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

RESERVE MEDIA, INC., a Delaware
corporation,

Plaintiff,

vs.

EFFICIENT FRONTIERS, INC., a
Wisconsin corporation; and DOES 1-10,

Defendants.

Case No.: CV 15-5072 DDP (AGRx)

PROTECTIVE ORDER

DISCOVERY MATTER

EFFICIENT FRONTIERS, INC., a

Wisconsin corporation;

Counter-Claimant,

vs.

RESERVE MEDIA, INC.,

Counter-Defendant.

1 The Court having considered the Stipulated Protective Order, and it
2 appearing that there is good cause for an Order providing confidential treatment for
3 certain documents and information that may be disclosed or produced during
4 discovery or other proceedings herein:

5 IT IS ORDERED that:

6 1. PRELIMINARY STATEMENTS

7 A. PURPOSES AND LIMITATIONS

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

21 B. GOOD CAUSE STATEMENT

22 This action is likely to involve trade secrets, customer and pricing lists and
23 other valuable research, development, commercial, financial, technical and/or
24 proprietary information for which special protection from public disclosure and
25 from use for any purpose other than prosecution of this action is warranted. Such
26 confidential and proprietary materials and information consist of, among other
27 things, confidential business or financial information, information regarding
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1 confidential business practices, or other confidential research, development, or
2 commercial information (including information implicating privacy rights of third
3 parties), information otherwise generally unavailable to the public, or which may
4 be privileged or otherwise protected from disclosure under state or federal statutes,
5 court rules, case decisions, or common law. Accordingly, to expedite the flow of
6 information, to facilitate the prompt resolution of disputes over confidentiality of
7 discovery materials, to adequately protect information the parties are entitled to
8 keep confidential, to ensure that the parties are permitted reasonable necessary uses
9 of such material in preparation for and in the conduct of trial, to address their
10 handling at the end of the litigation, and serve the ends of justice, a protective order
11 for such information is justified in this matter. It is the intent of the parties that
12 information will not be designated as confidential for tactical reasons and that
13 nothing be so designated without a good faith belief that it has been maintained in
14 a confidential, non-public manner, and there is good cause why it should not be
15 part of the public record of this case.

16 2. DEFINITIONS

17 2.1 Action: this pending federal lawsuit.

18 2.2 Challenging Party: a Party or Non-Party that challenges the
19 designation of information or items under this Order.

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

24 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
25 their support staff).
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1 2.5 Designating Party: a Party or Non-Party that designates information
2 or items that it produces in disclosure or in the responses to discovery as
3 “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or foundation, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced
7 or generated in disclosures or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a
9 matter pertinent to the litigation who has been retained by a Party or its counsel to
10 serve as an expert witness or as a consultant in this Action.

11 2.8 House Counsel: attorneys who are employees of a party to this
12 Action. House Counsel does not include Outside Counsel of Record or any other
13 outside counsel.

14 2.9 Non-Party: any natural person, partnership, corporation, association,
15 or other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys who are not employees of a
17 party to this Action but are retained to represent or advise a party to this Action
18 and have appeared in this Action on behalf of that party or are affiliated with a law
19 firm which has appeared on behalf of that party, and includes support staff.

20 2.11 Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.13 Professional Vendors: persons or entities that provide litigation
26 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium)
28 and their employees and subcontractors.

1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

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

5 3. SCOPE

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

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

13 4. DURATION

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

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.
24 Each Party or Non-Party that designates information or items for protection under
25 this Order must take care to limit any such designation to specific material that
26 qualifies under the appropriate standards. The Designating Party must designate for
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1 protection only those parts of material, documents, items, or oral or written
2 communications that qualify so that other portions of the material, documents,
3 items, or communications for which protection is not warranted are not swept
4 unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized
5 designations are prohibited. Designations that are shown to be clearly unjustified
6 or that have been made for an improper purpose (e.g., to unnecessarily encumber
7 the case development process or to impose unnecessary expenses and burdens on
8 other parties) may expose the Designating Party to sanctions. If it comes to a
9 Designating Party's attention that information or items that it designated for
10 protection do not qualify for protection, that Designating Party must promptly
11 notify all other Parties that it is withdrawing the inapplicable designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in
13 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
14 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
15 under this Order must be clearly so designated before the material is disclosed or
16 produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic
19 documents, but excluding transcripts of depositions or other pretrial or trial
20 proceedings), that the Producing Party affix at a minimum, the legend
21 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
22 contains protected material. If only a portion or portions of the material on a page
23 qualifies for protection, the Producing Party also must clearly identify the
24 protected portion(s) (e.g., by making appropriate markings in the margins). A Party
25 or Non-Party that makes original documents available for inspection need not
26 designate them for protection until after the inspecting Party has indicated which
27 documents it would like copied and produced. During the inspection and before the
28 designation, all of the material made available for inspection shall be deemed

1 “CONFIDENTIAL.” After the inspecting Party has identified the documents it
2 wants copied and produced, the Producing Party must determine which documents,
3 or portions thereof, qualify for protection under this Order. Then, before producing
4 the specified documents, the Producing Party must affix the “CONFIDENTIAL
5 legend” to each page that contains Protected Material. If only a portion or portions
6 of the material on a page qualifies for protection, the Producing Party also must
7 clearly identify the protected portion(s) (e.g., by making appropriate markings in
8 the margins).

