

1 Gary A. Bornstein (*pro hac vice*)
 gbornstein@cravath.com
 2 Damaris Hernández (*pro hac vice*)
 dhernandez@cravath.com
 3 CRAVATH, SWAINE & MOORE LLP
 825 Eighth Avenue
 4 New York, NY 10019
 Telephone: (212) 474-1000
 5 Facsimile: (212) 474-3700

6 David I. Hurwitz—Bar No. 174632
 dih@birdmarella.com
 7 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
 DROOKS, LINCENBERG & RHOW, P.C.
 8 1875 Century Park East, 23rd Floor
 Los Angeles, CA 90067-2561
 9 Telephone: (310) 201-2100
 Facsimile: (310) 201-2110

10 *Attorneys for Defendants UTi Worldwide, Inc.,*
 11 *Eric W. Kirchner, Richard G. Rodick and*
 12 *Edward G. Feitzinger*

13
 14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

16 MICHAEL J. ANGLEY, *et al.*,

17
 18 Plaintiffs,

19 v.

20 UTI WORLDWIDE, INC., *et al.*,

21
 22 Defendants.

Case No. 2:14-CV-2066-CBM-E

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

Assigned to Hon. Consuelo B. Marshall

DISCOVERY MATTER

Assigned for Discovery Matters to
 Hon. Charles F. Eick

1 **I. BACKGROUND**

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

16 Good Cause Statement: This action is likely to involve customer
17 information and other valuable research, development, commercial, financial,
18 technical and/or proprietary information for which special protection from public
19 disclosure and from use for any purpose other than prosecution of this action is
20 warranted. Such confidential and proprietary materials and information consist of,
21 among other things, confidential business or financial information, information
22 regarding confidential business practices, or other confidential research,
23 development, or commercial information (including information implicating
24 privacy rights of third parties), information otherwise generally unavailable to the
25 public, or which may be privileged or otherwise protected from disclosure under
26 state or federal statutes, court rules, case decisions or common law. The public
27 disclosure of such information could put the disclosing party at a competitive
28 disadvantage and could cause material economic hardship. Accordingly, to

1 expedite the flow of information, to facilitate the prompt resolution of disputes
2 over confidentiality of discovery materials, to adequately protect information the
3 parties are entitled to keep confidential, to ensure that the parties are permitted
4 reasonable necessary uses of such material in preparation for and in the conduct of
5 trial, to address their handling at the end of the litigation and serve the ends of
6 justice, a protective order for such information is justified in this matter. It is the
7 intent of the parties that information will not be designated as confidential for
8 tactical reasons and that no information will be designated without a good faith
9 belief that it has been maintained in a confidential, non-public manner, and there is
10 good cause why it should not be part of the public record of this case.

11 **II. DEFINITIONS**

12 1. Action: the above-captioned pending federal lawsuit.

13 2. Challenging Party: a Party or Non-Party that challenges the
14 designation of information or items under this Order.

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

18 4. Counsel: Outside Counsel of Record and In-House Counsel (as well
19 as their support staff).

20 5. Designating Party: a Party or Non-Party that designates information
21 or items that it produces in disclosures or in responses to discovery as
22 "CONFIDENTIAL."

23 6. Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced
26 or generated in disclosures or responses to discovery in this matter.

27 7. Expert: a person with specialized knowledge or experience in a
28 matter pertinent to this Action who (1) has been retained by a Party or its Counsel

1 to serve as an expert witness or as a consultant in this Action and (2) is not a past
2 or current employee of a Party or of a Party's competitor.

3 8. Identified Materials: disclosed documents subject to a claim of
4 attorney-client privilege, work-product protection, or other applicable privilege or
5 protection, and for which a Party or Non-Party seeks protection.

6 9. In-House Counsel: attorneys employed by a Party to perform legal
7 functions. In-House Counsel does not include Outside Counsel of Record or any
8 other outside counsel.

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

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

15 12. Party: any party to this Action.

16 13. Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

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

22 15. Protected Material: any Disclosure or Discovery Material that is
23 designated as "CONFIDENTIAL".

24 16. Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 17. SEC Confidential Material: any Disclosure or Discovery Material
27 that was previously produced to the U.S. Securities and Exchange Commission
28 ("SEC") by Defendant UTi Worldwide, Inc. ("UTi"), in connection with the SEC

1 investigation captioned “In the Matter of Uti Worldwide, Inc. (LA-4410)”, and that
2 was marked as confidential when produced to the SEC.

