

1 **SEYFARTH SHAW LLP**
 Candice T. Zee (SBN 227453)
 2 Email: czee@seyfarth.com
 2029 Century Park East, Suite 3500
 3 Los Angeles, California 90067-3021
 Telephone: (310) 277-7200
 4 Facsimile: (310) 201-5219

5 **SEYFARTH SHAW LLP**
 Duwayne A. Carr (SBN 299136)
 6 Email: dacarr@seyfarth.com
 333 South Hope Street, Suite 3900
 7 Los Angeles, California 90071
 Telephone: (213) 270-9600
 8 Facsimile: (213) 270-9601

9 Attorneys for Defendant
 DS SERVICES OF AMERICA, INC.

10
 11 **SOLOUKI | SAVOY, LLP**
 Grant Joseph Savoy (SBN 284077)
 12 Email: grant@soloukisavoy.com
 Shoham J. Solouki (SBN 278538)
 13 Email: shoham@soloukisavoy.com
 316 W. 2nd Street, Suite 1200
 14 Los Angeles, CA 90012
 Telephone: (213) 814-4940
 15 Facsimile: (213) 814-2550

16 Attorneys for Plaintiff
 Hector Pimienta

17
 18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA

20 HECTOR PIMIENTA, an individual, On
 21 Behalf of Himself and All Similarly
 Situated Current and Former Employees,
 22
 Plaintiff,

Case No. 2:16-cv-09580-DSF (FFMx)
 [Assigned to Judge Dale S. Fischer,
 Courtroom 7D]

23 v.

**STIPULATED PROTECTIVE
 ORDER**

24 DS SERVICES OF AMERICA, INC., a
 Georgia Corporation; and DOES 1 through
 25 10, inclusive,
 26
 Defendants.

Trial Date: May 7, 2019
 Complaint Filed: November 15, 2016

1 Plaintiff Hector Pimienta (“Plaintiff”) and DS Services of America, Inc. (“DSS”)
2 (Jointly, “the Parties”) hereby stipulate, by and through their respective attorneys of
3 record, as follows:

4 **1. PURPOSES AND LIMITATIONS**

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

18 **2. GOOD CAUSE STATEMENT**

19 This action is likely to involve customer and pricing lists and/or other valuable
20 research, development, commercial, financial, technical and/or proprietary information
21 for which special protection from public disclosure and from use for any purpose other
22 than 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, or other confidential
25 research, development, or commercial information (including information implicating
26 privacy rights of third parties), information otherwise generally unavailable to the public,
27 or which may be privileged or otherwise protected from disclosure under state or federal
28 statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow

1 of information, to facilitate the prompt resolution of disputes over confidentiality of
2 discovery materials, to adequately protect information the parties are entitled to keep
3 confidential, to ensure that the parties are permitted reasonable necessary uses of such
4 material in preparation for and in the conduct of trial, to address their handling at the end
5 of the 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 without a
8 good-faith belief that it has been maintained in a confidential, non-public manner, and
9 there is good cause why it should not be part of the public record of this case.

10 **3. DEFINITIONS**

11 3.1 Challenging Party: a Party or Non-Party that challenges the designation of
12 information or items under this Order.

13 3.2 “CONFIDENTIAL” Information or Items: information (regardless of how it
14 is generated, stored or maintained) or tangible things that qualify for protection under
15 Federal Rule of Civil Procedure 26(c), and is specified above in the Good Cause
16 Statement.

17 3.3 Counsel: Outside Counsel of Record and House Counsel (as well as support
18 staff).

19 3.4 Designating Party: a Party or Non-Party that designates information or
20 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”
21 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

22 3.5 Disclosure or Discovery Material: all items or information, regardless of the
23 medium or manner in which it is generated, stored, or maintained (including, among
24 other things, testimony, transcripts, and tangible things), that are produced or generated in
25 disclosures or responses to discovery in this matter.

26 3.6 Expert: a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who (1) has been retained by a Party or his counsel to serve as
28 an expert witness or as a consultant in this action, (2) is not a past or current employee of

1 a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to
2 become an employee of a Party or of a Party's competitor. This definition includes a
3 professional jury or trial consultant retained in connection with this litigation.