9 (b) for testimony given in deposition or other pretrial or trial proceedings,
10 that the Designating Party identify on the record, before the close of the deposition,
11 hearing, or other proceeding, all protected testimony. When it is impractical to
12 identify separately each portion of testimony that is entitled to protection and it
13 appears that substantial portions of the testimony may qualify for protection, the
14 Designating Party may invoke on the record (before the deposition, hearing, or
15 other proceeding is concluded) a right to have up to 21 days to identify the specific
16 portions of the testimony as to which protection is sought. Only those portions of
17 the testimony that are appropriately designated for protection within the 21 days
18 shall be covered by the provisions of this Stipulated Protective Order.

19 Alternatively, a Designating Party may specify, at the deposition or up to 21 days
20 afterwards if that period is properly invoked, that the entire transcript shall be
21 treated as “CONFIDENTIAL.”

22 Parties shall give the other parties notice if they reasonably expect a
23 deposition, hearing or other proceeding to include Protected Material so that the
24 other parties can ensure that only authorized individuals who have signed the
25 “Acknowledgement and Agreement to be Bound” (Exhibit A) are present at those
26 proceedings. The use of a document as an exhibit at a deposition shall not in any
27 way affect its designation as “CONFIDENTIAL.”

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1 Transcripts containing Protected Material shall have an obvious legend on
2 the title page that the transcript contains Protected Material. The Designating Party
3 shall inform the court reporter of these requirements. Any transcript that is
4 prepared before the expiration of a 21-day period for designation shall be treated
5 during that period as if it had been designated “CONFIDENTIAL” in its entirety
6 unless otherwise agreed. After the expiration of that period, the transcript shall be
7 treated only as actually designated.

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

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

20
21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time that is consistent with the Court’s
24 Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
26 resolution process under Local Rule 37.1 et seq.

27 6.3 The burden of persuasion in any such challenge proceeding shall be
28 on the Designating Party. Frivolous challenges, and those made for an improper

1 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
2 parties) may expose the Challenging Party to sanctions. Unless the Designating
3 Party has waived or withdrawn the confidentiality designation, all parties shall
4 continue to afford the material in question the level of protection to which it is
5 entitled under the Producing Party’s designation until the Court rules on the
6 challenge.

7
8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this
11 Action only for prosecuting, defending, or attempting to settle this Action. Such
12 Protected Material may be disclosed only to the categories of persons and under
13 the conditions described in this Order. When the Action has been terminated, a
14 Receiving Party must comply with the provisions of Section 13 below (FINAL
15 DISPOSITION).

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

19 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated
22 “CONFIDENTIAL” only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
24 as employees of said Outside Counsel of Record to whom it is reasonably
25 necessary to disclose the information for this Action and who have signed the
26 “Acknowledgement and Agreement to Be Bound” (Exhibit A);

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

1 who have signed the “Acknowledgement and Agreement to Be Bound” that is
2 attached hereto as Exhibit A;

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

6 (d) the court and its personnel;

7 (e) court reporters and their staff;

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

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

13 (h) witnesses to be deposed in this Action to whom disclosure is reasonably
14 necessary and who have signed the “Acknowledgment and Agreement to Be
15 Bound” (Exhibit A). Pages of transcribed deposition testimony or exhibits to
16 depositions that reveal Protected Material may be separately bound by the court
17 reporter and may not be disclosed to anyone except as permitted under this
18 Stipulated Protective Order; and

19 (i) any mediator or settlement officer, and their supporting personnel,
20 mutually agreed upon by any of the parties engaged in settlement discussions and
21 who have signed the “Acknowledge and Agreement to Be Bound” (Exhibit A).

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

25 If a Party is served with a subpoena or a court order issued in other litigation
26 that compels disclosure of any information or items designated in this Action as
27 “CONFIDENTIAL,” that Party must:
28

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

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

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

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

17
18 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

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

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

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

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

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

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

17
18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

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

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of
15 any person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in
19 this Stipulated Protective Order. Similarly, no Party waives any right to object on
20 any ground to use in evidence of any of the material covered by this Protective
21 Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Civil Local Rule 79-5. Within two (2) court
24 days of presenting a written application and a proposed order to the judge in
25 compliance with Civil Local Rule 79-5, if the Party that seeks to file under seal any
26 Protected Material is not the Designating Party, then the Designating Party shall
27 present its own application and proposed order to the judge, and the Designating
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1 Party shall bear the burden of satisfying the requirements of filing the Protected
2 Material under seal. Protected Material may only be filed under seal pursuant to a
3 court order authorizing the sealing of the specific Protected Material at issue. If a
4 Party's request to file Protected Material under seal is denied by the court, then the
5 Receiving Party may file the information in the public record unless otherwise
6 instructed by the court.

7
8 13. FINAL DISPOSITION

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

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

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5 IT IS SO ORDERED this 14th day of December, 2015.

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HON. ALICIA G. ROSENBERG
10 United States Magistrate Judge

Attachment A

ACKNOWLEDGEMENT 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 in the case of Reserve Media, Inc. v. Efficient Media, Inc., Civil Action
No. CV 15-05072 DDP (AGRx). 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: _____