose the information for this Action;
- 18 (b) the officers, directors, and employees (including House Counsel) of
19 the Receiving Party to whom disclosure is reasonably necessary for this Action;
- 20 (c) Experts (as defined in this Order) of the Receiving Party to whom
21 disclosure is reasonably necessary for this Action and who have signed the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 23 (d) the court and its personnel;
- 24 (e) court reporters and their staff;
- 25 (f) professional jury or trial consultants, mock jurors, and Professional
26 Vendors to whom disclosure is reasonably necessary for this Action and who have
27 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 28

1 (g) the author or recipient of a document containing the information or
2 a custodian or other person who otherwise possessed or knew the information;

3 (h) during their depositions, witnesses, and attorneys for witnesses, in
4 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
5 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they
6 will not be permitted to keep any confidential information unless they sign the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
8 by the Designating Party or ordered by the court. Pages of transcribed deposition
9 testimony or exhibits to depositions that reveal Protected Material may be separately
10 bound by the court reporter and may not be disclosed to anyone except as permitted
11 under this Stipulated Protective Order; and

12 (i) any mediator or settlement officer, and their supporting personnel,
13 mutually agreed upon by any of the parties engaged in settlement discussions.

14 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
15 **IN OTHER LITIGATION**

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

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

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

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

27 If the Designating Party timely seeks a protective order, the Party served with
28 the subpoena or court order shall not produce any information designated in this action

1 as “CONFIDENTIAL” before a determination by the court from which the subpoena
2 or order issued, unless the Party has obtained the Designating Party’s permission. The
3 Designating Party shall bear the burden and expense of seeking protection in that court
4 of its confidential material and nothing in these provisions should be construed as
5 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
6 directive from another court.

7 **IX. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
8 **PRODUCED IN THIS LITIGATION**

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

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

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

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

24 (3) make the information requested available for inspection by
25 the Non-Party, if requested.

26 (c) If the Non-Party fails to seek a protective order from this court
27 within 14 days of receiving the notice and accompanying information, the Receiving
28 Party may produce the Non-Party’s confidential information responsive to the

1 discovery request. If the Non-Party timely seeks a protective order, the Receiving
2 Party shall not produce any information in its possession or control that is subject to
3 the confidentiality agreement with the Non-Party before a determination by the court.
4 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
5 of seeking protection in this court of its Protected Material.

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

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

15 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
16 **PROTECTED INFORMATION**

17 Pursuant to Federal Rule of Evidence 502(b), inadvertent disclosure of
18 privileged information does not operate as a waiver if the holder of the privilege has
19 taken reasonable steps to prevent disclosure and to rectify the error. When a Producing
20 Party gives notice to Receiving Parties that certain inadvertently produced material is
21 subject to a claim of privilege or other protection, the obligations of the Receiving
22 Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Specifically,
23 after being notified, the Receiving Parties (a) must promptly return, sequester, or
24 destroy the specified information and any copies it has; (b) must not use or disclose the
25 information until the claim is resolved; (c) must take reasonable steps to retrieve the
26 information if the Receiving Parties disclosed it before being notified; and (d) may
27 promptly present the information to the court under seal for a determination of the
28 claim. This provision is not intended to modify whatever procedure may be established

1 in an e-discovery order that provides for production without prior privilege review. In
2 addition, pursuant to Federal Rule of Evidence 502(d) and (e), the Parties agree that
3 disclosure in this Action of information subject to a claim of privilege or protection
4 does not otherwise waive that privilege or protection.

5 **XII. MISCELLANEOUS**

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
7 person to seek its modification by the Court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this
9 Protective Order no Party waives any right it otherwise would have to object to
10 disclosing or producing any information or item on any ground not addressed in this
11 Stipulated Protective Order. Similarly, no Party waives any right to object on any
12 ground to use in evidence of any of the material covered by this Protective Order.

13 12.3 Filing Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
15 only be filed under seal pursuant to a court order authorizing the sealing of the specific
16 Protected Material at issue. If a Party's request to file Protected Material under seal is
17 denied by the court, then the Receiving Party may file the information in the public
18 record unless otherwise instructed by the court.

19 12.4 No Admissions. Nothing in this stipulation shall be deemed an admission
20 by either party that certain categories or types of documents or information contain
21 proprietary or confidential information. Each party retains the right to challenge any
22 and all information designated "CONFIDENTIAL" through the procedures detailed in
23 Section 6 above. Nothing in this stipulation shall be deemed a waiver of such rights.

24 **XIII. FINAL DISPOSITION**

25 After the final disposition of this Action, as defined in paragraph 4, within 60
26 days of a written request by the Designating Party, each Receiving Party must return
27 all Protected Material to the Producing Party or destroy such material. As used in this
28 subdivision, "all Protected Material" includes all copies, abstracts, compilations,

1 summaries, and any other format reproducing or capturing any of the Protected
2 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
3 must submit a written certification to the Producing Party (and, if not the same person
4 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
5 category, where appropriate) all the Protected Material that was returned or destroyed
6 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
7 compilations, summaries or any other format reproducing or capturing any of the
8 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
9 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
10 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
11 attorney work product, and consultant and expert work product, even if such materials
12 contain Protected Material. Any such archival copies that contain or constitute
13 Protected Material remain subject to this Protective Order as set forth in Section 5
14 (DURATION).

15 Any violation of this Order may be punished by any and all appropriate
16 measures including, without limitation, contempt proceedings and/or monetary
17 sanctions.

18
19 Respectfully submitted,

20 Dated: October 17, 2016

21 KEVIN S. ROSEN
22 MATTHEW S. KAHN
23 AMRUTA GODBOLE
24 GIBSON, DUNN & CRUTCHER LLP

25 By: /s/ Matthew S. Kahn
Matthew S. Kahn

26 Attorneys for Defendant VENABLE LLP
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DAVID K. WILLINGHAM
ARWEN R. JOHNSON
CALDWELL LESLIE & PROCTOR, PC

By: /s/ David K. Willingham
David K. Willingham

Attorneys for Defendant David Meyer

JACK I. SIEGAL
NYSTROM BECKMAN & PARIS LLP

By: /s/ Jack I. Siegal
Jack I. Siegal

Attorneys for Plaintiffs ESG Capital Partners,
LP and Limited Partners

IT IS SO ORDERED.

DATED: October 18, 2016



Hon. Alicia G. Rosenberg
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury that I
6 have read in its entirety and understand the Stipulated Protective Order that was issued
7 by the United States District Court for the Central District of California in the case of
8 *ESG Capital Partners, LP et al. v. Stratos et al.*, Case No. CV 13-01639 ODW (SHx).
9 I agree to comply with and to be bound by all the terms of this Stipulated Protective
10 Order and I understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will not
12 disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the provisions
14 of this Order.

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

19
20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____

24 Signature: _____
25 _____