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David J. Kaminski (State Bar No. 128509)
kaminskid@cmtlaw.com
Stephen A. Watkins, Esq. (State Bar No. 205175)
watkinss@cmtlaw.com
CARLSON & MESSER LLP
5959 W. Century Boulevard, Suite 1214
Los Angeles, California 90045
t: (310) 242-2200 f: (310) 242-2222
Attorneys for Defendant HOVG, LLC dba BAY AREA CREDIT SERVICE,
erroneously sued as BAY AREA CREDIT SERVICE, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MOR ZAIDERMAN,

Plaintiff,

vs.

BAY AREA CREDIT SERVICE, LLC,

Defendant.

Case No: 14-cv-03801-DDP (PLAx)
STIPULATED PROTECTIVE ORDER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve 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 may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection

1 it affords from public disclosure and use extends only to the limited information or
2 items that are entitled to confidential treatment under the applicable legal principles.
3
4 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
5 Protective Order does not entitle them to file confidential information under seal; Civil
6 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
7 will be applied when a party seeks permission from the court to file material under seal.
8

9 **B. GOOD CAUSE STATEMENT**

10 Defendant is a debt collection agency and its collection policies and procedures
11 help Defendant compete in the collection industry. Plaintiff is seeking disclosure of
12 those confidential policies and procedures in this lawsuit. Defendant seeks to maintain
13 their confidentiality given their obvious relationship to Defendant's ability to generate
14 revenue. Defendant has taken significant steps to protect its confidential and sensitive
15 business information. Public disclosure of these policies and procedures would enable
16 Defendant's competitors to employ Defendant's collection tactics and possibly
17 eliminate any practical competitive advantage.
18
19
20

21 Plaintiff may also seek Defendant's confidential financial information with
22 respect to Defendant's means to satisfy a judgment. Public disclosure of Defendant's
23 finances would also enable Defendant's competitors to better assess Defendant's
24 vulnerability to competitive tactics.
25

26 Therefore, this action involves trade secrets, confidential policies and procedures,
27 and other valuable research, development, commercial, financial, technical and/or
28

1 proprietary information for which special protection from public disclosure and from
2 use for any purpose other than prosecution of this action is warranted. Such
3 confidential and proprietary materials and information consist of, among other things,
4 confidential business or financial information, information regarding confidential
5 business practices, and may also consist of other confidential research, development, or
6 commercial information (including information implicating privacy rights of third
7 parties), information otherwise generally unavailable to the public, or which may be
8 privileged or otherwise protected from disclosure under state or federal statutes, court
9 rules, case decisions, or common law.
10
11

12
13 Accordingly, to expedite the flow of information, to facilitate the prompt
14 resolution of disputes over confidentiality of discovery materials, to adequately protect
15 information the parties are entitled to keep confidential, to ensure that the parties are
16 permitted reasonable necessary uses of such material in preparation for and in the
17 conduct of trial, to address their handling at the end of the litigation, and serve the ends
18 of justice, a protective order for such information is justified in this matter. It is the
19 intent of the parties that information will not be designated as confidential for tactical
20 reasons and that nothing be so designated without a good faith belief that it has been
21 maintained in a confidential, non-public manner, and there is good cause why it should
22 not be part of the public record of this case.
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1 **2. DEFINITIONS**

2 2.1 Action: this pending federal law suit.

3
4 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
7 it is generated, stored or maintained) or tangible things that qualify for protection under
8 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
9 Statement.
10

11 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
12 support staff).
13

14 2.5 Designating Party: a Party or Non-Party that designates information or
15 items that it produces in disclosures or in responses to discovery as
16 “CONFIDENTIAL.”
17

18 2.6 Disclosure or Discovery Material: all items or information, regardless of
19 the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced or
21 generated in disclosures or responses to discovery in this matter.
22

23 2.7 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
25 expert witness or as a consultant in this Action.
26
27
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1 2.8 House Counsel: attorneys who are employees of a party to this Action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.
4

5 2.9 Non-Party: any natural person, partnership, corporation, association, or
6 other legal entity not named as a Party to this action.
7

8 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
9 this Action but are retained to represent or advise a party to this Action and have
10 appeared in this Action on behalf of that party or are affiliated with a law firm which
11 has appeared on behalf of that party, and includes support staff.
12

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).
16

17 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this Action.
19

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

25 2.14 Protected Material: any Disclosure or Discovery Material that is designated
26 as “CONFIDENTIAL.”
27
28

1 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.
3

4
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6 **3. SCOPE**
7

8 The protections conferred by this Stipulation and Order cover not only Protected
9 Material (as defined above), but also (1) any information copied or extracted from
10 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
11 Material; and (3) any testimony, conversations, or presentations by Parties or their
12 Counsel that might reveal Protected Material.
13

14 Any use of Protected Material at trial shall be governed by the orders of the trial
15 judge. This Order does not govern the use of Protected Material at trial.
16

