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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SIDNEY BLUM,

Plaintiff,

v.

STOUT RISIUS ROSS, INC. a
Michigan corporation; DOES I through
X, inclusive,

Defendants.

Case No. 2:16-cv-07382-AB-PLA

**ORDER REGARDING THE
PARTIES' STIPULATED
PROTECTIVE ORDER**

Hon. André Birotte Jr.

Removal Date: September 30, 2016
Trial Date: March 6, 2018

1 **ORDER**

2 Upon consideration of the Parties’ Stipulated Protective Order and good
3 cause appearing therefore, the Court orders the following:

4 **1. PURPOSES AND LIMITATIONS**

5 Discovery in this action involved the production of confidential, proprietary,
6 and private information for which special protection from public disclosure and
7 from use for any purpose other than prosecuting this litigation is warranted.
8 Accordingly, the parties hereby stipulate to and petition the Court to enter the
9 following Stipulated Protective Order. The parties acknowledge that this Order
10 does not confer blanket protections on all disclosures or responses to discovery and
11 that the protection it affords from public disclosure and use extends only to the
12 limited information or items that are entitled to confidential treatment under the
13 applicable legal principles. The parties further acknowledge, as set forth in Section
14 13.3, below, that this Stipulated Protective Order does not entitle them to file
15 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
16 that must be followed and the standards that will be applied when a party seeks
17 permission from the court to file material under seal.

18 **2. GOOD CAUSE STATEMENT**

19 This action indirectly involves confidential and proprietary information
20 relating to Defendant’s business and its clients and customers for which special
21 protection from public disclosure and from use for any purpose other than
22 prosecution of this action is warranted. Such confidential and proprietary materials
23 and information consist of, among other things, confidential business or financial
24 information, information regarding confidential business practices, the names of
25 customers and/or clients, the billing records relating to such clients and/or
26 customers, confidential employee information and/or information implicating
27 privacy rights of third parties, and information otherwise generally unavailable to
28 the public, or which may be privileged or otherwise protected from disclosure under

1 state or federal statutes, court rules, case decisions, or common law. Accordingly,
2 to adequately protect information the parties are entitled to keep confidential, to
3 ensure that the parties are permitted reasonable necessary uses of such material in
4 preparation for and in the conduct of trial, to address their handling at the end of the
5 litigation, and serve the ends of justice, a protective order for such information is
6 justified in this matter. It is the intent of the parties that information will not be
7 designated as confidential for tactical reasons and that nothing be so designated
8 without a good faith belief that it has been maintained in a confidential, non-public
9 manner, and there is good cause why it should not be part of the public record of
10 this case.

11 **3. DEFINITIONS**

12 3.1 Action: *Blum v. Stout Risius Ross, Inc.*, Case No. 2:16-cv-07382-AB-
13 PLA.

14 3.2 Challenging Party: a Party or Non-Party that challenges the
15 designation of information or items under this Order.

16 3.3 “CONFIDENTIAL” Information or Items: information (regardless of
17 how it is generated, stored or maintained) or tangible things that qualify for
18 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
19 the Good Cause Statement.

20 3.4 Counsel: Outside Counsel of Record and House Counsel (as well as
21 their support staff).

22 3.5 Designating Party: a Party or Non-Party that designates information or
23 items that it produces in disclosures or in responses to discovery as
24 “CONFIDENTIAL.”

25 3.6 Disclosure or Discovery Material: all items or information, regardless
26 of the medium or manner in which it is generated, stored, or maintained (including,
27 among other things, testimony, transcripts, and tangible things), that are produced
28 or generated in disclosures or responses to discovery in this matter.

1 3.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this Action.

4 3.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 3.9 Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 3.10 Outside Counsel of Record: attorneys who are not employees of a
10 party to this Action but are retained to represent or advise a party to this Action and
11 have appeared in this Action on behalf of that party or are affiliated with a law firm
12 that has appeared on behalf of that party, including support staff.

13 3.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 3.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 3.13 Professional Vendors: persons or entities that provide litigation
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
21 and their employees and subcontractors.

22 3.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL.”

24 3.15 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 **4. SCOPE**

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
2 compilations of Protected Material; and (3) any testimony, conversations, or
3 presentations by Parties or their Counsel that might reveal Protected Material.

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

6 **5. DURATION**

7 Once a case proceeds to trial, all of the court-filed information to be
8 introduced that was previously designated as confidential or maintained pursuant to
9 this protective order becomes public and will be presumptively available to all
10 members of the public, including the press, unless compelling reasons supported by
11 specific factual findings to proceed otherwise are made to the trial judge in advance
12 of the trial. *See, Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-
13 81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents
14 produced in discovery from “compelling reasons” standard when merits-related
15 documents are part of court record). Accordingly, the terms of this protective order
16 do not extend beyond the commencement of the trial.

17 **6. DESIGNATING PROTECTED MATERIAL**

18 **6.1 Exercise of Restraint and Care in Designating Material for Protection.**

19 Each Party or Non-Party that designates information or items for protection under
20 this Order must take care to limit any such designation to specific material that
21 qualifies under the appropriate standards. The Designating Party must designate for
22 protection only those parts of material, documents, items, or oral or written
23 communications that qualify so that other portions of the material, documents,
24 items, or communications for which protection is not warranted are not swept
25 unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations
27 that are shown to be clearly unjustified or that have been made for an improper
28 purpose (e.g., to unnecessarily encumber the case development process or to

1 impose unnecessary expenses and burdens on other parties) may expose the
2 Designating Party to sanctions.