3 **III. SCOPE**

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

19 **IV. DURATION**

20 Even after final disposition of this Action, the confidentiality obligations
21 imposed by this Order shall remain in effect until a Designating Party agrees
22 otherwise in writing or a court order otherwise directs. Final disposition shall be
23 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
24 with or without prejudice; or (2) final judgment herein after the completion and
25 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
26 including the time limits for filing any motions or applications for extension of
27 time pursuant to applicable law. Confidentiality obligations with respect to
28 Protected Material used at trial shall be governed by the orders of the trial judge.

1 **V. DESIGNATING PROTECTED MATERIAL**

2 1. Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under
4 this Order must take care, to the extent reasonably possible, to limit any such
5 designation to specific material that qualifies under the appropriate standards. To
6 the extent it is practical to do so, the Designating Party must designate for
7 protection only those parts of material, documents, items, or oral or written
8 communications that qualify—so that other portions of the material, documents,
9 items, or communications for which protection is not warranted are not swept
10 unjustifiably within the ambit of this Order. The Parties agree, however, that
11 where it is not practicable or cost efficient to designate only parts of documents,
12 items, or oral or written communications as Confidential, the entire document, item
13 or oral or written communication may be so designated.

14 Mass, indiscriminate, or routinized designations are prohibited.
15 Designations that are shown to be clearly unjustified or that have been made for an
16 improper purpose (*e.g.*, to unnecessarily encumber the case development process
17 or to impose unnecessary expenses and burdens on other parties) may expose the
18 Designating Party to sanctions.

19 If it comes to a Designating Party's attention that information or items that it
20 designated for protection do not qualify for protection at all or do not qualify for
21 the level of protection initially asserted, that Designating Party must promptly
22 notify all other Parties that it is withdrawing or changing the mistaken designation.

23 SEC Confidential Material shall be presumed to qualify for designation as
24 Protected Material under this Order. Nothing in this Order shall impose a duty to
25 re-examine whether SEC Confidential Material qualifies for designation as
26 Protected Material unless that designation is challenged with respect to specific
27 information or items.

1 2. Manner and Timing of Designations. Except as otherwise provided in
2 this Order (*see, e.g.*, second paragraph of Section V.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (*e.g.*, paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix a legend indicating the material is
10 “CONFIDENTIAL” to each page that contains Protected Material.¹

11 A Party or Non-Party that makes original documents or materials available
12 for inspection need not designate them for protection until after the inspecting
13 Party has indicated which material it would like copied and produced. During the
14 inspection and before the designation, all of the material made available for
15 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
16 identified the documents it wants copied and produced, the Producing Party must
17 determine which documents qualify for protection under this Order. Then, before
18 producing the specified documents, the Producing Party must affix to each page
19 that contains Protected Material the appropriate legend indicating that the material
20 is “CONFIDENTIAL.”

21 (b) for testimony given in deposition or in other pretrial or trial
22 proceedings, that the Designating Party identify, within 30 days following receipt
23 of the final transcript of the deposition, hearing, or other proceeding, the specific
24 portions of the testimony as to which protection is sought and specify the level of
25 protection being asserted. Only those portions of the testimony that are
26 appropriately designated for protection within the 30 days following receipt of the
27

28 ¹ Any document produced in native format shall be produced with a single page Bates-
stamped TIFF image slip-sheet stating the document has been produced in native format and
noting the document’s confidentiality designation.

1 final transcript shall be covered by the provisions of this Stipulated Protective
2 Order. Alternatively, a Designating Party may specify, at the deposition or up to
3 30 days afterwards, that the entire transcript shall be treated as
4 “CONFIDENTIAL.”

5 Parties shall give the other parties notice if they reasonably expect a
6 deposition, hearing, or other proceeding to include Protected Material so that other
7 parties can ensure that only authorized individuals who have signed the
8 “Acknowledgement and Agreement to Be Bound” (attached hereto as Exhibit A)
9 are present at those proceedings. The use of a document as an exhibit at a
10 deposition shall not in any way affect its designation as “CONFIDENTIAL.”

