

1 LEWIS WAGNER, LLP  
 2 Dina M. Cox (admitted *pro hac vice*)  
 dcox@lewiswagner.com  
 3 501 Indiana Avenue, Suite 200  
 Indianapolis, IN 46202  
 Telephone: 317-237-0500  
 4 Fax: 317-630-2799

5 LATHAM & WATKINS LLP  
 David J. Schindler, Bar # 130490  
 david.schindler@lw.com  
 6 Jonathan M. Jackson, Bar # 257554  
 jonathan.jackson@lw.com  
 7 355 South Grand Avenue  
 Los Angeles, CA 90071  
 Telephone: 213-891-8556  
 8 Fax: 213-891-8763

9 *Attorneys for Defendant*  
 10 *Guthy-Renker LLC*

11 **UNITED STATES DISTRICT COURT**  
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13  
 14 AMY FRIEDMAN and JUDI  
 MILLER, on behalf of themselves  
 15 and all others similarly situated,

16 Plaintiffs,

17 v.

18 GUTHY-RENKER LLC,

19 Defendant.  
 20

Case No. 2:14-cv-06009-ODW-AGR  
**PROTECTIVE ORDER**

21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

1           The Court, having considered the parties Stipulation for Protective Order  
2 (the “Stipulation”) [Dkt. 60], good cause having been shown, hereby APPROVES  
3 and ENTERS this Protective Order.

4           1.     GENERAL PROVISIONS

5           1.1   Purposes and Limitations. Discovery in this action is likely to involve  
6 production of confidential, proprietary, or private information for which special  
7 protection from public disclosure and from use for any purpose other than  
8 prosecuting this litigation may be warranted. Accordingly, the parties hereby  
9 stipulate to and petition the Court to enter the following Stipulated Protective  
10 Order. The parties acknowledge that this Order does not confer blanket protections  
11 on all disclosures or responses to discovery and that the protection it affords from  
12 public disclosure and use extends only to the limited information or items that are  
13 entitled to confidential treatment under the applicable legal principles. The parties  
14 further acknowledge, as set forth in Section 12.3, below, that this Stipulated  
15 Protective Order does not entitle them to file confidential information under seal;  
16 Local Rule 79-5 sets forth the procedures that must be followed and the standards  
17 that will be applied when a Party seeks permission from the Court to file material  
18 under seal. The parties also agree that nothing herein shall be construed as an  
19 admission that any types of documents or information described herein must be  
20 produced in this case.

21           1.2   Good Cause Statement. This action is likely to involve trade secrets  
22 (as that term is defined by California Civil Code § 3426.1),<sup>1</sup> customer and pricing  
23 lists, and other valuable research, testing, formula, development, commercial,  
24 financial, technical and/or proprietary information for which special protection  
25

---

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

1 from public disclosure and from use for any purpose other than prosecution of this  
2 action is warranted. Such confidential and proprietary materials and information  
3 consist of, among other things, business processes; non-public business or other  
4 sensitive financial information, including, but not limited to, customer lists,  
5 pricing, sales data, profit and/or loss information, sales, profit and/or loss  
6 projections, profit and loss statements, or corporate financial statements; and also  
7 include confidential research; business development, business marketing or other  
8 sensitive commercial information; formulae and formulae development; testing  
9 and test results; or other confidential research, development, or commercial  
10 information (including information implicating privacy rights of third parties),  
11 information otherwise generally unavailable to the public, or which may be  
12 privileged or otherwise protected from disclosure under state or federal statutes,  
13 Court rules, case decisions, or common law.

14 Defendant is one of the world's largest direct marketing companies, with  
15 distribution in more than 68 countries. The above information is not generally  
16 known to the public or to other persons who could obtain economic value from its  
17 disclosure or use, and Defendant uses reasonable efforts to maintain the secrecy of  
18 this information. The disclosure of Defendant's trade secrets, and confidential and  
19 proprietary materials and information (as described in this paragraph and below) to  
20 the public or Defendant's competitors would cause harm to Defendant's  
21 competitive positions in the marketplace. In addition, discovery in this action is  
22 also likely to call for materials containing medical records and other sensitive  
23 personal information, the disclosure of which would be harmful to individual third  
24 parties.

