

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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

J. ROBERT BERRELLEZ , on behalf
of herself, all others similarly situated,

Plaintiff,

v.

PONTOON SOLUTIONS, INC., a
Delaware corporation; ADECCO
USA, INC., a Delaware corporation;
ROSE INTERNATIONAL, INC., a
Missouri corporation; BANK OF
AMERICA, N.A.; and DOES 1-10,
inclusive,

Defendants.

Case No. 2:15-cv-01898-CAS-FFM

~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER

1 Plaintiff J. Robert Berrellez (“Plaintiff”) and Defendants Bank of America,
2 N.A., Rose International, Inc., Pontoon Solutions, Inc., and Adecco USA, Inc.
3 (collectively “Defendants”) (Plaintiff and Defendants may be referred to collectively
4 herein as the “Parties”), have met and conferred in good faith pursuant to Rule 26(c) of
5 the Federal Rules of Civil Procedure, and have agreed to the following terms which the
6 Parties propose shall govern the course and conduct of discovery in the above-
7 captioned action.

8 The Parties, through their respective undersigned counsel, hereby agree to the
9 following:

10 1. PURPOSES AND LIMITATIONS

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

24 2. DEFINITIONS

25 2.1 Challenging Party: a Party or Non-Party that challenges the designation
26 of information or items under this Order.

27 ///

28 ///

1 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
2 how it is generated, stored or maintained) or tangible things that qualify for protection
3 under Federal Rule of Civil Procedure 26(c).

4 2.3 Counsel (without qualifier): Outside Counsel of Record and House
5 Counsel (as well as their support staff).

6 2.4 Designating Party: a Party or Non-Party that designates information or
7 items that it produces in disclosures or in responses to discovery as
8 “CONFIDENTIAL.”

9 2.5 Disclosure or Discovery Material: all items or information, regardless of
10 the medium or manner in which it is generated, stored, or maintained (including,
11 among other things, testimony, transcripts, and tangible things), that are produced or
12 generated in disclosures or responses to discovery in this matter.

13 2.6 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
15 expert witness or as a consultant in this action.

16 2.7 House Counsel: attorneys who are employees of a party to this action.
17 House Counsel does not include Outside Counsel of Record or any other outside
18 counsel.

19 2.8 Non-Party: any natural person, partnership, corporation, association, or
20 other legal entity not named as a Party to this action.

21 2.9 Outside Counsel of Record: attorneys who are not employees of a party
22 to this action but are retained to represent or advise a party to this action and have
23 appeared in this action on behalf of that party or are affiliated with a law firm which
24 has appeared on behalf of that party.

25 2.10 Party: any party to this action, including all of its officers, directors,
26 employees, consultants, retained experts, and Outside Counsel of Record (and their
27 support staffs).

28 ///

1 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this action.

3 2.12 Professional Vendors: persons or entities that provide litigation support
4 services (e.g., photocopying, videotaping, translating, preparing exhibits or
5 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
6 their employees and subcontractors.

7 2.13 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL.”

9 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
10 from a Producing Party.

11 3. SCOPE

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

26 4. DURATION

27 Even after final disposition of this litigation, the confidentiality obligations
28 imposed by this Order shall remain in effect until a Designating Party agrees otherwise

1 in writing or a court order otherwise directs. Final disposition shall be deemed to be
2 the later of (1) dismissal of all claims and defenses in this action, with or without
3 prejudice; and (2) final judgment herein after the completion and exhaustion of all
4 appeals, rehearings, remands, trials, or reviews of this action, including the time limits
5 for filing any motions or applications for extension of time pursuant to applicable law.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

15 If it comes to a Designating Party’s attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this
19 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
20 or ordered, Disclosure or Discovery Material that qualifies for protection under this
21 Order must be clearly so designated before the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic
24 documents, but excluding transcripts of depositions or other pretrial or trial
25 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
26 page that contains protected material. If only a portion or portions of the material on a
27 page qualifies for protection, the Producing Party also must clearly identify the
28 protected portion(s) (e.g., by making appropriate markings in the margins).

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

12 (b) for testimony given in deposition, that the Designating Party identify
13 on the record, before the close of the deposition, all protected testimony.

14 (c) for information produced in some form other than documentary and
15 for any other tangible items, that the Producing Party affix in a prominent place on the
16 exterior of the container or containers in which the information or item is stored the
17 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
18 warrant protection, the Producing Party, to the extent practicable, shall identify the
19 protected portion(s).