11 Transcripts containing Protected Material shall have an obvious legend on
12 the title page that the transcript contains Protected Material, and the title page shall
13 be followed by a list of all pages (including line numbers as appropriate) that have
14 been designated as Protected Material and the level of protection being asserted by
15 the Designating Party. The Designating Party shall inform the court reporter of
16 these requirements. Any transcript that is prepared before the expiration of a 30-
17 day period for designation shall be treated during that period as if it had been
18 designated “CONFIDENTIAL” in its entirety unless otherwise agreed. After the
19 expiration of that period, the transcript shall be treated only as actually designated.

20 (c) for information produced in some form other than documentary
21 and for other tangible items, that the Producing Party affix in a prominent place on
22 the exterior of the container or containers in which the information or item is
23 stored a legend indicating that the material is “CONFIDENTIAL.” If only a
24 portion or portions of the information or item warrant protection, the Producing
25 Party, to the extent practicable, shall identify the protected portion(s) and specify
26 the level of protection being asserted.

27 3. Failures to Designate. If a Producing Party discovers that it produced
28 material that was not designated as Protected Material or that it produced material

1 that was designated as Protected Material but had designated that Protected
2 Material in the incorrect category of Protected Material, the Producing Party may
3 promptly notify all Receiving Parties, in writing, of the error and identify (by
4 production number) the affected material and its new designation or re-designation.
5 Thereafter, the material so designated or re-designated will be treated as Protected
6 Material in conformity with the new designation or re-designation. Promptly after
7 providing such notice, the Producing Party shall provide re-labeled copies of the
8 material to each Receiving Party reflecting the change in designation. Each
9 Receiving party shall make reasonable efforts to delete and replace the incorrectly
10 designated material, and all copies thereof, with the newly designated material and
11 to destroy the incorrectly designated material. If corrected, the failure to
12 designate qualified information or items as “CONFIDENTIAL” does not waive
13 the Producing Party’s right to secure protection under this Order for such material.
14 If material is re-designated “CONFIDENTIAL” after the material was initially
15 produced, each Receiving Party, upon notification of the designation, must make
16 reasonable efforts to assure that the material is treated in accordance with the
17 provisions of this Order.

18 VI. CHALLENGING OF CONFIDENTIALITY DESIGNATIONS

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

26 2. Meet and Confer. The Challenging Party shall initiate the dispute
27 resolution process under Local Rule 37-1, et seq. Any discovery motion must
28 strictly comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

1 3. Burden. The burden of persuasion in any such challenge proceeding
2 shall be on the Designating Party. Frivolous challenges and those made for an
3 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
4 other parties) may expose the Challenging Party to sanctions. Unless the
5 Designating Party has waived or withdrawn the confidentiality designation, all
6 Parties shall continue to afford the material in question the level of protection to
7 which it is entitled under the Designating Party’s designation until the Court rules
8 on the challenge.

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

10 1. Basic Principles. A Receiving Party may use Protected Material that
11 is disclosed or produced by another Party or by a Non-Party in connection with this
12 Action only for prosecuting, defending, or attempting to settle this Action. Such
13 Protected Material may be disclosed only to the categories of persons and under
14 the conditions described in this Order. When this Action has been terminated, a
15 Receiving Party must comply with the provisions of Section XIII below (FINAL
16 DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at a
18 location and in a secure manner that ensures that access is limited to the persons
19 authorized under this Order. For purposes of this Order, a secure website, or other
20 internet-based document depository with adequate security, shall be deemed a
21 secure location.

22 2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
23 otherwise ordered by the Court or permitted in writing by the Designating Party, a
24 Party may disclose any information or item designated “CONFIDENTIAL” only
25 to:

26 (a) The Parties to this litigation (including Lead Plaintiff and any
27 proposed or appointed Class Representative(s)) and the Parties’ Outside Counsel of
28

1 Record, as well as employees of said Outside Counsel of Record to whom it is
2 reasonably necessary to disclose the information for this Action;

3 (b) the officers, directors, and employees (including In-House
4 Counsel) of the Party to whom disclosure is reasonably necessary for this Action;

5 (c) Experts (as defined in this Order) of the Party to whom
6 disclosure is reasonably necessary for this Action and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A); provided that any
8 part of a report created by such Expert incorporating Protected Material in whole
9 or in part shall be designated appropriately by the Party responsible for its creation;
10 and provided further that Experts may not use Protected Material for any purpose
11 that does not relate to this Action;

