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 9 R AND S WORLDWIDE, INC.

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

12 R AND S WORLDWIDE, INC., a
 13 California corporation,

14 Plaintiff

15 v.

16 RUE 21, INC., a Delaware corporation;
 17 MJCK CORPORATION, a California
 18 corporation dba NOBILITY; and DOES
 19 1-10, inclusive,

20 Defendants.

Case No.: 15-CV-09303-AB-KS

DISCOVERY MATTER

Hon. Karen L. Stevenson

**~~[PROPOSED]~~ PROTECTIVE
 ORDER**

**[Stipulation of Parties re Protective
 Order Concurrently Filed Herewith]**

21 **Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based**
 22 **on the parties' Amended Stipulation For protective Order ("Stipulation") filed**
 23 **on June 1, 2016, the terms of the protective order to which the parties have**
 24 **agreed are adopted as a protective order of this Court (which generally shall**
 25 **govern the pretrial phase of this action) except to the extent, as set forth below,**
 26 **that those terms have been modified by the Court's amendment of paragraphs**
 27 **1, 3, 6.2, 6.3, 7.2(e), 7.3(c), 8, 9, 10, 11, 12, and 13 of the Stipulation.**

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

18 2. DEFINITIONS:

19 2.1 Party: any party to this action, including all of its officers, directors,
20 employees, consultants, retained experts, and outside counsel (and their support
21 staff).

22 2.2 Disclosure or Discovery Material: all items or information, regardless of the
23 medium or manner generated, stored, or maintained (including, among other things,
24 testimony, transcripts, or tangible things), that are produced or generated in
25 disclosures or responses to discovery in this matter.

26 2.3 “Confidential” Information or Items: information (regardless of how
27 generated, stored, or maintained) or tangible things that qualify for protection under
28 standards developed under Fed. R. Civ. P. 26(c).

1 2.4 “Attorneys’ Eyes Only”: Discovery Material or such portion of such material
2 as consists of:

3 a) any commercially sensitive and/or confidential business or financial
4 information (including without limitation confidential nonpublic contracts,
5 profitability reports or estimates, sales reports, and sales margins) which could
6 reasonably create a competitive disadvantage if disclosed to the parties in this action;

7 b) any business or financial information that is confidential, proprietary, or
8 commercially sensitive to third parties who have had business dealings with parties to
9 this action; or

10 c) any other category of material or information hereinafter given Confidential
11 status by the Court, to the extent said material could reasonably create a competitive
12 disadvantage if disclosed to the parties in this action.

13 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
14 Producing Party.

15 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
16 Material in this action.

17 2.7 Designating Party: a Party or non-party that designates information or items
18 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
19 “ATTORNEYS’ EYES ONLY.”

20 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
21 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

22 2.9 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as
24 an expert witness or as a consultant in this action. This definition includes a
25 professional jury or trial consultant retained in connection with this litigation. The
26 expert witness or consultant may not be a past or a current employee of the Party
27 (including any affiliates or related entities) adverse to the Party engaging the expert
28 witness or consultant, or someone who at the time of retention is anticipated to
become an employee of the Party (including any affiliates or related entities) adverse

1 to the Party engaging the expert witness or consultant. Moreover, the expert witness
2 or consultant may not be a current employee or anticipated to become an employee of
3 any entity who is a competitor of the Party adverse to the Party engaging the expert
4 witness or consultant.

5 2.10 Professional Vendors: persons or entities that provide litigation support
6 services (e.g., photocopying; videotaping; translating; preparing exhibits or
7 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.)
8 and their employees and subcontractors.

9 3. SCOPE:

10 The protections conferred by this Stipulation and Order cover not only Protected
11 Material (as defined above), but also any information copied or extracted therefrom,
12 as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
13 conversations, or presentations by parties or counsel to or in litigation or in other
14 settings that might reveal Protected Material. **Any use of Protected Material at trial
15 shall be governed by the orders of the trial judge. This Order does not govern
16 the use of Protected Material at trial.**

17
18 4. DURATION

19 Even after the termination of this action, the confidentiality obligations imposed by
20 this Order shall remain in effect until a Designating Party agrees otherwise in writing
21 or a court order otherwise directs.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
24 Party or non-party that designates information or items for protection under this
25 Order must take care to limit any such designation to specific material that qualifies
26 under the appropriate standards. A Designating Party must take care to designate for
27 protection only those parts of material, documents, items, or oral or written
28

1 communications that qualify – so that other portions of the material, documents,
2 items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations
5 that are shown to be clearly unjustified, or that have been made for an improper
6 purpose (e.g., to unnecessarily encumber or retard the case development process, or
7 to impose unnecessary expenses and burdens on other parties), expose the
8 Designating Party to sanctions.

