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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ESTELLA CONWAY, Individually And)	Case No. 5:15-cv-2388 AB KK
On Behalf Of All Others Similarly Situated,)	
)	
Plaintiffs,)	PROPOSED ORDER GRANTING
)	STIPULATED PROTECTIVE ORDER
vs.)	
)	
PHILLIPS & COHEN ASSOCIATES, LTD.,)	
)	
Defendant.)	
)	
)	
)	

1. A. PURPOSES AND LIMITATIONS

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

1 B. GOOD CAUSE STATEMENT

2 This action is likely to involve confidential financial information of Defendant,
3 confidential information of third party putative class members, and confidential and proprietary
4 business information constituting trade secrets, for which special protection from public
5 disclosure and from use for any purpose other than prosecution of this action is warranted. Such
6 confidential and proprietary materials and information consist of, among other things,
7 confidential business or financial information, information regarding confidential business
8 practices, or other confidential research, development, or commercial information (including
9 information implicating privacy rights of third parties), information otherwise generally
10 unavailable to the public, or which may be privileged or otherwise protected from disclosure
11 under state or federal statutes, court rules, case decisions, or common law. Accordingly, to
12 expedite the flow of information, to facilitate the prompt resolution of disputes over
13 confidentiality of discovery materials, to adequately protect information the parties are entitled to
14 keep confidential, to ensure that the parties are permitted reasonable necessary uses of such
15 material in preparation for and in the conduct of trial, to address their handling at the end of the
16 litigation, and serve the ends of justice, a protective order for such information is justified in this
17 matter. It is the intent of the parties that information will not be designated as confidential for
18 tactical reasons and that nothing be so designated without a good faith belief that it has been
19 maintained in a confidential, non-public manner, and there is good cause why it should not be
20 part of the public record of this case.

21 2. DEFINITIONS

22 2.1 Action: this pending lawsuit, entitled *Estella Conway v. Phillips & Cohen Associates,*
23 *Ltd.*, Case No. 15-cv-2388-AB-KK.

24 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
25 information or items under this Order.

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

 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support
staff).

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

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

1 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
2 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
3 consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action. House
5 Counsel does not include Outside Counsel of Record or any other outside counsel.

6 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
7 entity not named as a Party to this action.

8 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
9 Action but are retained to represent or advise a party to this Action and have appeared in this
10 Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
11 that party, and includes support staff.

12 2.11 Party: any party to this Action, including all of its officers, directors, employees,
13 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

14 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
15 Material in this Action.

16 2.13 Professional Vendors: persons or entities that provide litigation support services
17 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
18 organizing, storing, or retrieving data in any form or medium) and their employees and
19 subcontractors.

20 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
21 “CONFIDENTIAL.”

22 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
23 Producing Party.

24 3. SCOPE

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

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

4. DURATION

 Even after final disposition of this litigation, the confidentiality obligations imposed by
this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all

1 claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after
2 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
3 Action, including the time limits for filing any motions or applications for extension of time
4 pursuant to applicable law.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
7 Non-Party that designates information or items for protection under this Order must take care to
8 limit any such designation to specific material that qualifies under the appropriate standards. The
9 Designating Party must designate for protection only those parts of material, documents, items,
10 or oral or written communications that qualify so that other portions of the material, documents,
11 items, or communications for which protection is not warranted are not swept unjustifiably
12 within the ambit of this Order.

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

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

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
21 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure
22 or Discovery Material that qualifies for protection under this Order must be clearly so designated
23 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 documents, but
26 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
27 Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL
28 legend"), to each page that contains protected material. If only a portion or portions of the
material on a page qualifies for protection, the Producing Party also must clearly identify the
protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not
designate them for protection until after the inspecting Party has indicated which documents it
would like copied and produced. During the inspection and before the designation, all of the
material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting
Party has identified the documents it wants copied and produced, the Producing Party must
determine which documents, or portions thereof, qualify for protection under this Order. Then,
before producing the specified documents, the Producing Party must affix the

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

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

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

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
13 designate 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 is
16 treated in accordance with the provisions of this Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
19 confidentiality at any time that is consistent with the Court’s Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37.1 et seq.

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

7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
4 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
5 information or item designated “CONFIDENTIAL” only to:

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

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

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

14 (d) the court and its personnel;

15 (e) court reporters and their staff;

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

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

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

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

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels
disclosure of any information or items designated in this Action as

1 “CONFIDENTIAL,” that Party must:

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
17 **MATERIAL**

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

26 **12. MISCELLANEOUS**

27 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any person to
28 seek its modification by the Court in the future.

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

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under
seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If

1 a Party's request to file Protected Material under seal is denied by the court, then the Receiving
2 Party may file the information in the public record unless otherwise instructed by the court.

3 13. FINAL DISPOSITION

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

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

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17
18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

19 DATED: August 05, 2016

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21 _____
22 Hon. Kenly Kiya Kato
23 United States Magistrate Judge
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2 EXHIBIT A

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of _____
5 [print or type 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 District Court for
7 the Central District of California on [date] in the case of Estella Conway v. Phillips & Cohen
8 Associates, Ltd., Case No. 5:15-cv-02388 AB KK. I agree to comply with and to be bound by all
9 the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

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

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24 Signature: _____