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

6 6.2 Manner and Timing of Designations. Documents previously produced
7 and retroactively designated as confidential qualify for protection under this Order.

8 Designation in conformity with this Order requires:

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

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

1 (b) for testimony given in depositions that the Designating Party identify
2 the Disclosure or Discovery Material on the record, before the close of the
3 deposition.

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

10 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive
12 the Designating Party's right to secure protection under this Order for such
13 material. Upon timely correction of a designation, the Receiving Party must make
14 reasonable efforts to assure that the material is treated in accordance with the
15 provisions of this Order.

16 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 7.1 Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court's
19 Scheduling Order.

20 7.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37.1, et seq. Any discovery motion must
22 strictly comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

23 7.3 Burden. The burden of persuasion in any such challenge proceeding
24 shall be on the Designating Party. Frivolous challenges, and those made for an
25 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
26 other parties) may expose the Challenging Party to sanctions. Unless the
27 Designating Party has waived or withdrawn the confidentiality designation, all
28 parties shall continue to afford the material in question the level of protection to

1 which it is entitled under the Producing Party’s designation until the Court rules on
2 the challenge.

3 **8. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 8.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 Action only for prosecuting, defending, or attempting to settle this Action. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. When the Action has been terminated, a
9 Receiving Party must comply with the provisions of section 13 below (FINAL
10 DISPOSITION).

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

14 8.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
15 otherwise ordered by the Court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated
17 “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) the officers, directors, and employees (including House Counsel) of
22 the Receiving Party to whom disclosure is reasonably necessary for this Action;

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

26 (d) the Court and its personnel;

27 (e) court reporters and their staff;

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

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

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

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

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

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

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

24 (b) promptly notify in writing the party who caused the subpoena or order
25 to issue in the other litigation that some or all of the material covered by the
26 subpoena or order is subject to this Protective Order. Such notification shall
27 include a copy of this Stipulated Protective Order; and
28

1 (c) cooperate with respect to all reasonable procedures sought to be
2 pursued by the Designating Party whose Protected Material may be affected. If the
3 Designating Party timely seeks a protective order, the Party served with the
4 subpoena or court order shall not produce any information designated in this action
5 as “CONFIDENTIAL” before a determination by the court from which the
6 subpoena or order issued, unless the Party has obtained the Designating Party’s
7 permission. The Designating Party shall bear the burden and expense of seeking
8 protection in that court of its confidential material and nothing in these provisions
9 should be construed as authorizing or encouraging a Receiving Party in this Action
10 to disobey a lawful directive from another court.

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

13 (a) The terms of this Order are applicable to information produced by a
14 Non-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 be
17 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 is
20 subject to an agreement with the Non-Party not to produce the Non-Party’s
21 confidential information, then the Party shall:

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

25 (2) promptly provide the Non-Party with a copy of the Stipulated
26 Protective Order in this Action, the relevant discovery request(s), and a reasonably
27 specific description of the information requested; and
28

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

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

11 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED**
12 **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
17 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
18 person or persons to whom unauthorized disclosures were made of all the terms of
19 this Order, and (d) request such person or persons to execute the "Acknowledgment
20 and Agreement to Be Bound" that is attached hereto as Exhibit A.

21 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR**
22 **OTHERWISE PROTECTED MATERIAL**

23 When a Producing Party gives notice to Receiving Parties that certain
24 inadvertently produced material is subject to a claim of privilege or other
25 protection, the obligations of the Receiving Parties are those set forth in Federal
26 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
27 whatever procedure may be established in an e-discovery order that provides for
28 production without prior privilege review. Pursuant to Federal Rule of Evidence

1 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
2 of a communication or information covered by the attorney-client privilege or work
3 product protection, the parties may incorporate their agreement in the stipulated
4 protective order submitted to the Court.

5 **13. MISCELLANEOUS**

6 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
7 person to seek its modification by the Court in the future.

8 13.2 Right to Assert Other Objections. By stipulating to the entry of this
9 Protective Order, no Party waives any right it otherwise would have to object to
10 disclosing or producing any information or item on any ground not addressed in
11 this Stipulated Protective Order. Similarly, no Party waives any right to object on
12 any ground to use in evidence of any of the material covered by this Protective
13 Order.

14 13.3 Filing Protected Material. A Party that seeks to file under seal any
15 Protected Material must comply with Civil Local Rule 79-5. Protected Material
16 may only be filed under seal pursuant to a court order authorizing the sealing of the
17 specific Protected Material at issue; good cause must be shown in the request to file
18 under seal. If a Party's request to file Protected Material under seal is denied by the
19 Court, then the Receiving Party may file the information in the public record unless
20 otherwise instructed by the Court.

21 **14. FINAL DISPOSITION**

22 After the final disposition of this Action, within 60 days of a written request
23 by the Designating Party, each Receiving Party must return all Protected Material to
24 the Producing Party or destroy such material. As used in this subdivision, "all
25 Protected Material" includes all copies, abstracts, compilations, summaries, and any
26 other format reproducing or capturing any of the Protected Material. Whether the
27 Protected Material is returned or destroyed, the Receiving Party must submit a
28 written certification to the Producing Party (and, if not the same person or entity, to

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

12 **15. VIOLATION**

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

16
17 **IT IS SO ORDERED.**

18
19 DATED: January 11, 2018

By:



Paul L. Abrams
United States Magistrate Judge