9 If it comes to a Party's or a non-party's attention that information or items that it
10 designated for protection do not qualify for protection at all, or do not qualify for the
11 level of protection initially asserted, that Party or non-party must promptly notify all
12 other parties that it is withdrawing the mistaken designation.

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

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (apart from transcripts of depositions or
19 other pretrial or trial proceedings), that the Producing Party affix the legend
20 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" at the top or bottom of each
21 page that contains protected material.

22 A Party or non-party that makes originals or copies of documents or materials
23 available for inspection need not designate them for protection until after the
24 inspecting Party has indicated which material it intends to copy. During the
25 inspection and before the designation, all of the material made available for
26 inspection shall be deemed "ATTORNEYS' EYES ONLY." After the inspecting
27 Party has identified the documents it wants copied and produced, the Producing Party
28 must designate, either in writing or on the record (at a deposition), which documents,
or portions thereof, qualify for protection under this Order. Then the Receiving Party

1 must affix the “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” legend at the
2 top of each copied page that contains Protected Material. If only a portion or portions
3 of the material on a page qualifies for protection, the Producing Party also must
4 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
5 margins) and must specify, for each portion, the level of protection being asserted
6 (either “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”).

7 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
8 the Party or non-party offering or sponsoring the testimony identify on the record or
9 within seven (7) calendar days of the deposition or proceeding, all protected
10 testimony, and further specify any portions of the testimony that qualify as
11 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” When it is impractical to
12 identify separately each portion of testimony that is entitled to protection, and when it
13 appears that substantial portions of the testimony may qualify for protection, the
14 Party or non-party that sponsors, offers, or gives the testimony may invoke on the
15 record (or within seven (7) calendar days of the deposition) a right to have up to 20
16 days to identify the specific portions of the testimony as to which protection is sought
17 and to specify the level of protection being asserted (“CONFIDENTIAL” or
18 “ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are
19 appropriately designated for protection within the 20 days shall be covered by the
20 provisions of this Stipulated Protective Order.

21 Transcript pages containing Protected Material must be separately bound by the court
22 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL”
23 or “ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-party offering
24 or sponsoring the witness or presenting the testimony.

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

1 practicable, shall identify the protected portions, specifying whether they qualify as
2 “CONFIDENTIAL” or as “ATTORNEYS’ EYES
3 ONLY.”

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
5 designate qualified information or items as “CONFIDENTIAL” or “ATTORNEYS’
6 EYES ONLY” does not, standing alone, waive the Designating Party’s right to secure
7 protection under this Order for such material. If material is appropriately designated
8 as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” after the material was
9 initially produced, the Receiving Party, on timely notification of the designation,
10 must make reasonable efforts to assure that the material is treated in accordance with
11 the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
14 confidentiality designation is necessary to avoid foreseeable substantial unfairness,
15 unnecessary economic burdens, or a later significant disruption or delay of the
16 litigation, a Party does not waive its right to challenge a confidentiality designation
17 by electing not to mount a challenge promptly after the original designation is
18 disclosed.

19 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
20 Party’s confidentiality designation must do so **in accordance with Local Rule 37.1**
21 **et seq.**, in good faith and must begin the process by conferring with counsel for the
22 Designating Party in writing. In conferring, the challenging Party must explain the
23 basis for its belief that the confidentiality designation was not proper and must give
24 the Designating Party an opportunity to review the designated material, to reconsider
25 the circumstances, and, if no change in designation is offered, to explain the basis for
26 the chosen designation. A challenging Party may proceed to the next stage of the
27 challenge process only if it has engaged in this meet-and-confer process first.