25 Accordingly, to expedite the flow of information, to facilitate the prompt  
26 resolution of disputes over confidentiality of discovery materials, to adequately  
27 protect information the parties are entitled to keep confidential, to ensure that the  
28

1 parties are permitted reasonably necessary uses of such material in preparation for  
2 and in the conduct of trial, to address their handling at the end of the litigation, and  
3 to serve the ends of justice, a protective order for such information is justified in  
4 this matter. It is the intent of the parties that information will not be designated as  
5 confidential for tactical reasons and that nothing be so designated without a good  
6 faith belief that it has been maintained in a confidential, non-public manner, and  
7 there is good cause why it should not be part of the public record of this case.

8       2.     DEFINITIONS

9       2.1    Action: the above-entitled proceeding, Case No. 2:14-cv-06009-  
10 ODW-AGR.

11       2.2    Challenging Party: a Party or Non-Party that challenges the  
12 designation of information or items under this Order.

13       2.3    "CONFIDENTIAL" Information or Items: information (regardless of  
14 how it is generated, stored or maintained) or tangible things that qualify for  
15 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
16 the Good Cause Statement.

17       2.4    Counsel: Outside Counsel of Record and House Counsel (as well as  
18 their support staff and vendors provided that the vendors have signed the  
19 "Acknowledgment and Agreement to Be Bound" (Exhibit A)).

20       2.5    Designated House Counsel: House Counsel who seek access to  
21 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this  
22 Action.

23       2.6    Designating Party: a Party or Non-Party that designates information or  
24 items that it produces in disclosures or in responses to discovery as  
25 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
26 ONLY."

27       2.7    Disclosure or Discovery Material: all items or information, regardless  
28

1 of the medium or manner in which it is generated, stored, or maintained (including,  
2 among other things, testimony, transcripts, and tangible things), that are produced  
3 or generated in disclosures or responses to discovery in this matter.

4       2.8 Expert: a person with specialized knowledge or experience in a matter  
5 pertinent to the litigation who (1) has been retained by a Party or its counsel to  
6 serve as an expert witness or as a consultant in this action, (2) is not a past or  
7 current employee of a Party or of a Party’s competitor, and (3) at the time of  
8 retention, is not anticipated to become an employee of a Party or of a Party’s  
9 competitor.

10       2.9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
11 Information or Items: extremely sensitive “CONFIDENTIAL Information or  
12 Items,” disclosure of which to another Party or Non-Party would create a  
13 substantial risk of serious harm that could not be avoided by less restrictive means.  
14 Such Information and Items include, but are not limited to, the following non-  
15 public Information and Items: formulae for Wen® Cleansing Conditioner;  
16 documents relating to the development and testing of formulae for Wen®  
17 Cleansing Conditioner; financial data or information, including, but not limited to,  
18 information concerning sales, revenue, profit margins, costs, and/or capital  
19 expenditures; budgets, forecasts, and projections; Defendant’s proprietary  
20 computer software; agreements with retailers, wholesalers, manufacturers,  
21 distributors, and/or other third-parties relating to Wen® Cleansing Conditioner;  
22 and/or marketing or other business strategy documents.

23       2.10 House Counsel: attorneys who are employees of a Party to this  
24 Action. House Counsel does not include Outside Counsel of Record or any other  
25 outside counsel.

26       2.11 Non-Party: any natural person, partnership, corporation, association,  
27 or other legal entity not named as a Party to this action.  
28

1           2.12 Outside Counsel of Record: attorneys who are not employees of a  
2 Party to this Action but are retained to represent or advise a Party to this Action  
3 and have appeared in this Action on behalf of that Party or are affiliated with a law  
4 firm which has appeared on behalf of that Party, and includes support staff.

5           2.13 Party: any Party to this Action, including all of its officers, directors,  
6 employees, consultants, retained experts, and Outside Counsel of Record (and their  
7 support staffs).

8           2.14 Producing Party: a Party or Non-Party that produces Disclosure or  
9 Discovery Material in this Action.

10          2.15 Professional Vendors: persons or entities that provide litigation  
11 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
13 and their employees and subcontractors.

14          2.16 Protected Material: any Disclosure or Discovery Material that is  
15 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL –  
16 ATTORNEYS' EYES ONLY."

17          2.17 Receiving Party: a Party that receives Disclosure or Discovery  
18 Material from a Producing Party.