4 2.7 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 counsel.

6 3.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information
7 or Items: extremely sensitive "Confidential Information or Items," disclosure of which to
8 another Party or Non-Party would create a substantial risk of serious harm that could not
9 be avoided by less restrictive means.

10 3.9 Non-Party: any natural person, partnership, corporation, association, or other
11 legal entity not named as a Party to this action.

12 3.10 Party: any party to this action, including all of his retained experts and
13 Counsel of Record (and their support staffs).

14 3.11 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this action.

16 3.12 Professional Vendors: persons or entities that provide litigation support
17 services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
19 their employees and subcontractors.

20 3.13 Protected Material: any Disclosure or Discovery Material that is designated
21 as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
22 ONLY."

23 3.14 Receiving Party: a Party that receives Disclosure or Discovery Material from
24 a Producing Party.

25 **4. SCOPE**

26 The protections conferred by this Stipulation and Order cover not only Protected
27 Material (as defined above), but also (1) any information copied or extracted from
28 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected

1 Material; and (3) any testimony, conversations, or presentations by Parties or their
2 Counsel of Record that might reveal Protected Material. However, the protections
3 conferred by this Stipulation and Order do not cover the following information: (a) any
4 information that is in the public domain at the time of disclosure to a Receiving Party or
5 becomes part of the public domain after its disclosure to a Receiving Party as a result of
6 publication not involving a violation of this Order, including becoming part of the public
7 record through trial or otherwise; and (b) any information known to the Receiving Party
8 prior to the disclosure or obtained by the Receiving Party after the disclosure from a
9 source who obtained the information lawfully and under no obligation of confidentiality
10 to the Designating Party. Any use of Protected Material at trial shall be governed by a
11 separate agreement or order. This Order does not govern the use of Protected Material at
12 trial.

13 **5. 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 otherwise in
16 writing or a court order otherwise directs. Final disposition shall be deemed to be the later
17 of (1) dismissal of all claims and defenses in this action, with or without prejudice; and
18 (2) final judgment herein after the completion and exhaustion of all appeals, rehearings,
19 remands, trials, or reviews of this action, including the time limits for filing any motions
20 or applications for extension of time pursuant to applicable law.

21 **6. DESIGNATING PROTECTED MATERIAL**

22 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each
23 Party or Non-Party that designates information or items for protection under this Order
24 must take care to limit any such designation to specific material that qualifies under the
25 appropriate standards. To the extent it is practical to do so, the Designating Party must
26 designate for protection only those parts of material, documents, items, or oral or written
27 communications that qualify.

28 ///

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection at all or do not qualify for the level
3 of protection initially asserted, that Designating Party must promptly notify all other
4 parties that it is withdrawing the inapplicable designation.

5 6.2 Manner and Timing of Designations. Except as otherwise provided in this
6 Order (see, e.g., second paragraph of section 6.2(a) below), or as otherwise stipulated or
7 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
8 must be clearly so designated before the material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),
12 that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY
13 CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains protected
14 material. If only a portion or portions of the material on a page qualifies for protection,
15 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
16 appropriate markings in the margins) and must specify, for each portion, the level of
17 protection being asserted.

18 A Party or Non-Party that makes original documents or materials available for
19 inspection need not designate them for protection until after the inspecting Party has
20 indicated which material it would like copied and produced. During the inspection and
21 before the designation, all of the material made available for inspection shall be deemed
22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting
23 Party has identified the documents it wants copied and produced, the Producing Party
24 must determine which documents, or portions thereof, qualify for protection under this
25 Order. Then, before producing the specified documents, the Producing Party must affix
26 the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
27 ATTORNEYS' EYES ONLY" to each page that contains Protected Material. If only a
28 portion or portions of the material on a page qualifies for protection, the Producing Party

1 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
2 in the margins) and must specify, for each portion, the level of protection being asserted.