17 **4. DURATION**
18

19 Once a case proceeds to trial, all of the information to be introduced that was
20 previously designated as confidential or maintained pursuant to this protective order
21 becomes public and will be presumptively available to all members of the public,
22 including the press, unless compelling reasons supported by specific factual findings to
23 proceed otherwise are made to the trial judge in advance of the trial. *See Kamakana v.*
24 *City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing
25 “good cause” showing for sealing documents produced in discovery from “compelling
26 reasons” standard when merits-related documents are part of court record).
27
28

1 Accordingly, the terms of this protective order do not extend beyond the
2 commencement of the trial.
3

4
5
6 **5. DESIGNATING PROTECTED MATERIAL**
7

8 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
9 Party or Non-Party that designates information or items for protection under this Order
10 must take care to limit any such designation to specific material that qualifies under the
11 appropriate standards. The Designating Party must designate for protection only those
12 parts of material, documents, items, or oral or written communications that qualify so
13 that other portions of the material, documents, items, or communications for which
14 protection is not warranted are not swept unjustifiably within the ambit of this Order.
15
16

17 Mass, indiscriminate, or routinized designations are prohibited. Designations that
18 are shown to be clearly unjustified or that have been made for an improper purpose
19 (e.g., to unnecessarily encumber the case development process or to impose
20 unnecessary expenses and burdens on other parties) may expose the Designating Party
21 to sanctions.
22
23

24 If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the inapplicable designation.
27
28

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
3 or ordered, Disclosure or Discovery Material that qualifies for protection under this
4 Order must be clearly so designated before the material is disclosed or produced.
5

6 Designation in conformity with this Order requires:

7
8 (a) for information in documentary form (e.g., paper or electronic documents,
9 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
10 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
11 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
12 portion or portions of the material on a page qualifies for protection, the Producing
13 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
14 markings in the margins).
15
16

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

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

7
8 (c) for information produced in some form other than documentary and for any
9 other tangible items, that the Producing Party affix in a prominent place on the exterior
10 of the container or containers in which the information is stored the legend
11 “CONFIDENTIAL.” If only a portion or portions of the information warrants
12 protection, the Producing Party, to the extent practicable, shall identify the protected
13 portion(s).
14
15

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
17 to designate qualified information or items does not, standing alone, waive the
18 Designating Party’s right to secure protection under this Order for such material. Upon
19 timely correction of a designation, the Receiving Party must make reasonable efforts to
20 assure that the material is treated in accordance with the provisions of this Order.
21

22 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23
24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
25 designation of confidentiality at any time that is consistent with the Court’s Scheduling
26 Order.
27
28

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1, et seq. Any discovery motion must strictly
3 comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.6.3.
4

5 6.3 Burden. The burden of persuasion in any such challenge proceeding shall
6 be on the Designating Party. Frivolous challenges, and those made for an improper
7 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties)
8 may expose the Challenging Party to sanctions. Unless the Designating Party has
9 waived or withdrawn the confidentiality designation, all parties shall continue to afford
10 the material in question the level of protection to which it is entitled under the
11 Producing Party's designation until the Court rules on the challenge.
12
13

14 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**
15

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this
18 Action only for prosecuting, defending, or attempting to settle this Action. Such
19 Protected Material may be disclosed only to the categories of persons and under the
20 conditions described in this Order. When the Action has been terminated, a Receiving
21 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).
22
23

24 Protected Material must be stored and maintained by a Receiving Party at a
25 location and in a secure manner that ensures that access is limited to the persons
26 authorized under this Order.
27
28

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving
3 Party may disclose any information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to
6 disclose the information for this Action;
7

8 (b) the officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this Action;
10

11 (c) Experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this Action and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
14

15 (d) the court and its personnel;

16 (e) court reporters and their staff;

17 (f) professional jury or trial consultants, mock jurors, and Professional
18 Vendors to whom disclosure is reasonably necessary for this Action and who have
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
20

21 (g) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information;
23

24 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
25 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
26 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
27
28

1 not be permitted to keep any confidential information unless they sign the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
3 by the Designating Party or ordered by the court. Pages of transcribed deposition
4 testimony or exhibits to depositions that reveal Protected Material may be separately
5 bound by the court reporter and may not be disclosed to anyone except as permitted
6 under this Stipulated Protective Order; and
7

8
9 (i) any mediator or settlement officer, and their supporting personnel,
10 mutually agreed upon by any of the parties engaged in settlement discussions.
11

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

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

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

21 (b) promptly notify in writing the party who caused the subpoena or order to
22 issue in the other litigation that some or all of the material covered by the subpoena or
23 order is subject to this Protective Order. Such notification shall include a copy of this
24 Stipulated Protective Order; and
25

26 (c) cooperate with respect to all reasonable procedures sought to be pursued by
27 the Designating Party whose Protected Material may be affected.
28

