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 TIMOTHY MORRISON, individually and
 8 derivatively on behalf of PAN-
 AMERICAN PROPERTIES, LLC
 9

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 TIMOTHY MORRISON, individually
 and derivatively on behalf of PAN-
 13 AMERICAN PROPERTIES, LLC, a
 California limited liability company,

14 Plaintiffs,

15 vs.

16 MAURO SANTOYO, and DOES 1-20,

17 Defendants.

18 and,

19 PAN-AMERICAN PROPERTIES,
 20 LLC, a California limited liability
 company,

21 Nominal Defendant.

22 MAURO SANTOYO, an Individual,

23 Counterclaimant,

24 vs.

25 TIMOTHY MORRISON, an individual,

26 Counterdefendant.
 27

Case No. 2:17-cv-02540-VAP (AGRx)

The Hon. Virginia A. Phillips

**STIPULATED PROTECTIVE
 ORDER**

Judge: Hon. Virginia A. Phillips

FREEMAN, FREEMAN & SMILEY, LLP
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 LOS ANGELES, CALIFORNIA 90067
 (310) 255-6100

1 **I. PURPOSES AND LIMITATION**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles.

11 **II. GOOD CAUSE STATEMENT**

12 This action is likely to involve commercial, financial, and/or proprietary
13 information for which special protection from public disclosure and from use for
14 any purpose other than prosecution of this action is warranted. Such confidential and
15 proprietary materials and information consist of, among other things, confidential
16 business or financial information, tax records, information otherwise generally
17 unavailable to the public, or which may be privileged or otherwise protected from
18 disclosure under state or federal statutes, court rules, case decisions, or common
19 law. Accordingly, to expedite the flow of information, to facilitate the prompt
20 resolution of disputes over confidentiality of discovery materials, to adequately
21 protect information the parties are entitled to keep confidential, to ensure that the
22 parties are permitted reasonable necessary uses of such material in preparation for
23 and in the conduct of trial, to address their handling at the end of the litigation, and
24 serve the ends of justice, a protective order for such information is justified in this
25 matter. It is the intent of the parties that information will not be designated as
26 confidential for tactical reasons and that nothing be so designated without a good
27 faith belief that it has been maintained in a confidential, non-public manner, and
28 there is good cause why it should not be part of the public record of this case.

1 **III. DEFINITIONS**

- 2 **A.** Action: the pending federal actions identified above.
- 3 **B.** Challenging Party: a Party or Non-Party that challenges the designation
- 4 of information or items under this Order.
- 5 **C.** “CONFIDENTIAL” Information or Items: information (regardless of
- 6 how it is generated, stored or maintained) or tangible things that qualify
- 7 for protection under Federal Rule of Civil Procedure 26(c), and as
- 8 specified above in the Good Cause Statement.
- 9 **D.** Counsel: Counsel of Record (as well as their support staff).
- 10 **E.** Designating Party: a Party or Non-Party that designates information or
- 11 items that it produces in disclosures or in responses to discovery as
- 12 “CONFIDENTIAL.”
- 13 **F.** Disclosure or Discovery Material: all items or information, regardless
- 14 of the medium or manner in which it is generated, stored, or maintained
- 15 (including, among other things, testimony, transcripts, and tangible
- 16 things), that are produced or generated in disclosures or responses to
- 17 discovery in this matter.
- 18 **G.** Expert: a person with specialized knowledge or experience in a matter
- 19 pertinent to the litigation who has been retained by a Party or its
- 20 counsel to serve as an expert witness or as a consultant in this Action.
- 21 **H.** Non-Party: any natural person, partnership, corporation, association, or
- 22 other legal entity not named as a Party to this action.
- 23 **I.** Party: any party to this Action, including all of its officers, directors,
- 24 employees, consultants, retained experts, and Counsel of Record (and
- 25 their support staffs).
- 26 **J.** Producing Party: a Party or Non-Party that produces Disclosure or
- 27 Discovery Material in this Action.