28 6.3 Court Intervention. A Party that elects to press a challenge to a

1 confidentiality designation after considering the justification offered by the
2 Designating Party may file and serve a motion that identifies the challenged material
3 and sets forth in detail the basis for the challenge. Each such motion must be
4 accompanied by a competent declaration that affirms that the movant has complied
5 with the meet-and-confer requirements imposed in the preceding paragraph and that
6 sets forth with specificity the justification for the confidentiality designation that was
7 given by the Designating Party in the meet-and-confer dialogue. The parties agree
8 that a confidentiality designation shall not create a presumption in favor of such
9 confidentiality designation, and that the Court shall decide the issue as such. **The**
10 **burden of persuasion in any such challenge proceeding shall be on the**
11 **Designating Party. Frivolous challenges, and those made for an improper**
12 **purpose (e.g., to harass or impose unnecessary expenses and burdens on other**
13 **parties) may expose the Challenging Party to sanctions.**

14 Until the Court rules on the challenge, all parties shall continue to afford the material
15 in question the level of protection to which it is entitled under the Producing Party's
16 designation.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is
19 disclosed or produced by another Party or by a non-party in connection with this case
20 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
21 Material may be disclosed only to the categories of persons and under the conditions
22 described in this Order. When the litigation has been terminated, a Receiving Party
23 must comply with the provisions of section 11, below (FINAL DISPOSITION).
24 Protected Material must be stored and maintained by a Receiving Party at a location
25 and in a secure manner that ensures that access is limited to the persons authorized
26 under this Order.

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

5 (a) the Receiving Party’s outside counsel, as well as employees of said outside
6 counsel to whom it is reasonably necessary to disclose the information for this
7 litigation;

8 (b) Board members, officers and directors of the Receiving Party;

9 (c) Other employees of the Receiving Party to whom disclosure is reasonably
10 necessary for this litigation and who are bound by internal confidentiality obligations
11 as part of their employment or who have signed the “Acknowledgment and
12 Agreement to Be Bound” (Exhibit A);

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

16 (e) the Court personnel ~~assigned to this litigation~~;

17 (f) court reporters, their staffs, and professional vendors to whom disclosure is
18 reasonably necessary for this litigation and who have signed the “Acknowledgment
19 and Agreement to Be Bound” (Exhibit A);

20 (g) during their depositions, witnesses in the action to whom disclosure is
21 reasonably necessary and who have signed the “Acknowledgment and Agreement to
22 Be Bound” (Exhibit A). Pages of transcribed deposition testimony or exhibits to
23 depositions that reveal Protected Material must be separately bound by the court
24 reporter and may not be disclosed to anyone except as permitted under this Stipulated
25 Protective Order; and

26 (h) the author and recipients of the document or the original source of the
27 information.

28 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items. Unless
otherwise ordered by the Court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated “ATTORNEYS’
2 EYES ONLY” only to:

3 (a) the Receiving Party’s outside counsel, as well as employees of said outside
4 counsel to whom it is reasonably necessary to disclose the information for this
5 litigation;

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

9 (c) the Court personnel ~~assigned to this litigation~~;

10 (d) court reporters, their staffs, and professional vendors to whom disclosure is
11 reasonably necessary for this litigation and who have signed the “Acknowledgment
12 and Agreement to Be Bound” (Exhibit A); and

13 (e) the author and recipients of the document or the original source of the
14 information.

15 7.4 Nothing in this Order shall be read to prohibit the use of otherwise Protected
16 Material to prosecute claims against additional potential defendants identified in said
17 materials.

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN 19 OTHER LITIGATION

20 If a Receiving Party is served with a subpoena or an order issued in other litigation
21 that would compel disclosure of any Discovery Material, the Receiving Party must so
22 notify the Designating Party, in writing immediately and in no event more than five
23 business days after receiving the subpoena or order. Such notification must include a
24 copy of the subpoena or court order. The Receiving Party also must immediately
25 inform in writing the Party who caused the subpoena or order to issue in the other
26 litigation that some or all of the material covered by the subpoena or order is the
27 subject of this Protective Order. In addition, the Receiving Party must deliver a copy
28 of this Stipulated Protective Order promptly to the Party in the other action that

1 caused the subpoena or order to issue, **and cooperate with respect to all reasonable**
2 **procedures sought to be pursued by the Party whose Protected Material may be**
3 **affected.**

4 The purpose of imposing these duties is to alert the interested parties to the existence
5 of this Protective Order and to afford the Designating Party in this case an
6 opportunity to try to protect its confidentiality interests in the court from which the
7 subpoena or order issued. The Designating Party shall bear the burdens and the
8 expenses of seeking protection in that court of its confidential material – and nothing
9 in these provisions should be construed as authorizing or encouraging a Receiving
10 Party in this action to disobey a lawful directive from another court.