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

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

14 (a) The terms of this Order are applicable to information produced by a Non-
15 Party in this Action and designated as “CONFIDENTIAL.” Such information produced
16 by Non-Parties in connection with this litigation is protected by the remedies and relief
17 provided by this Order. Nothing in these provisions should be construed as prohibiting
18 a Non-Party from seeking additional protections.
19
20

21 (b) In the event that a Party is required, by a valid discovery request, to
22 produce a Non-Party’s confidential information in its possession, and the Party is
23 subject to an agreement with the Non-Party not to produce the Non-Party’s confidential
24 information, then the Party shall:
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1 (1) promptly notify in writing the Requesting Party and the Non-Party that
2 some or all of the information requested is subject to a confidentiality agreement with a
3 Non-Party;
4

5 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
6 Order in this Action, the relevant discovery request(s), and a reasonably specific
7 description of the information requested; and
8

9 (3) make the information requested available for inspection by the Non-
10 Party, if requested.
11

12 (c) If the Non-Party fails to seek a protective order from this court within 14 days
13 of receiving the notice and accompanying information, the Receiving Party may
14 produce the Non-Party's confidential information responsive to the discovery request.
15 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
16 any information in its possession or control that is subject to the confidentiality
17 agreement with the Non-Party before a determination by the court. Absent a court order
18 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
19 in this court of its Protected Material.
20
21

22 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**
23

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
27 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
28

1 all unauthorized copies of the Protected Material, (c) inform the person or persons to
2 whom unauthorized disclosures were made of all the terms of this Order, and (d)
3 request such person or persons to execute the “Acknowledgment and Agreement to Be
4 Bound” that is attached hereto as Exhibit A.
5

6 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
7 **OTHERWISE PROTECTED MATERIAL**
8

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

22 **12. MISCELLANEOUS**
23

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
25 person to seek its modification by the Court in the future.
26

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3
4 ground to use in evidence of any of the material covered by this Protective Order.

5 12.3 Filing Protected Material. A Party that seeks to file under seal any
6 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
7
8 only be filed under seal pursuant to a court order authorizing the sealing of the specific
9 Protected Material at issue. If a Party's request to file Protected Material under seal is
10 denied by the court, then the Receiving Party may file the information in the public
11 record unless otherwise instructed by the court.
12

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16 **13. FINAL DISPOSITION**

17 After the final disposition of this Action, as defined in paragraph 4, within 60
18 days of a written request by the Designating Party, each Receiving Party must return all
19 Protected Material to the Producing Party or destroy such material. As used in this
20 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
21 summaries, and any other format reproducing or capturing any of the Protected
22 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
23 must submit a written certification to the Producing Party (and, if not the same person
24 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
25 category, where appropriate) all the Protected Material that was returned or destroyed
26
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1 and (2)affirms that the Receiving Party has not retained any copies, abstracts,
2 compilations, summaries or any other format reproducing or capturing any of the
3 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
4 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
5 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
6 work product, and consultant and expert work product, even if such materials contain
7 Protected Material. Any such archival copies that contain or constitute Protected
8 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).
9
10
11

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

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
17

18 DATED: March 23, 2015

LAW OFFICES OF TODD FRIEDMAN,
P.C.

19
20 By: s/ Suren N. Weerasuriya
21 Todd Friedman
22 Suren N. Weerasuriya
23 Attorneys for Plaintiff
24 MOR ZAIDERMAN
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DATED: March 23, 2015

CARLSON & MESSER LLP

By: s/David J. Kaminski
David J. Kaminski
Stephen A. Watkins
Attorneys for Defendant
HOVG, LLC dba BAY AREA
CREDIT SERVICE, erroneously sued as
BAY AREA CREDIT SERVICE, LLC

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.



DATED: March 25, 2015

Hon. Paul L. Abrams
United States Magistrate Judge

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 Stipulated
Protective Order that was issued by the United States District Court for the Central
District of California on [date] in the case of *Mor Zaiderman v. Bay Area Credit
Service, LLC, 14-cv-03801-DDP (PLAx)*. I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge that

1 failure to so comply could expose me to sanctions and punishment in the nature of
2 contempt. I solemnly promise that I will not disclose in any manner any information or
3 item that is subject to this Stipulated Protective Order to any person or entity except in
4 strict compliance with the provisions of this Order.

5 I further agree to submit to the jurisdiction of the United States District Court for the
6 Central District of California for the purpose of enforcing the terms of this Stipulated
7 Protective Order, even if such enforcement proceedings occur after termination of this
8 action. I hereby appoint _____ [print or type full name] of
9 _____ [print or type full address and
10 telephone number] as my California agent for service of process in connection with
11 this action or any proceedings related to enforcement of this Stipulated Protective
12 Order.

13
14 Date: _____

15 City and State where sworn and signed: _____

16 Printed name: _____

17
18 Signature: _____