19           3.     SCOPE

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

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

27           4.     DURATION  
28

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

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

26 5.2 Manner and Timing of Designations. Except as otherwise provided in  
27 this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material  
28

1 that qualifies for protection under this Order must be clearly so designated before  
2 the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) **Information in documentary form.** The Producing Party shall affix  
5 to any Disclosure or Discovery Material in documentary form (e.g., paper or  
6 electronic documents, but excluding transcripts of depositions or other pretrial or  
7 trial proceedings) the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
8 – ATTORNEYS’ EYES ONLY” to each page that contains protected material.

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

24 (b) **Depositions.** Unless all parties agree on the record at the time the  
25 deposition testimony is taken, all deposition testimony taken in this case shall be  
26 treated as if it were designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
27 EYES ONLY” from the date of the deposition through and including thirty (30)  
28



1 days after receipt of the final deposition transcript. No later than the thirtieth day  
2 after receipt of the final deposition transcript, a party may serve a Notice of  
3 Designation to all parties of record as to specific portions of the transcript,  
4 including exhibits, that are designated “CONFIDENTIAL” or “HIGHLY  
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and thereafter those portions  
6 identified in the Notice of Designation shall be protected under the terms of this  
7 Order. The failure to serve a timely Notice of Designation shall waive any  
8 designation of testimony taken in that deposition as confidential information,  
9 unless (a) the parties agree to a different time for serving a Notice of Designation  
10 or (b) the party seeking a late designation seeks and obtains relief from the  
11 deadline from the Court for good cause shown. Alternatively, a Designating Party  
12 may specify, at the deposition or up to 30 days afterwards if that period is properly  
13 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or  
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

15 Transcripts containing Protected Material shall have an obvious legend on  
16 the title page that the transcript contains Protected Material, and the title page shall  
17 be followed by a list of all pages (including line numbers as appropriate) that have  
18 been designated as Protected Material and the level of protection being asserted by  
19 the Designating Party. The Designating Party shall inform the court reporter of  
20 these requirements.

21 (c) **Other Material.** For information produced in some form other than  
22 documentary and for any other tangible items, the Producing Party shall affix in a  
23 prominent place on the exterior of the container or containers in which the  
24 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions  
26 of the information or item warrant protection, the Producing Party, to the extent  
27  
28

1 practicable, shall identify the protected portion(s) and specify the level of  
2 protection being asserted.

3       5.3 Inadvertent Failures to Designate. If corrected within a reasonable  
4 time of identifying an inadvertent failure to designate, an inadvertent failure to  
5 designate qualified information or items does not, standing alone, waive the  
6 Designating Party's right to secure protection under this Order for such material.  
7 Upon reasonably timely correction of a designation, the Receiving Party must  
8 make reasonable efforts to assure that the material is treated in accordance with the  
9 provisions of this Order.

10       6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11       6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
12 designation of confidentiality at any time that is consistent with the Court's  
13 Scheduling Order. Unless a prompt challenge to a Designating Party's  
14 confidentiality designation is necessary to avoid foreseeable, substantial  
15 unfairness, unnecessary economic burdens, or a significant disruption or delay of  
16 the litigation, a Party does not waive its right to challenge a confidentiality  
17 designation by electing not to mount a challenge promptly after the original  
18 designation is disclosed.

19       6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
20 resolution process consistent with Local Rule 37-1, *et seq.* The Challenging Party  
21 shall initiate the dispute resolution process by providing written notice of each  
22 designation it is challenging and describing the basis for each challenge. To avoid  
23 ambiguity as to whether a challenge has been made, the written notice must recite  
24 that the challenge to confidentiality is being made in accordance with this specific  
25 paragraph of the Protective Order. The parties shall attempt to resolve each  
26 challenge in good faith and must begin the process by conferring directly (in voice  
27 to voice dialogue consistent with Local Rule 37-1, *et seq.*; other forms of  
28

1 communication are not sufficient) within 10 days of the date of service of notice.  
2 In conferring, the Challenging Party must explain the basis for its belief that the  
3 confidentiality designation was not proper and must give the Designating Party an  
4 opportunity to review the designated material, to reconsider the circumstances,  
5 and, if no change in designation is offered, to explain the basis for the chosen  
6 designation. A Challenging Party may seek judicial assistance only if it has  
7 engaged in this meet and confer process in good faith or establishes that the  
8 Designating Party is unwilling to participate in the meet and confer process in a  
9 timely manner.

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

18           7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

26           Protected Material must be stored and maintained by a Receiving Party at a  
27 location and in a secure manner that ensures that access is limited to the persons  
28

1 authorized under this Order.