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

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
27 designation of confidentiality at any time. Unless a prompt challenge to a Designating
28 Party’s confidentiality designation is necessary to avoid foreseeable, substantial

1 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
2 litigation, a Party does not waive its right to challenge a confidentiality designation by
3 electing not to mount a challenge promptly after the original designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
5 resolution process by providing written notice of each designation it is challenging and
6 describing the basis for each challenge. To avoid ambiguity as to whether a challenge
7 has been made, the written notice must recite that the challenge to confidentiality is
8 being made in accordance with this specific paragraph of the Protective Order. The
9 Parties shall attempt to resolve each challenge in good faith and must begin the process
10 by conferring directly (in voice to voice dialogue; other forms of communication are
11 not sufficient) within 14 days of the date of service of notice. In conferring, the
12 Challenging Party must explain the basis for its belief that the confidentiality
13 designation was not proper and must give the Designating Party an opportunity to
14 review the designated material, to reconsider the circumstances, and, if no change in
15 designation is offered, to explain the basis for the chosen designation. A Challenging
16 Party may proceed to the next stage of the challenge process only if it has engaged in
17 this meet and confer process first or establishes that the Designating Party is unwilling
18 to participate in the meet and confer process in a timely manner.

19 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
20 court intervention, the Designating Party shall file and serve a motion to retain
21 confidentiality under Civil Local Rule 37-1 (and in compliance with Civil Local Rule
22 79-5, if applicable) within 7 days of the parties agreeing that the meet and confer
23 process will not resolve their dispute. Each such motion must be accompanied by a
24 competent declaration affirming that the movant has complied with the meet and
25 confer requirements imposed in the preceding paragraph. Failure by the Designating
26 Party to make such a motion including the required declaration within 7 days shall
27 automatically waive the confidentiality designation for each challenged designation. In
28 addition, the Challenging Party may file a motion pursuant to Civil Local Rule 37-1

1 challenging a confidentiality designation at any time if there is good cause for doing
2 so, including a challenge to the designation of a deposition transcript or any portions
3 thereof. Any motion brought pursuant to this provision must be accompanied by a
4 competent declaration affirming that the movant has complied with the meet and
5 confer requirements imposed by the preceding paragraph.

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

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is
16 disclosed or produced by another Party or by a Non-Party in connection with this case
17 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
18 Material may be disclosed only to the categories of persons and under the conditions
19 described in this Order. When the litigation has been terminated, a Receiving Party
20 must comply with the provisions of section 13 below (FINAL DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at a
22 location and in a secure manner that ensures that access is limited to the persons
23 authorized under this Order.

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
25 ordered by the court or permitted in writing by the Designating Party, a Receiving
26 Party may disclose any information or item designated "CONFIDENTIAL" only to:

27 (a) the Receiving Party's Outside Counsel of Record in this action, as
28 well as employees of said Outside Counsel of Record to whom it is reasonably

1 necessary to disclose the information for this litigation and who have signed the
2 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

3 (b) the officers, directors, and employees (including House Counsel) of
4 the Receiving Party to whom disclosure is reasonably necessary for this litigation and
5 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (c) Experts (as defined in this Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this litigation and who have signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants,
11 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for
12 this litigation and who have signed the “Acknowledgment and Agreement to Be
13 Bound” (Exhibit A);

14 (f) witnesses in the action to whom disclosure is reasonably necessary
15 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
16 unless otherwise agreed by the Designating Party or ordered by the court. Pages of
17 transcribed deposition testimony or exhibits to depositions that reveal Protected
18 Material must be separately bound by the court reporter and may not be disclosed to
19 anyone except as permitted under this Stipulated Protective Order.

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

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
23 OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation that
25 compels disclosure of any information or items designated in this action as
26 “CONFIDENTIAL,” that Party must:

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

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

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

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

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
16 IN THIS LITIGATION

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

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

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

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

4 (3) make the information requested available for inspection by the
5 Non-Party.

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

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
24 PROTECTED MATERIAL

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

1 may be established in an e-discovery order that provides for production without prior
2 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
3 parties reach an agreement on the effect of disclosure of a communication or
4 information covered by the attorney-client privilege or work product protection, the
5 parties may incorporate their agreement in the stipulated protective order submitted
6 to the court.

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 this
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any
14 ground to use in evidence of any of the material covered by this Protective Order.

15 12.3 Filing Protected Material. Without written permission from the
16 Designating Party or a court order secured after appropriate notice to all interested
17 persons, a Party may not file in the public record in this action any Protected Material.
18 A Party that seeks to file under seal any Protected Material must comply with Civil
19 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
20 order authorizing the sealing of the specific Protected Material at issue. Pursuant to
21 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that
22 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
23 entitled to protection under the law. If a Receiving Party's request to file Protected
24 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
25 the Receiving Party may file the information in the public record pursuant to Civil
26 Local Rule 79-5(e) unless otherwise instructed by the court.

27 ///

28 ///

1 13. FINAL DISPOSITION

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

20 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

21
22 Date: March 16, 2016

23 /s/ Frederick F. Mumm
24 HONORABLE FREDERICK F. MUMM
25 UNITED STATES MAGISTRATE JUDGE
26
27
28

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

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 *J. Robert Berrellez v. Pontoon Solutions, Inc. et. al.*, Case No. 15-cv-01898 CAS-FFM. 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: _____