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Attorneys for Plaintiff,
MICHAEL WALIS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

MICHAEL WALIS, an individual,
v.
CHRISTIAN FERNANDEZ, AN
INDIVIDUAL; JONATHAN KATZ,
AN INDIVIDUAL; RICHARD
WASERSTEIN, AN INDIVIDUAL;
CLAUDIO FERNANDEZ, AN
INDIVIDUAL; FACILITY PRO, INC.,
A FLORIDA CORPORATION;
MAINTENANCE PRO SERVICES LA,
INC., A CALIFORNIA
CORPORATION; ALTRUISTIC
STAFFING CORP, INC., A FLORIDA
CORPORATION AND DOES 3-10
Defendants.

Case No: 2:16-cv-00467-RGK-
JEM

~~[PROPOSED]~~ PROTECTIVE
ORDER

1 Per court order, the parties have met and conferred and, pursuant to Fed. R.
2 Civ. P. 26(c) have agreed to the following protective order:

3 GENERAL TERMS

4 Whereas on or about October 25, 2016, Plaintiff, Michael Walis,
5 subpoenaed third-party entities for documents relevant to instant lawsuit. These
6 entities included: Chase Bank, USA, N.A.; JPMorgan Chase Bank; AMEX; Wal-
7 Mart Stores Incorporated; Facility Pro, Inc.; Altruistic Staffing Corp.

8 Whereas on November 27, 2016 Defendants' (Christian Fernandez, Jonathan
9 Katz, Richard Waserstein, and Claudio Fernandez) filed a motion to quash all the
10 subpoenas served by Plaintiff on October 26, 2016 (Dkt. 54).

11 Whereas on November 28, 2016 Plaintiff filed an opposition to Defendants'
12 motion to quash (Dkt. 56).

13 Whereas on December 21, 2016, the Court issued an order on Defendants'
14 motion to quash (Dkt. 73), generally denying Defendant' motion to quash.

15 Whereas on January 4, 2017 Defendants' (Christian Fernandez, Jonathan
16 Katz, Richard Waserstein, and Claudio Fernandez) filed a motion for
17 reconsideration on motion to quash ruling (Dkt. 79).

18 Whereas on February 7, 2017, the Court issued an order on Defendants'
19 motion for reconsideration (Dkt. 118), denying Defendant' motion.

20
21 1. PURPOSES AND LIMITATIONS

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

9 2. DEFINITIONS

10 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
11 information or items under this Order.

12 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it
13 is generated, stored or maintained) or tangible things that qualify for protection
14 under Federal Rule of Civil Procedure 26(c).

15 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
16 (as well as their support staff).

17 2.4 Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 "CONFIDENTIAL."

20 2.5 Disclosure or Discovery Material: all items or information, regardless of the
21 medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced
23 or generated in disclosures or responses to discovery in this matter.

24 2.6 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve
26 as an expert witness or as a consultant in this action.

1 2.7 House Counsel: attorneys who are employees of a party to this action.

2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.8 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.
6

7 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
8 this action but are retained to represent or advise a party to this action and have
9 appeared in this action on behalf of that party or are affiliated with a law firm
10 which has appeared on behalf of that party.

11 2.10 Party: any party to this action, including all of its officers, directors,
12 employees, consultants, retained experts, and Outside Counsel of Record (and their
13 support staffs).
14

15 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this action.

17 2.12 Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying, videotaping, translating, preparing exhibits or
19 demonstrations, and organizing, storing, or retrieving data in any form or medium)
20 and their employees and subcontractors.
21

22 2.13 Protected Material: any Disclosure or Discovery Material that is designated
23 as "CONFIDENTIAL."
24

25 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
26 from a Producing Party.

27 3. SCOPE
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1 The protections conferred by this Stipulation and Order cover not only
2 Protected Material (as defined above), but also (1) any information copied or
3 extracted from Protected Material; (2) all copies, excerpts, summaries, or
4 compilations of Protected Material. However, the protections conferred by this
5 Stipulation and Order do not cover the following information: (a) any information
6 that is in the public domain at the time of disclosure to a Receiving Party or
7 becomes part of the public domain after its disclosure to a Receiving Party as a
8 result of publication not involving a violation of this Order, including becoming
9 part of the public record through trial or otherwise; and (b) any information known
10 to the Receiving Party prior to the disclosure or obtained by the Receiving Party
11 after the disclosure from a source who obtained the information lawfully and under
12 no obligation of confidentiality to the Designating Party.

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. 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
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.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations
6 that are shown to be clearly unjustified or that have been made for an improper
7 purpose (e.g., to unnecessarily encumber or retard the case development process or
8 to impose unnecessary expenses and burdens on other parties) expose the
9 Designating Party to sanctions. If it comes to a Designating Party's attention that
10 information or items that it designated for protection do not qualify for protection
11 that Designating Party must promptly notify all other Parties that it is withdrawing
12 the mistaken designation.