3 (b) for testimony given in deposition, that the Designating Party identify
4 on the record, before the close of the deposition, all protected testimony and specify the
5 level of protection being asserted. When it is impractical to identify separately each
6 portion of testimony that is entitled to protection and it appears that substantial portions
7 of the testimony may qualify for protection, the Designating Party may invoke on the
8 record (before the deposition is concluded) a right to have up to 21 days to identify the
9 specific portions of the testimony as to which protection is sought and to specify the level
10 of protection being asserted. Only those portions of the testimony that are appropriately
11 designated for protection within the 21 days shall be covered by the provisions of this
12 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the
13 deposition or up to 21 days afterwards if that period is properly invoked, that the entire
14 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY.”

16 **Parties shall give the other parties notice if they reasonably expect a**
17 **deposition to include Protected Material so that the other parties can ensure that**
18 **only authorized individuals who have signed the “Acknowledgment and Agreement**
19 **to Be Bound” (Exhibit A) are present at those proceedings. The use of a document**
20 **as an exhibit at a deposition shall not in any way affect its designation as**
21 **“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES**
22 **ONLY.”**

23 **Transcripts containing Protected Material shall have an obvious legend on the**
24 **title page that the transcript contains Protected Material, and the title page shall be**
25 **followed by a list of all pages (including line numbers as appropriate) that have been**
26 **designated as Protected Material and the level of protection being asserted by the**
27 **Designating Party. The Designating Party shall inform the court reporter of these**
28 **requirements. Any transcript that is prepared before the expiration of a 21-day**

1 period for designation shall be treated during that period as if it had been
2 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its
3 entirety unless otherwise agreed. After the expiration of that period, the transcript
4 shall be treated only as actually designated.

5 (c) for information produced in some form other than documentary and
6 for any other tangible items, that the Producing Party affix in a prominent place on the
7 exterior of the container or containers in which the information or item is stored the
8 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
9 ONLY.” If only a portion or portions of the information or item warrant protection, the
10 Producing Party, to the extent practicable, shall identify the protected portion(s) and
11 specify the level of protection being asserted.

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

17 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 7.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
19 of confidentiality at any time. Unless a prompt challenge to a Designating Party’s
20 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
21 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
22 Party does not waive its right to challenge a confidentiality designation by electing not to
23 mount a challenge promptly after the original designation is disclosed.

24 7.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
25 process by providing written notice of each designation it is challenging and describing
26 the basis for each challenge. To avoid ambiguity as to whether a challenge has been
27 made, the written notice must recite that the challenge to confidentiality is being made in
28 accordance with this specific paragraph of the Protective Order. The parties shall attempt

1 to resolve each challenge in good faith and must begin the process by conferring directly
2 (in voice to voice dialogue; other forms of communication are not sufficient) within 14
3 days of the date of service of notice. In conferring, the Challenging Party must explain
4 the basis for its belief that the confidentiality designation was not proper and must give
5 the Designating Party an opportunity to review the designated material, to reconsider the
6 circumstances, and, if no change in designation is offered, to explain the basis for the
7 chosen designation. A Challenging Party may proceed to the next stage of the challenge
8 process only if it has engaged in this meet and confer process first or establishes that the
9 Designating Party is unwilling to participate in the meet and confer process in a timely
10 manner.

11 7.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
12 intervention, the Designating Party shall file and serve a motion to retain confidentiality
13 under Civil Local Rule 37 (and in compliance with Civil Local Rule 79-5, if applicable)
14 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing
15 that the meet and confer process will not resolve their dispute, whichever is earlier. Each
16 such motion must be accompanied by a joint stipulation and competent declaration
17 affirming that the movant has complied with the meet and confer requirements imposed
18 in the preceding paragraph. Failure by the Designating Party to make such a motion,
19 including the required declaration within 21 days (or 14 days, if applicable), shall
20 automatically waive the confidentiality designation for each challenged designation. In
21 addition, the Challenging Party may file a motion challenging a confidentiality
22 designation at any time if there is good cause for doing so, including a challenge to the
23 designation of a deposition transcript or any portions thereof. Any motion brought
24 pursuant to this provision must be accompanied by a joint stipulation and competent
25 declaration affirming that the movant has complied with the meet and confer
26 requirements imposed by the preceding paragraph.