12 (d) the Court and its personnel;

13 (e) court reporters and/or videographers and their staff,
14 professional jury or trial consultants, and Professional Vendors to whom disclosure
15 is reasonably necessary for this Action and who have signed the “Acknowledgment
16 and Agreement to Be Bound” (Exhibit A);

17 (f) the author or recipient of a document containing the
18 information or a custodian or other person who otherwise possessed or knew the
19 information; provided, however, that the disclosure is made for the purpose of
20 advancing the disclosing Party’s claims or defenses, and for no other purpose;

21 (g) a witness who has been subpoenaed or noticed for deposition,
22 trial testimony, or other court proceeding in this Action not otherwise authorized to
23 view the Protected Material in question, during that witness’ testimony at a
24 deposition, hearing, or trial in this Action, or in preparation for the same; provided
25 that (i) the disclosure is made for the purpose of advancing the disclosing Party’s
26 claims or defenses, and for no other purposes; (ii) the witness is not permitted to
27 retain the Protected Material after the witness is examined regarding the Protected
28 Material; (iii) the witness signs the “Acknowledgement and Agreement to Be

1 Bound” (Exhibit A); and (iv) the witness is explicitly informed by Counsel for the
2 Party seeking to use the Protected Material that signing the Acknowledgement
3 means that the witness is forbidden from disclosing the Protected Material except
4 as permitted under this Protective Order and that he or she is subject to the Court’s
5 jurisdiction for the purposes of enforcing this Protective Order;

6 (h) relevant employees of any insurer to a Party to the extent that
7 such disclosure is reasonably necessary for the defense of that Party in this Action
8 and who have signed the “Acknowledgement and Agreement to Be Bound”
9 (Exhibit A);

10 (i) special masters, mediators, or other third parties who are
11 appointed by the Court or retained by the Parties for settlement purposes or
12 resolution of discovery or other disputes and their necessary personnel and, in the
13 case of persons retained by the Parties, who have signed the “Acknowledgement
14 and Agreement to Be Bound” (Exhibit A);

15 (j) any other person agreed to by the Designating Party in writing;
16 and

17 (k) any other person to whom the Court compels disclosure of the
18 Confidential Material or to whom disclosure is required by law.

19 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
20 **PRODUCED IN OTHER LITIGATION**

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

24 1. promptly notify in writing the Designating Party. Such notification
25 shall include a copy of the subpoena or court order;

26 2. promptly notify in writing the party who caused the subpoena or order
27 to issue in the other litigation that some or all of the material covered by the
28 subpoena or order is subject to this Protective Order. Such notification shall
include a copy of this Protective Order; and

1 3. cooperate with respect to all reasonable procedures sought by the
2 Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served
4 with the subpoena or court order shall not produce any information designated in
5 this Action as “CONFIDENTIAL” before a determination by the court from which
6 the subpoena or order issued, unless the Party has obtained the Designating Party’s
7 permission. The Designating Party shall bear the burden and expense of seeking
8 protection in that court of its confidential material—and nothing in these
9 provisions should be construed as authorizing or encouraging a Receiving Party in
10 this Action to disobey a lawful directive from another court.

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

13 1. The terms of this Order are applicable to information produced by a
14 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
15 produced by Non-Parties in connection with this Action is protected by the
16 remedies and relief provided by this Order. Nothing in these provisions should be
17 construed as prohibiting a Non-Party from seeking additional protections.

18 2. In the event that a Party is required, by a valid discovery request, to
19 produce a Non-Party’s Confidential information in its possession, and the Party is
20 subject to an agreement with the Non-Party not to produce the Non-Party’s
21 Confidential information, then the Party shall:

22 (a) promptly notify in writing the Requesting Party and the Non-
23 Party that some or all of the information requested is subject to a confidentiality
24 agreement with a Non-Party;

25 (b) promptly provide the Non-Party with a copy of the Stipulated
26 Protective Order in this Action, the relevant discovery request(s), and a reasonably
27 specific description of the information requested; and

28 (c) make the information requested available for inspection by the
Non-Party.

