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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**
16

17 IV SOLUTIONS, INC., a California
18 corporation,

19 Plaintiff,

20 v.

21 COBHAM MANAGEMENT
22 SERVICES, INC., a Delaware
corporation,

23 Defendant.
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Case No. 2:16-cv-06462 FMO (PJWx)

Honorable Fernando M. Olguin

**STIPULATED PROTECTIVE
ORDER**

Complaint Served: Sept. 19, 2016
Trial Date: March 13, 2018

1 1. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS

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

16 1.2 GOOD CAUSE STATEMENT

17 This case involves allegations by Plaintiff IV Solutions, Inc. (“IVS”)
18 that defendant Cobham Management Services, Inc. (“Cobham”) failed to pay IVS
19 its full billed charges for medical services provided by IVS to Cobham’s member
20 “G.D.” (whose identity is protected herein from disclosure). Discovery in this case
21 will naturally contain information regarding G.D., G.D.’s medical condition, and
22 medical services provided by IVS to G.D., all of which is protected by the Health
23 Insurance Portability and Accountability Act (“HIPAA”). The parties must ensure
24 this information is kept confidential. Discovery in this case is also likely to seek
25 production of information regarding the parties’ trade secret, privileged, proprietary
26 or confidential information, including, without limitation, the sources of certain
27 drugs provided to G.D. for his treatment and the prices paid for such drugs.

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1 2. DEFINITIONS

2 2.1 Action: IV Solutions, Inc. v. Cobham Management Services,
3 Inc., case number 2:16-cv-06462 FMO (PJWx).

4 2.2 Challenging Party: a Party or Non-Party that challenges the
5 designation of information or items under this Order.

6 2.3 “CONFIDENTIAL” Information or Items: information
7 (regardless of how it is generated, stored or maintained) or tangible things that
8 qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified
9 above in the Good Cause Statement.

10 2.4 “HIGHLY CONFIDENTIAL” Information or Items: any
11 Confidential information that any Party determines in good faith is particularly
12 sensitive, confidential, personal, and/or private, and/or the disclosure of which to
13 persons other than those set forth in Section 7.3 below is reasonably likely to cause
14 serious competitive harm or other harm.

15 2.5 Counsel: Outside Counsel of Record and House Counsel (as
16 well as their support staff).

17 2.6 Designating Party: a Party or Non-Party that designates
18 information or items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

20 2.7 Disclosure or Discovery Material: all items or information,
21 regardless of the medium or manner in which it is generated, stored, or maintained
22 (including, among other things, testimony, transcripts, and tangible things), that are
23 produced or generated in disclosures or responses to discovery in this matter.

24 2.8 Expert: a person with specialized knowledge or experience in a
25 matter pertinent to the litigation who has been retained by a Party or its counsel to
26 serve as an expert witness or as a consultant in this Action.

27 2.9 House Counsel: attorneys who are employees of a party to this
28 Action. House Counsel does not include Outside Counsel of Record or any other

1 outside counsel.

2 2.10 Non-Party: any natural person, partnership, corporation,
3 association, or other legal entity not named as a Party to this action.

4 2.11 Outside Counsel of Record: attorneys who are not employees of
5 a party to this Action but are retained to represent or advise a party to this Action
6 and have appeared in this Action on behalf of that party or are affiliated with a law
7 firm which has appeared on behalf of that party, and includes support staff.

8 2.12 Party: any party to this Action, including all of its officers,
9 directors, employees, consultants, retained experts, and Outside Counsel of Record
10 (and their support staffs).

11 2.13 Producing Party: a Party or Non-Party that produces Disclosure
12 or Discovery Material in this Action.

13 2.14 Professional Vendors: persons or entities that provide litigation
14 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)
16 and their employees and subcontractors.

17 2.15 Protected Material: any Disclosure or Discovery Material that is
18 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

19 2.16 Receiving Party: a Party that receives Disclosure or Discovery
20 Material from a Producing Party.

21 3. SCOPE

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

27 Any use of Protected Material at trial will be governed by the orders of the
28 trial judge. This Order does not govern the use of Protected Material at trial.

1 4. DURATION

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

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in
28 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise

1 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
2 under this Order must be clearly so designated before the material is disclosed or
3 produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic
6 documents, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), that the Producing Party affix at a minimum, the legend
8 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”) or “HIGHLY
9 CONFIDENTIAL” (hereinafter “HIGHLY CONFIDENTIAL” legend), to each
10 page that contains protected material. If only a portion or portions of the material on
11 a page qualifies for protection, the Producing Party also must clearly identify the
12 protected portion(s) (e.g., by making appropriate markings in the margins).

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

26 (b) for testimony given in depositions that the Designating Party identify
27 the Disclosure or Discovery Material on the record, before the close of the
28 deposition all protected testimony.

1 (c) for information produced in some form other than documentary and
2 for any other tangible items, that the Producing Party affix in a prominent place on
3 the exterior of the container or containers in which the information is stored the
4 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” If only a portion or
5 portions of the information warrants protection, the Producing Party, to the extent
6 practicable, will identify the protected portion(s).

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

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time that is consistent with the Court’s
16 Scheduling Order.

17 6.2 Meet and Confer. The Challenging Party will initiate the dispute
18 resolution process (and, if necessary, file a discovery motion) under Local Rule
19 37.1 et seq.