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

- 6       (a) the Receiving Party's Outside Counsel of Record in this Action, as  
7 well as employees of said Outside Counsel of Record to whom it is  
8 reasonably necessary to disclose the information for this Action;
- 9       (b) the officers, directors, and employees (including House Counsel) of  
10 the Receiving Party to whom disclosure is reasonably necessary for  
11 this Action;
- 12       (c) Experts (as defined in this Order) of the Receiving Party to whom  
13 disclosure is reasonably necessary for this Action and who have  
14 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
15 A);
- 16       (d) the Court and its personnel;
- 17       (e) court reporters and their staff;
- 18       (f) professional jury or trial consultants, mock jurors, and Professional  
19 Vendors to whom disclosure is reasonably necessary for this Action  
20 and who have signed the "Acknowledgment and Agreement to Be  
21 Bound" (Exhibit A);
- 22       (g) the custodian, author, or recipient of a document containing the  
23 information;
- 24       (h) during their depositions, witnesses, and attorneys for witnesses, in the  
25 Action to whom disclosure is reasonably necessary provided: (1) the  
26 deposing Party requests that the witness sign the form attached as  
27 Exhibit A hereto; and (2) they will not be permitted to keep any  
28

1 confidential information unless they sign the "Acknowledgment and  
2 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the  
3 Designating Party or ordered by the Court.; and

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

7 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
8 ONLY" Information or Items. Unless otherwise ordered by the Court or permitted  
9 in writing by the Designating Party, a Receiving Party may disclose any  
10 information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS'  
11 EYES ONLY" only to:

- 12 (a) the Receiving Party's Outside Counsel of Record in this action, as  
13 well as employees of said Outside Counsel of Record to whom it is  
14 reasonably necessary to disclose the information for this litigation and  
15 who have signed the "Acknowledgment and Agreement to Be Bound"  
16 that is attached hereto as Exhibit A;
- 17 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
18 necessary for this litigation, (2) who have signed the  
19 "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3)  
20 as to whom the procedures set forth in paragraph 7.4(a)(2), below,  
21 have been followed;
- 22 (c) the court and its personnel;
- 23 (d) court reporters and their staff, professional jury or trial consultants,  
24 and Professional Vendors to whom disclosure is reasonably necessary  
25 for this litigation and who have signed the "Acknowledgment and  
26 Agreement to Be Bound" (Exhibit A);
- 27 (e) the author or recipient of a document containing the information or a  
28

1                   custodian or other person who otherwise possessed or knew the  
2 information; and

- 3                   (f) Designated House Counsel of the Receiving Party (1) who has no  
4 involvement in competitive decision-making, (2) to whom disclosure  
5 is reasonably necessary for this litigation, (3) who has signed the  
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4)  
7 as to whom the procedures set forth in paragraph 7.4(a)(1), below,  
8 have been followed.

9                   7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to  
11 Designated House Counsel or Experts.

- 12                   (a)(1) Unless otherwise ordered by the Court or agreed to in writing by the  
13 Designating Party, a Party that seeks to disclose to Designated House  
14 Counsel any information or item that has been designated “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to  
16 paragraph 7.3(f) first must make a written request to the Designating  
17 Party that (1) sets forth the full name of the Designated House  
18 Counsel and the city and state of his or her residence, and (2)  
19 describes the Designated House Counsel’s current and reasonably  
20 foreseeable future primary job duties and responsibilities in sufficient  
21 detail to determine if House Counsel is involved, or may become  
22 involved, in any competitive decision-making.

- 23                   (a)(2) Notwithstanding paragraph 7.4(a)(2)(i) below, unless otherwise  
24 ordered by the Court or agreed to in writing by the Designating Party,  
25 a Party that seeks to disclose to an Expert (as defined in this Order)  
26 any information or item that has been designated “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to  
28

1 paragraph 7.3(b) first must make a written request to the Designating  
2 Party that (1) identifies the general categories of “HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that  
4 the Receiving Party seeks permission to disclose to the Expert, (2) sets  
5 forth the full name of the Expert and the city and state of his or her  
6 primary residence, (3) attaches a copy of the Expert’s current resume,  
7 (4) identifies the Expert’s current employer(s), (5) identifies each  
8 person or entity from whom the Expert has received compensation or  
9 funding for work in his or her areas of expertise or to whom the expert  
10 has provided professional services, including in connection with a  
11 litigation, at any time during the preceding five years,<sup>2</sup> and (6)  
12 identifies (by name and number of the case, filing date, and location  
13 of Court) any litigation in connection with which the Expert has  
14 offered expert testimony, including through a declaration, report, or  
15 testimony at a deposition or trial, during the preceding five years.