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

1 harass or impose unnecessary expenses and burdens on other parties) may expose the
2 Challenging Party to sanctions. Unless the Designating Party has waived the
3 confidentiality designation by failing to file a motion to retain confidentiality as described
4 above, all parties shall continue to afford the material in question the level of protection
5 to which it is entitled under the Producing Party's designation until the court rules on the
6 challenge.

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

8 8.1 Basic Principles. A Receiving Party may use Protected Material that is
9 disclosed or produced by another Party or by a Non-Party in connection with this case
10 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
11 Material may be disclosed only to the categories of persons and under the conditions
12 described in this Order. When the litigation has been terminated, a Receiving Party must
13 comply with the provisions of section 14 below (FINAL DISPOSITION).

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

17 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
18 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
19 may disclose any information or item designated "CONFIDENTIAL" only to:

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

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

27 (c) the court and its personnel;

28 (d) court reporters and their staff;

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

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

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

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

14 8.3 **Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES**
15 **ONLY” Information or Items**. Unless otherwise ordered by the court or permitted in
16 writing by the Designating Party, a Receiving Party may disclose any information or item
17 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

22 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
23 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement
24 to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph
25 7.4(a)(2), below, have been followed];

26 (c) the court and its personnel;

27 (d) court reporters and their staff, professional jury or trial consultants,
28 and Professional Vendors to whom disclosure is reasonably necessary for this litigation

1 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
2 and

3 (e) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 8.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

7 (a) Unless otherwise ordered by the court or agreed to in writing by the
8 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order)
9 any information or item that has been designated “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written
11 request to the Designating Party that (1) identifies the general categories of “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party
13 seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and
14 the city and state of his or her primary residence, (3) attaches a copy of the Expert’s
15 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person
16 or entity from whom the Expert has received compensation or funding for work in his or
17 her areas of expertise or to whom the expert has provided professional services, including
18 in connection with a litigation, at any time during the preceding five years,¹ and (6)
19 identifies (by name and number of the case, filing date, and location of court) any
20 litigation in connection with which the Expert has offered expert testimony, including
21 through a declaration, report, or testimony at a deposition or trial, during the preceding
22 five years.

23 (b) A Party that makes a request and provides the information specified in
24 the preceding respective paragraphs may disclose the subject Protected Material to the

25 _____
26 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to
27 a third-party, then the Expert should provide whatever information the Expert believes
28 can be disclosed without violating any confidentiality agreements, and the Party seeking
to disclose to the Expert shall be available to meet and confer with the Designating Party
regarding any such engagement.

1 identified Expert unless, within 14 days of delivering the request, the Party receives a
2 written objection from the Designating Party. Any such objection must set forth in detail
3 the grounds on which it is based.

4 (c) A Party that receives a timely written objection must meet and confer
5 with the Designating Party (through direct voice to voice dialogue) to try to resolve the
6 matter by agreement within seven days of the written objection. If no agreement is
7 reached, the Party seeking to make the disclosure to the Expert may file a motion as
8 provided in Civil Local Rule 37 (and in compliance with Civil Local Rule 79-5, if
9 applicable) seeking permission from the court to do so. Any such motion must describe
10 the circumstances with specificity, set forth in detail the reasons why the disclosure to the
11 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail,
12 and suggest any additional means that could be used to reduce that risk. In addition, any
13 such motion must be accompanied by a joint stipulation and competent declaration
14 describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the
15 content of the meet and confer discussions) and setting forth the reasons advanced by the
16 Designating Party for its refusal to approve the disclosure.

17 In any such proceeding, the Party opposing disclosure to the Expert shall bear the
18 burden of proving that the risk of harm that the disclosure would entail (under the
19 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
20 Material to his Expert.