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

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic
21 documents, but excluding transcripts of depositions or other pretrial or trial
22 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to
23 each page that contains protected material. If only a portion or portions of the
24 material on a page qualifies for protection, the Producing Party also must clearly
25 identify the protected portion(s) (e.g., by making appropriate markings in the
26 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
3 has indicated which material it would like copied and produced. During the
4 inspection and before the designation, all of the material made available for
5 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
6 identified the documents it wants copied and produced, the Producing Party must
7 determine which documents, or portions thereof, qualify for protection under this
8 Order. Then, before producing the specified documents, the Producing Party must
9 affix the "CONFIDENTIAL" legend to each page that contains Protected Material.
10 If only a portion or portions of the material on a page qualifies for protection, the
11 Producing Party also must clearly identify the protected portion(s) (e.g., by making
12 appropriate markings in the margins).

13 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
14 the Designating Party identify on the record, before the close of the deposition,
15 hearing, or other proceeding, all protected testimony.

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

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

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
5 of confidentiality at any time. Unless a prompt challenge to a Designating Party's
6 confidentiality designation is necessary to avoid foreseeable, substantial
7 unfairness, unnecessary economic burdens, or a significant disruption or delay of
8 the litigation, a Party does not waive its right to challenge a confidentiality
9 designation by electing not to mount a challenge promptly after the original
10 designation is disclosed.

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

1 7.1 Basic Principles. A Receiving Party may use Protected Material that is
2 disclosed or produced by another Party or by a Non-Party in connection with this
3 case only for prosecuting, defending, or attempting to settle this litigation. Such
4 Protected Material may be disclosed only to the categories of persons and under
5 the conditions described in this Order. When the litigation has been terminated, a
6 Receiving Party must comply with the provisions of section 13 below (FINAL
7 DISPOSITION).

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

11 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
12 ordered by the court or permitted in writing by the Designating Party, a Receiving
13 Party may disclose any information or item designated "CONFIDENTIAL" only
14 to:

15 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
16 employees of said Outside Counsel of Record to whom it is reasonably necessary
17 to disclose the information for this litigation and who have signed the
18 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
19 A;

20 (b) the officers, directors, and employees (including House Counsel) of the
21 Receiving Party to whom disclosure is reasonably necessary for this litigation and
22 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
24 reasonably necessary for this litigation and who have signed the "Acknowledgment
25 and Agreement to Be Bound" (Exhibit A);

1 (d) the court and its personnel;

2 (e) court reporters and their staff, professional jury or trial consultants, mock
3 jurors, and Professional Vendors to whom disclosure is reasonably necessary for
4 this litigation and who have signed the "Acknowledgment and Agreement to Be
5 Bound" (Exhibit A);
6

7 (f) during their depositions, witnesses in the action to whom disclosure is
8 reasonably necessary and who have signed the "Acknowledgment and Agreement
9 to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or
10 ordered by the court. Pages of transcribed deposition testimony or exhibits to
11 depositions that reveal Protected Material must be separately bound by the court
12 reporter and may not be disclosed to anyone except as permitted under this
13 Stipulated Protective Order.

14 (g) the author or recipient of a document containing the information or a custodian
15 or other person who otherwise possessed or knew the information.
16

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

19 If a Party is served with a subpoena or a court order issued in other litigation that
20 compels disclosure of any information or items designated in this action as
21 "CONFIDENTIAL," that Party must:

22
23 (a) promptly notify in writing the Designating Party. Such notification shall
24 include a copy of the subpoena or court order;

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

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

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

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

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

22 (b) In the event that a Party is required, by a valid discovery request, to produce a
23 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:
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- 1 (1) promptly notify in writing the Requesting Party and the Non-Party that some
2 or all of the information requested is subject to a confidentiality agreement
3 with a Non-Party;
- 4 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order
5 in this litigation, the relevant discovery request(s), and a reasonably specific
6 description of the information requested; and
- 7 (3) make the information requested available for inspection by the Non-Party.

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

17 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

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

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

14 12. MISCELLANEOUS

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

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

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

9 13. FINAL DISPOSITION

10 Within 60 days after the final disposition of this action, as defined in paragraph 4,
11 each 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
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1 constitute Protected Material remain subject to this Protective Order as set forth in
2 Section 4 (DURATION).

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
4

5 DATED: February 15, 2017

6 /s/ Kaveh Navab
7 Attorneys for Plaintiff
8

9 DATED: February 15, 2017

10 /s/ Christopher D. Nissen
11 Attorneys for Defendant
12

13 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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15 DATED: 2/15/2017
16 John E. McDermott
17 United States District/Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District District of
7 California on [date] in the case of _____ [insert formal name of the case
8 and the number and initials assigned to it by the court]. I agree to comply with and
9 to be bound by all the terms of this Stipulated Protective Order and I understand
10 and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in
12 any manner any information or item that is subject to this Stipulated Protective
13 Order to any person or entity except in strict compliance with the provisions of this
14 Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Northern District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action.

19 I hereby appoint _____ [print or type full name] of
20 _____ [print or type full address and
21 telephone number] as my California agent for service of process in connection with
22 this action or any proceedings related to enforcement of this Stipulated Protective
23 Order.

24
25 Date: _____

26 City and State where sworn and signed: _____

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1 Printed name: _____

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3 Signature: _____

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