1 3. If the Non-Party fails to seek a protective order from this Court within
2 14 days of receiving the notice and accompanying information, the Receiving
3 Party may produce the Non-Party’s confidential information responsive to the
4 discovery request. If the Non-Party timely seeks a protective order, the Receiving
5 Party shall not produce any information in its possession or control that is subject
6 to the confidentiality agreement with the Non-Party before a determination by the
7 Court. Absent a court order to the contrary, the Non-Party shall bear the burden
8 and expense of seeking protection in this Court of its Protected Material.

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

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

18 **XI. PROTECTION AND CLAWBACK OF PRIVILEGED OR
19 OTHERWISE PROTECTED MATERIAL**

20 The disclosure of a document subject to a claim of attorney-client privilege,
21 work-product protection, or other applicable privilege or protection, whether
22 inadvertent or otherwise, is not a waiver of privilege or of protection from
23 discovery in this case or in any other federal or state proceeding. For example, the
24 mere disclosure of privileged or work-product-protected documents in this case as
25 part of a mass production is not itself a waiver in this case or in any other federal
26 or state proceeding. This Order shall be interpreted to provide the maximum
27 protection allowed by Federal Rule of Civil Procedure 26(b)(5)(B) and Federal
28 Rule of Evidence 502(d).

1 Upon notice that Identified Materials have been produced, the Identified
2 Materials and all copies thereof shall be returned to the Producing Party or
3 destroyed, deleted, or otherwise permanently removed from any systems used to
4 house documents, including document review databases, e-rooms, and any other
5 locations that store the document. In providing notice that Identified Materials
6 have been produced, the Producing Party shall promptly provide the Receiving
7 Party with an updated privilege log.

8 The Receiving Party may make no use of the Identified Materials during any
9 aspect of this matter or any other matter, including in depositions or at trial, unless
10 the Identified Materials are later designated by a court as not privileged or
11 protected. The contents of the Identified Materials shall not be disclosed to anyone
12 who was not already aware of their contents before the notice was made. If the
13 Receiving Party has any notes or other work product reflecting the contents of the
14 Identified Materials, the Receiving Party will not review or use those materials
15 unless a court later designates the Identified Materials as not privileged or
16 protected.

17 If a Receiving Party receives a document from a Producing Party which the
18 Receiving Party believes is privileged or protected, the Receiving Party shall in
19 good faith take reasonable steps to promptly notify the Producing Party of the
20 production of that document so that the Producing Party may determine whether it
21 wishes to have the document returned or destroyed pursuant to this Order.

22 To the extent documents produced in a prior litigation were retracted under a
23 claim of privilege or other protection, the re-production of such documents in this
24 case shall not be deemed a waiver of privilege or other protection.

25 **XII. MISCELLANEOUS**

26 1. Right to Advise Client. Nothing in this Order shall prevent any
27 Counsel from advising his or her client concerning this Action and, in the course of
28 providing such advice, from referring to Protected Material.

1 2. 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 3. 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
6 this Stipulated Protective Order. Similarly, no Party waives any right to object on
7 any ground to use in evidence of any of the material covered by this Protective
8 Order.

9 4. Filing Protected Material. Without written permission from the
10 Designating Party or a court order secured after appropriate notice to all interested
11 persons, a Party may not file in the public record in this Action any Protected
12 Material. A Party that seeks to file under seal any Protected Material must comply
13 with Civil Local Rule 79-5. Protected Material may only be filed under seal
14 pursuant to a court order authorizing the sealing of the specific Protected Material
15 at issue; good cause must be shown in the request to file under seal. If a Party's
16 request to file Protected Material under seal is denied by the Court, then the
17 Receiving Party may not file the information in the public record unless otherwise
18 instructed by the Court.

19 5. Shipping Protected Material. When any Receiving Party ships any
20 Protected Material to others designated in this Order as authorized to receive
21 Protected Material, the Receiving Party will encrypt any electronic data (if the
22 Protected Material is in that format) and supply the password in separate
23 correspondence to the recipient. If the Protected Material is in hard copy/paper
24 form, the Receiving Party will ship the Protected Material using secure packaging
25 tape via Federal Express or UPS and retain a tracking number for the materials. If
26 the Receiving Party learns at any time that Protected Material may have been
27 retrieved or viewed by unauthorized parties during shipment, it will immediately
28