20 6.3 The burden of persuasion in any such challenge proceeding will
21 be on the Designating Party. Frivolous challenges, and those made for an improper
22 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
23 parties) may expose the Challenging Party to sanctions. Unless the Designating
24 Party has waived or withdrawn the confidentiality designation, all parties will
25 continue to afford the material in question the level of protection to which it is
26 entitled under the Producing Party’s designation until the Court rules on the
27 challenge.

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1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

16 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
17 well as employees of said Outside Counsel of Record to whom it is reasonably
18 necessary to disclose the information for this Action;

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

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

24 (d) the Court and its personnel;

25 (e) court reporters and their staff;

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

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

3 (h) during their depositions, witnesses, and attorneys for witnesses, in the
4 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
5 requests that the witness sign the form attached as Exhibit A hereto; and (2) they
6 will not be permitted to keep any confidential information unless they sign the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
8 agreed by the Designating Party or ordered by the court. Pages of transcribed
9 deposition testimony or exhibits to depositions that reveal Protected Material may
10 be separately bound by the court reporter and may not be disclosed to anyone
11 except as permitted under this Stipulated Protective Order; and

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

14 7.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items.
15 Unless otherwise ordered by the court or permitted in writing by the Designating
16 Party, a Receiving Party may disclose any information or item designated
17 “HIGHLY CONFIDENTIAL” only to:

18 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
19 well as employees of said Outside Counsel of Record to whom it is reasonably
20 necessary to disclose the information for this Action;

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

24 (c) the Court and its personnel;

25 (d) court reporters and their staff;

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

1 (f) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information;

3 (g) during their depositions, witnesses, and attorneys for witnesses, in the
4 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
5 requests that the witness sign the form attached as Exhibit A hereto; and (2) they
6 will not be permitted to keep any confidential information unless they sign the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
8 agreed by the Designating Party or ordered by the court. Pages of transcribed
9 deposition testimony or exhibits to depositions that reveal Protected Material may
10 be separately bound by the court reporter and may not be disclosed to anyone
11 except as permitted under this Stipulated Protective Order;

12 (h) any mediator or settlement officer, and their supporting personnel,
13 mutually agreed upon by any of the parties engaged in settlement discussions; AND

14 (i) designated in-house counsel of the Receiving Party (including in-
15 house counsel’s support staff), provided that (1) the designated-in house counsel
16 has no involvement in competitive decision-making, (2) disclosure to the
17 designated in-house counsel is reasonably necessary for this litigation, (3) the
18 designated in-house counsel has signed the “Acknowledgement And Agreement To
19 Be Bound” (Exhibit A), and (4) the designated in-house counsel is a licensed
20 attorney admitted to practice law in at least one state of the United States or the
21 District of Columbia (or, in the case of in-house counsel’s support staff, that the
22 support staff is subject to the direct supervision of a licensed attorney, and the
23 licensed attorney is not Outside Counsel of Record).

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

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

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

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

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

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

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

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

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

1 confidential information, then the Party will:

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

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

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

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

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

3 (a) 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.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the Court in the future.

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

18 12.3 Filing Protected Material. A Party that seeks to file under seal any
19 Protected Material must comply with Civil Local Rule 79-5. Protected Material
20 may only be filed under seal pursuant to a court order authorizing the sealing of the
21 specific Protected Material at issue. If a Party's request to file Protected Material
22 under seal is denied by the court, then the Receiving Party may file the information
23 in the public record unless otherwise instructed by the court.

24 13. FINAL DISPOSITION

25 After the final disposition of this Action, as defined in paragraph 4, within 60
26 days of a written request by the Designating Party, each Receiving Party must
27 return all Protected Material to the Producing Party or destroy such material. As
28 used in this subdivision, "all Protected Material" includes all copies, abstracts,

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

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14. WILLFUL VIOLATIONS

Any willful violation of this Order may be punished by civil or criminal contempt proceedings, financial or evidentiary sanctions, reference to disciplinary authorities, or other appropriate action at the discretion of the Court.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: July 28, 2017

WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

By /s/ Eric Levinard
Marc E. Rohatiner
Eric Levinard
Attorneys for Plaintiff IV Solutions, Inc.


DATED: July 28, 2017

CROWELL & MORING LLP

By /s/ Andrew Holmer
Jennifer S. Romano
Daniel M. Glassman
Andrew Holmer
Attorneys for Defendant Cobham
Management Services, Inc.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED

DATED: July 31, 2017



HON. PATRICK J. WALSH
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ **[full name]**, of _____
5 **[full address]**, declare under penalty of perjury that I have read in its entirety and
6 understand the Stipulated Protective Order that was issued by the United States
7 District Court for the Central District of California on [_____] in the case of IV
8 Solutions, Inc. v. Cobham Management Services, Inc., case number 2:16-cv-06462
9 FMO (PJWx). I agree to comply with and to be bound by all the terms of this
10 Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item
13 that is subject to this Stipulated Protective Order to any person or entity except in
14 strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Central 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. I hereby appoint _____ **[full**
19 **name]** of _____ **[full address and**
20 **telephone number]** as my California agent for service of process in connection
21 with this action or any proceedings related to enforcement of this Stipulated
22 Protective Order.

23 Date: _____

24 City and State where signed: _____

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26 Printed name: _____

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28 Signature: _____

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Dated: July 28, 2017

/s/ *Andrew Holmer*

*Attorneys for Defendant
Cobham Management Services, Inc.*