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1 **K.** Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying, videotaping, translating, preparing
3 exhibits or demonstrations, and organizing, storing, or retrieving data in
4 any form or medium) and their employees and subcontractors.

5 **L.** Protected Material: any Disclosure or Discovery Material that is
6 designated as “CONFIDENTIAL.”

7 **M.** Receiving Party: a Party that receives Disclosure or Discovery Material
8 from a Producing Party.

9 **IV. SCOPE**

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

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

17 **V. DURATION**

18 Even after final disposition of this litigation, the confidentiality obligations
19 imposed by this Order shall remain in effect until a Designating Party agrees
20 otherwise in writing or a court order otherwise directs. Final disposition shall be
21 deemed to be the later of (1) dismissal of all claims, counterclaims and defenses in
22 this Action, with or without prejudice; and (2) final judgment herein after the
23 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of
24 this Action, including the time limits for filing any motions or applications for
25 extension of time pursuant to applicable law.

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1 **VI. DESIGNATING PROTECTED MATERIAL**

2 **A. Exercise of Restraint and Care in Designating Material for**
3 **Protection**

4 Each Party or Non-Party that designates information or items for protection
5 under this Order must take care to limit any such designation to specific material
6 that qualifies under the appropriate standards. The Designating Party must designate
7 for protection only those parts of material, documents, items, or oral or written
8 communications that qualify so that other portions of the material, documents,
9 items, or communications for which protection is not warranted are not swept
10 unjustifiably within the ambit of this Order.

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

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

19 **B. Manner and Timing of Designations**

20 Except as otherwise provided in this Order (see, e.g., second paragraph of
21 section VI.B(a) below), or as otherwise stipulated or ordered, Disclosure or
22 Discovery Material that qualifies for protection under this Order must be clearly so
23 designated before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic
26 documents, but excluding transcripts of depositions or other pretrial or trial
27 proceedings), that the Producing Party affix at a minimum, the legend
28 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that

1 contains protected material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected
3 portion(s) (e.g., by making appropriate markings in the margins).

4 A Party or Non-Party that makes original documents available for inspection
5 need not designate them for protection until after the inspecting Party has indicated
6 which documents it would like copied and produced. During the inspection and
7 before the designation, all of the material made available for inspection shall be
8 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
9 documents it wants copied and produced, the Producing Party must determine which
10 documents, or portions thereof, qualify for protection under this Order. Then, before
11 producing the specified documents, the Producing Party must affix the
12 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
13 portion or portions of the material on a page qualifies for protection, the Producing
14 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
15 markings in the margins).

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

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

25 **C. Inadvertent Failures to Designate**

26 If timely corrected, an inadvertent failure to designate qualified information
27 or items does not, standing alone, waive the Designating Party’s right to secure
28 protection under this Order for such material. Upon timely correction of a

1 designation, the Receiving Party must make reasonable efforts to assure that the
2 material is treated in accordance with the provisions of this Order.

3 **VII. CHALLENGING CONFIDENTIAL DESIGNATIONS**

4 **A. Timing of Challenges**

5 Any Party or Non-Party may challenge a designation of confidentiality at any
6 time that is consistent with the Court’s Scheduling Order.

7 **B. Meet and Confer**

8 The Challenging Party shall initiate the dispute resolution process under
9 Local Rule 37.1 et seq.

10 **C. Burden**

11 The burden of persuasion in any such challenge proceeding shall be on the
12 Designating Party. Frivolous challenges, and those made for an improper purpose
13 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
14 expose the Challenging Party to sanctions. Unless the Designating Party has waived
15 or withdrawn the confidentiality designation, all parties shall continue to afford the
16 material in question the level of protection to which it is entitled under the
17 Producing Party’s designation until the Court rules on the challenge.