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

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

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

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

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

1 **(3) make the information requested available for inspection by the Non-Party,**
2 **if requested.**

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

12 **910. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

21 **101. FILING PROTECTED MATERIAL**

22 ~~Without written permission from the Designating Party, or Any Party wishing to file~~
23 **Protected Material under seal may make an application for a court order**
24 ~~secured after appropriate notice to all interested persons and after following~~
25 **authorizing the sealing of the specific Protected Material at issue under the**
26 **procedures provided for in Local Rule 79-5.1 and 79-5.2. a Party may not file in the**
27 ~~public record in this action any Protected Material. If a Party’s request to file~~

1 **Protected Material under seal is denied by the court, then the Receiving Party**
2 **may file the information in the public record unless otherwise instructed by the**
3 **court. Nothing in this provision, however, prohibits a Designating Party from**
4 **giving its written permission to allow the filing of any Protected Material in the**
5 **public record in this action.**

6 **142. FINAL DISPOSITION**

7 Unless otherwise ordered or agreed to in writing by the Producing Party, within 60
8 days after the final termination of this action, each Receiving Party must either return
9 all Protected Material to the Producing Party or **destroy and** certify the destruction of
10 said material. As used in this subdivision, “all Protected Material” includes all copies,
11 abstracts, compilations, summaries or any other form of reproducing or capturing any
12 of the Protected Material. Whether the Protected Material is returned or destroyed,
13 the Receiving Party must submit a written certification to the Producing Party (and, if
14 not the same person or entity, to the Designating Party) by the 60-day deadline that
15 identifies (by category, where appropriate) all the Protected Material that was
16 returned or destroyed and that affirms that the Receiving Party has not retained any
17 copies, abstracts, compilations, summaries or other forms of reproducing or capturing
18 any of the Protected Material.

19 Notwithstanding this provision, counsel are entitled to retain an archival copy of all
20 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
21 work product, even if such materials contain Protected Material. Any such archival
22 copies that contain or constitute Protected Material remain subject to this Protective
23 Order as set forth in Section 4 (DURATION), above.

24 **123. MISCELLANEOUS**

25 **123.1 Right to Further Relief.** Nothing in this Order abridges the right of any
26 person to seek its modification in the future.

1 123.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
2 Order no Party waives any right it otherwise would have to object to disclosing or
3 producing any information or item on any ground not addressed in this Stipulated
4 Protective Order. Similarly, no Party waives any right to object on any ground to use
5 in evidence of any of the material covered by this Protective Order.

6 123.3 Inadvertent Production of Privileged Documents. If a Party, through
7 inadvertence, produces any document or information that it believes is immune from
8 discovery pursuant to an attorney-client privilege, the work product privilege, or any
9 other privilege, such production shall not be deemed a waiver of any privilege, and
10 the Producing Party may give written notice to the Receiving Party that the document
11 or information produced is deemed privileged and that return of the document or
12 information is requested. Upon receipt of such notice, **in conformity with Federal**
13 **Rule of Civil Procedure 26(b)(5)(B)**, the Receiving Party shall immediately gather
14 the original and all copies of the document or information of which the Receiving
15 Party is aware, in addition to any abstracts, summaries, or descriptions thereof, and
16 shall immediately return the original and all such copies to the Producing Party.
17 Nothing stated herein shall preclude a Party from challenging an assertion by the
18 other Party of privilege or confidentiality.

19 IT IS SO ORDERED.

20 Dated: June 2, 2016



21
22 HON. KAREN L. STEVENSON
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print full name], of
_____ [print 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 *R and S Worldwide, Inc. v. Rue 21, Inc.,
et al.*, USDC Case No. 15-CV-09303-AB-KS, I agree to comply with and to be
bound by all of 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 full name] of
_____ [print 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: _____