16 (i) If the time for designating any Expert has not expired and the  
17 Expert has not been disclosed pursuant to Fed.R.Civ.P. 26 or  
18 pursuant to order of the Court; or if an Expert is a consulting  
19 expert, a Party does not have to specifically comply with  
20 provisions (2) – (6) of paragraph 7.4(2)(a) above. In such a  
21 situation, a party shall make a good faith attempt to disclose  
22 sufficient information to comply with the spirit of paragraph  
23 7.4(2)(a) above while protecting the identity of the consulting  
24 expert or non-disclosed Expert. Once an Expert is disclosed  
25

---

26 <sup>2</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a  
27 third-party, then the Expert should provide whatever information the Expert believes can be  
28 disclosed without violating any confidentiality agreements, and the Party seeking to disclose to  
the Expert shall be available to meet and confer with the Designating Party regarding any such  
engagement.

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

pursuant to Fed.R.Civ.P. 26 and/or pursuant to order of the Court, the Expert must fully comply with paragraph 7.4(2)(a) above.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Designated House Counsel or Expert unless, within 5 business days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue consistent with Local Rule 37-1, *et seq.*; other forms of communication are not sufficient) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as provided in Local Rule 7 (and in compliance with Local Rule 79-5, if applicable) seeking permission from the Court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the



1 reasons advanced by the Designating Party for its refusal to approve  
2 the disclosure.

3 In any such proceeding, the Party opposing disclosure to Designated House  
4 Counsel or the Expert shall bear the burden of proving that the risk of harm that the  
5 disclosure would entail (under the safeguards proposed) outweighs the Receiving  
6 Party's need to disclose the Protected Material to its Designated House Counsel or  
7 Expert.

8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
9 PRODUCED IN OTHER LITIGATION.

10 If a Party is served with a subpoena or a court order issued in other litigation  
11 or a demand for the production of documents in an administrative proceeding or  
12 other similar action that compels disclosure of any information or items designated  
13 in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
14 ATTORNEYS' EYES ONLY" that Party must:

15 (a) promptly notify in writing the Designating Party. Such notification  
16 shall include a copy of the subpoena, court order, or other demand;

17 (b) promptly notify in writing the Party who caused the subpoena or order  
18 to issue in the other litigation that some or all of the material covered by the  
19 subpoena or order is subject to this Protective Order. Such notification shall  
20 include a copy of this Stipulated Protective Order; and

21 (c) cooperate with respect to all reasonable procedures sought to be  
22 pursued by the Designating Party whose Protected Material may be affected.<sup>3</sup>

23 If the Designating Party timely seeks a protective order, the Party served  
24 with the subpoena, court order, or other demand, shall not produce any information  
25 designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
26

---

27 <sup>3</sup> The purpose of imposing these duties is to alert the interested parties to the existence of  
28 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
protect its confidentiality interests in the Court from which the subpoena or order issued.

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

7 9. 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" or "HIGHLY  
11 CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced  
12 by Non-Parties in connection with this litigation is protected by the remedies and  
13 relief provided by this Order. Nothing in these provisions should be construed as  
14 prohibiting a Non-Party from seeking additional protections.

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

- 19 1. promptly notify in writing the Requesting Party and the Non-  
20 Party that some or all of the information requested is subject to  
21 a confidentiality agreement with a Non-Party;
  - 22 2. promptly provide the Non-Party with a copy of the Stipulated  
23 Protective Order in this litigation, the relevant discovery  
24 request(s), and a reasonably specific description of the  
25 information requested; and
  - 26 3. make the information requested available for inspection by the  
27 Non-Party.
- 28

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

10 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

20 11. INADVERTENT PRODUCTION OF PRIVILEGED OR  
21 OTHERWISE PROTECTED MATERIAL

22 When a Producing Party gives notice to Receiving Parties that certain  
23 inadvertently produced material is subject to a claim of privilege or other  
24 protection, the obligations of the Receiving Parties are those set forth in Federal  
25 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
26

27  
28 <sup>4</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this Court.