18 **VIII. ACCESS TO AND USE OF BASIC PROTECTED MATERIAL**

19 **A. Basic Principles**

20 A Receiving Party may use Protected Material that is disclosed or produced
21 by another Party or by a Non-Party in connection with this Action only for
22 prosecuting, defending, or attempting to settle this Action. Such Protected Material
23 may be disclosed only to the categories of persons and under the conditions
24 described in this Order. When the Action has been terminated, a Receiving Party
25 must comply with the provisions of section XIV below (FINAL DISPOSITION).

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

1 **B. Disclosure of “CONFIDENTIAL” Information or Items**

2 Unless otherwise ordered by the court or permitted in writing by the
3 Designating Party, a Receiving Party may disclose any information or item
4 designated “CONFIDENTIAL” only to:

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

8 (b) the officers, directors, and employees of the Receiving Party to whom
9 disclosure is reasonably necessary for this Action;

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

13 (d) the court and its personnel;

14 (e) court reporters and their staff;

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

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

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

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

3 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
4 **PRODUCED IN OTHER LITIGATION**

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

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

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

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

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

24 **X. NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
25 **PRODUCED IN THIS LITIGATION**

26 (a) The terms of this Order are applicable to information produced by a
27 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
28 produced by Non-Parties in connection with this litigation is protected by the
remedies and relief provided by this Order. Nothing in these provisions should be

1 construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

22 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
24 Protected Material to any person or in any circumstance not authorized under this
25 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
26 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
27 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
28 persons to whom unauthorized disclosures were made of all the terms of this Order,

1 and (d) request such person or persons to execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
4 **PROTECTED MATERIAL**

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

15 **XIII. MISCELLANEOUS**

16 (a) Right to Further Relief. Nothing in this Order abridges the right of any
17 person to seek its modification by the Court in the future.

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

23 (c) Filing Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
25 only be filed under seal pursuant to a court order authorizing the sealing of the
26 specific Protected Material at issue. If a Party's request to file Protected Material
27 under seal is denied by the court, then the Receiving Party may file the information
28 in the public record unless otherwise instructed by the court.

1 **XIV. FINAL DISPOSITION**

2 After the final disposition of this Action, as defined in Section V, within 60
3 days of a written request by the Designating Party, each Receiving Party must return
4 all Protected Material to the Producing Party or destroy such material. As used in
5 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
6 summaries, and any other format reproducing or capturing any of the Protected
7 Material. Whether the Protected Material is returned or destroyed, the Receiving
8 Party must submit a written certification to the Producing Party (and, if not the same
9 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
10 (by category, where appropriate) all the Protected Material that was returned or
11 destroyed and (2) affirms that the Receiving Party has not retained any copies,
12 abstracts, compilations, summaries or any other format reproducing or capturing any
13 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
14 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
15 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
16 reports, attorney work product, and consultant and expert work product, even if such
17 materials contain Protected Material. Any such archival copies that contain or
18 constitute Protected Material remain subject to this Protective Order as set forth in
19 Section V (DURATION). Notwithstanding this provision, the parties are entitled to
20 retain archival copies of any and all documents produced in this action even if such
21 material contains Protected Material to the extent they are reasonably necessary as
22 supporting documents in a tax audit or related review or investigation by any
23 governmental agency. Such documents shall remain confidential and disclosure is
24 authorized only to the government agency, their representative(s) as well as the
25 party’s representative(s) and only for the above stated purpose or as required by law.
26 This protective order shall not limit or restrict the parties’ rights to obtain, maintain
27 and use records and documents pursuant to the California Corporations Code or any
28 other applicable law.

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [date]_____ in the case of *Morrison v. Santoyo et al.*, Case No. 2:17-
cv-02540-VAP (AGRx). I agree to comply with and to be bound by all the terms of
this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that
is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order. I further agree to submit to the
jurisdiction of the United States District Court for the Central District of California
for the purpose of enforcing the terms of this Stipulated Protective Order, even if
such enforcement proceedings occur after termination of this action. I hereby
appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____