21 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
22 **OTHER LITIGATION**

23 If a Party is served with a subpoena or a court order issued in other litigation that
24 compels disclosure of any information or items designated in this action as
25 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
26 that Party must:

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

1 who caused the subpoena or order to issue in the other litigation that some or all of the
2 material covered by the subpoena or order is subject to this Protective Order. Such
3 notification shall include a copy of this Stipulated Protective Order; and

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

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 as
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
9 before a determination by the court from which the subpoena or order issued, unless the
10 Party has obtained the Designating Party’s permission. The Designating Party shall bear
11 the burden and expense of seeking protection in that court of its confidential material –
12 and nothing in these provisions should be construed as authorizing or encouraging a
13 Receiving Party in this action to disobey a lawful directive from another court.

14 **10. 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
17 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by Non-
19 Parties in connection with this litigation is protected by the remedies and relief provided
20 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party
21 from seeking additional protections.

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

26 1. promptly notify in writing the Requesting Party and the Non-
27 Party that some or all of the information requested is subject to a confidentiality
28 agreement with a Non-Party;

1 2. promptly provide the Non-Party with a copy of the Stipulated
2 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
3 specific description of the information requested; and

4 3. make the information requested available for inspection by the
5 Non-Party.

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

14 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

23 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
24 **PROTECTED MATERIAL**

25 When a Producing Party gives notice to Receiving Parties that certain inadvertently
26 produced material is subject to a claim of privilege or other protection, the obligations of
27 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
28 This provision is not intended to modify whatever procedure may be established in an e-

1 discovery order that provides for production without prior privilege review. Pursuant to
2 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
3 effect of disclosure of a communication or information covered by the attorney-client
4 privilege or work-product protection, the parties may incorporate their agreement in the
5 stipulated protective order submitted to the court.

6 **13. MISCELLANEOUS**

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

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

14 13.3 Filing Protected Material. Without written permission from the Designating
15 Party or a court order secured after appropriate notice to all interested persons, a Party
16 may not file in the public record in this action any Protected Material. A Party that seeks
17 to file under seal any Protected Material must comply with Civil Local Rule 79-5.
18 Protected Material may only be filed under seal pursuant to a court order authorizing the
19 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a
20 sealing order will issue only upon a request establishing that the Protected Material at
21 issue is privileged or otherwise entitled to protection under the law. If a Receiving Party's
22 request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is
23 denied by the court, then the Receiving Party may file the Protected Material in the public
24 record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.

25 **14. FINAL DISPOSITION**

26 Within 60 days after the final disposition of this action, as defined in paragraph 5,
27 each Receiving Party must return all Protected Material to the Producing Party or destroy
28 such material. As used in this subdivision, "all Protected Material" includes all copies,

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

15 **FOR GOOD CAUSE SHOWN AND PURSUANT TO THE PARTIES’**
16 **STIPULATION, IT IS SO ORDERED.**

17
18
19 DATED: May 19, 2017

/S/ FREDERICK F. MUMM
The Honorable Frederick F. Mumm
Magistrate Judge of the United States
District Court, Central District of California

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of
6 perjury that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Central District of California on
8 [date] in the case of *Hector Pimienta, an individual, On Behalf of Himself and All*
9 *Similarly Situated Current and Former Employees v. DS Services of America, Inc., a*
10 *Georgia Corporation; and DOES 1 through 10, inclusive*, Case Number 2:16-cv-09580-
11 DSF (FFMx). I agree to comply with and to be bound by all the terms of this Stipulated
12 Protective Order and I understand and acknowledge that failure to so comply could
13 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
14 that I will not disclose in any manner any information or item that is subject to this
15 Stipulated Protective Order to any person or entity except in strict compliance with the
16 provisions of this Order.

17 I further agree to submit to the jurisdiction of the United States District Court for
18 the Central District of California for the purpose of enforcing the terms of this Stipulated
19 Protective Order, even if such enforcement proceedings occur after termination of this
20 action. I hereby appoint _____ [print or type full name] of
21 _____ [print or type full address and telephone
22 number] as my California agent for service of process in connection with this action or
23 any proceedings related to enforcement of this Stipulated Protective Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____