1 whatever procedure may be established in an e-discovery order regarding the  
2 inadvertent production of Disclosure or Discovery Material. Pursuant to Federal  
3 Rule of Evidence 502(d) and (e), the inadvertent disclosure in this Action of  
4 Disclosure or Discovery Material protected by the attorney-client privilege and/or  
5 work product doctrine shall not operate as a waiver of the attorney-client privilege  
6 and/or work product doctrine.

7 12. MISCELLANEOUS

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
9 person to seek its modification by the Court in the future.

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

16 12.3 Filing Protected Material. A Party that seeks to file under seal any  
17 Protected Material must comply with Local Rule 79-5 and Local Rule 7. Protected  
18 Material may only be filed under seal pursuant to a Court order authorizing the  
19 sealing of the specific Protected Material at issue. In accordance with Local Rule  
20 79-5.1, a proposed filing containing Protected Material shall be accompanied by an  
21 application to file the papers or the portion thereof containing the Protected  
22 Material (if such portion is segregable) under seal; and that the application shall be  
23 directed to the judge to whom the papers are directed. If a Receiving Party desires  
24 to file Protected Material, the Receiving Party shall confer with the Designating  
25 Party in accordance with Local Rule 7 in order to afford the Designating Party an  
26 opportunity to support its position to the court in support of filing the Protected  
27 Material under seal. If a Party's request to file Protected Material under seal is  
28

1 denied by the Court, then the Receiving Party may file the information in the  
2 public record unless otherwise instructed by the Court.

3           13.    FINAL DISPOSITION

4           After the final disposition of this Action, as defined in paragraph 4, within  
5 60 days of a written request by the Designating Party, each Receiving Party must  
6 use reasonable efforts to return all Protected Material to the Producing Party or  
7 destroy such material. As used in this subdivision, "all Protected Material" includes  
8 all copies, abstracts, compilations, summaries, and any other format reproducing or  
9 capturing any of the Protected Material. The Receiving Party's reasonable efforts  
10 shall not require the return or destruction of confidential information from (i)  
11 disaster recovery or business continuity backups, (ii) data stored in system-  
12 generated temporary folders or near-line storage; (iii) unstructured departed  
13 employee data, and/or (iv) material that is subject to legal hold obligations or  
14 comingled with other such material. Backup storage media will not be restored for  
15 purposes of returning or certifying destruction of confidential information, but such  
16 retained information shall continue to be treated in accordance with the Order.  
17 Whether the Protected Material is returned or destroyed, the Receiving Party must  
18 submit a written certification to the Producing Party (and, if not the same person or  
19 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
20 category, where appropriate) all the Protected Material that was returned or  
21 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
22 abstracts, compilations, summaries or any other format reproducing or capturing  
23 any of the Protected Material except as otherwise permitted in this provision.  
24 Notwithstanding this provision, Counsel are entitled to retain an archival copy of  
25 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
26 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
27 work product, and consultant and expert work product, even if such materials  
28

1 contain Protected Material. Any such archival copies that contain or constitute  
2 Protected Material remain subject to this Protective Order as set forth in Section 4  
3 (DURATION).

4 14. VIOLATIONS.

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

8 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

9  
10 DATED: April 30, 2015

11  
12 

13 \_\_\_\_\_  
14 ALICIA G. ROSENBERG  
15 UNITED STATES MAGISTRATE JUDGE

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

**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 \_\_\_\_\_ in  
the case of Amy Friedman and Judi Miller, on behalf of themselves and all others  
similarly situated v. Guthy-Renker LLC, Case No. 2:14-cv-06009-ODW-AGR. I  
agree to comply with and to be bound by all the terms of this Stipulated Protective  
Order and I understand and acknowledge that failure to so comply could expose  
me to sanctions and punishment in the nature of contempt. I solemnly promise that  
I will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance with  
the provisions of this Order. I further agree to submit to the jurisdiction of the  
United States District Court for the Central District of California for the purpose of  
enforcing the terms of this Stipulated Protective Order, even if such enforcement  
proceedings occur after termination of this action. I hereby appoint  
\_\_\_\_\_ [print or type full name] of \_\_\_\_\_  
\_\_\_\_\_ [print or type full address and telephone number] as my  
California agent for service of process in connection with this action or any  
proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_  
City and State where sworn and signed: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Signature: \_\_\_\_\_