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11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

14	KERI NEILSEN and SIMON	} Case No. 5:21-cv-02053-JGB-KK } STIPULATION AND PROPOSED } PROTECTIVE ORDER
15	NEILSEN,	
16	Plaintiffs,	
17		
18	v.	
19	LOANCARE, LLC et. al.,	
20	Defendants.	
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25 1. PURPOSES AND LIMITATIONS

26 Discovery in this action is likely to involve production of confidential,
 27 proprietary or private information for which special protection from public
 28 disclosure and from use for any purpose other than pursuing this litigation may be

1 warranted. Accordingly, the parties hereby stipulate to and petition the Court to
2 enter the following Stipulated Protective Order. The parties acknowledge that this
3 Order does not confer blanket protections on all disclosures or responses to
4 discovery and that the protection it affords from public disclosure and use extends
5 only to the limited information or items that are entitled to confidential treatment
6 under the applicable legal principles.

7 2. GOOD CAUSE STATEMENT

8 This action is likely to involve trade secrets, employment practices, personal
9 identifying information of third-parties, and proprietary information for which
10 special protection from public disclosure and from use for any purpose other than
11 prosecution of this action is warranted. Such confidential and proprietary materials
12 and information consist of, among other things, confidential business or financial
13 information, information regarding confidential business practices, highly sensitive
14 personal identifying information, information otherwise generally unavailable to
15 the public, or which may be privileged or otherwise protected from disclosure
16 under state or federal statutes, court rules, case decisions, or common law.

17 Accordingly, to expedite the flow of information, to facilitate the prompt resolution
18 of disputes over confidentiality of discovery materials, to adequately protect
19 information the parties are entitled to keep confidential, to ensure that the parties
20 are permitted reasonable necessary uses of such material in preparation for and in
21 the conduct of trial, to address their handling at the end of the litigation, and serve
22 the ends of justice, a protective order for such information is justified in this
23 matter. It is the intent of the parties that information will not be designated as
24 confidential for tactical reasons and that nothing be so designated without a good
25 faith belief that it has been maintained in a confidential, non-public manner, and
26 there is good cause why it should not be part of the public record of this case.

27 3. ACKNOWLEDGMENT OF UNDER SEAL FILING

1 PROCEDURE

2 The parties further acknowledge, as set forth in Section 14.3, below, that this
3 Stipulated Protective Order does not entitle them to file confidential information
4 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
5 and the standards that will be applied when a party seeks permission from the court
6 to file material under seal. There is a strong presumption that the public has a right
7 of access to judicial proceedings and records in civil cases. In connection with non-
8 dispositive motions, good cause must be shown to support a filing under seal. See
9 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006),
10 Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-
11 Welbon v. Sony Electrics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even
12 stipulated protective orders require good cause showing), and a specific showing of
13 good cause or compelling reasons with proper evidentiary support and legal
14 justification, must be made with respect to Protected Material that a party seeks to
15 file under seal. The parties’ mere designation of Disclosure or Discovery Material
16 as CONFIDENTIAL does not— without the submission of competent evidence by
17 declaration, establishing that the material sought to be filed under seal qualifies as
18 confidential, privileged, or otherwise protectable—constitute good cause.

19 Further, if a party requests sealing related to a dispositive motion or trial,
20 then compelling reasons, not only good cause, for the sealing must be shown, and
21 the relief sought shall be narrowly tailored to serve the specific interest to be
22 protected. See Pintos v. Pacific Creditors Ass’n., 605 F.3d 665, 677-79 (9th Cir.
23 2010). For each item or type of information, document, or thing sought to be filed
24 or introduced under seal, the party seeking protection must articulate compelling
25 reasons, supported by specific facts and legal justification, for the requested sealing
26 order. Again, competent evidence supporting the application to file documents
27 under seal must be provided by declaration.
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1 Any document that is not confidential, privileged, or otherwise protectable
2 in its entirety will not be filed under seal if the confidential portions can be
3 redacted. If documents can be redacted, then a redacted version for public viewing,
4 omitting only the confidential, privileged, or otherwise protectable portions of the
5 document, shall be filed. Any application that seeks to file documents under seal in
6 their entirety should include an explanation of why redaction is not feasible.

7 4. DEFINITIONS

8 4.1 Action: this pending federal lawsuit.

9 4.2 Challenging Party: a Party or Non-Party that challenges the
10 designation of information or items under this Order.

11 4.3 “CONFIDENTIAL” Information or Items: information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for
13 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
14 the Good Cause Statement.

15 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
16 their support staff).

17 4.5 Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”
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21 4.6 Disclosure or Discovery Material: all items or information, regardless
22 of the medium or manner in which it is generated, stored, or maintained (including,
23 among other things, testimony, transcripts, and tangible things), that are produced
24 or generated in disclosures or responses to discovery.

25 4.7 Expert: a person with specialized knowledge or experience in a matter
26 pertinent to the litigation who has been retained by a Party or its counsel to serve
27 as an expert witness or as a consultant in this Action.

28 4.8 House Counsel: attorneys who are employees of a party to this

1 Action. House Counsel does not include Outside Counsel of Record or any other
2 outside counsel.

3 4.9 Non-Party: any natural person, partnership, corporation, association or
4 other legal entity not named as a Party to this action.

5 4.10 Outside Counsel of Record: attorneys who are not employees of a
6 party to this Action but are retained to represent a party to this Action and have
7 appeared in this Action on behalf of that party or are affiliated with a law firm that
8 has appeared on behalf of that party, and includes support staff.

9 4.11 Party: any party to this Action, including all of its officers, directors,
10 employees, consultants, retained experts, and Outside Counsel of Record (and their
11 support staffs).

12 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
13 Discovery Material in this Action.

14 4.13 Professional Vendors: persons or entities that provide litigation
15 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
16 demonstrations, and organizing, storing, or retrieving data in any form or medium)
17 and their employees and subcontractors.

18 4.14 Protected Material: any Disclosure or Discovery Material that is
19 designated as “CONFIDENTIAL.”

20 4.15 Receiving Party: a Party that receives Disclosure or Discovery
21 Material from a Producing Party.
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1 5. SCOPE

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

7 Any use of Protected Material at trial shall be governed by the orders of the
8 trial judge and other applicable authorities. This Order does not govern the use of
9 Protected Material at trial.

10 6. DURATION

11 Once a case proceeds to trial, information that was designated as
12 CONFIDENTIAL or maintained pursuant to this protective order used or
13 introduced as an exhibit at trial becomes public and will be presumptively
14 available to all members of the public, including the press, unless compelling
15 reasons supported by specific factual findings to proceed otherwise are made to the
16 trial judge in advance of the trial. See Kamakana, 447 F.3d at 1180-81
17 (distinguishing “good cause” showing for sealing documents produced in
18 discovery from “compelling reasons” standard when merits-related documents are
19 part of court record). Accordingly, the terms of this protective order do not extend
20 beyond the commencement of the trial.

21 7. DESIGNATING PROTECTED MATERIAL

22 7.1 Exercise of Restraint and Care in Designating Material for

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

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

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

11 7.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
13 that qualifies for protection under this Order must be clearly so designated before
14 the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic
17 documents, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), that the Producing Party affix at a minimum, the legend
19 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
20 contains protected material. If only a portion of the material on a page qualifies for
21 protection, the Producing Party also must clearly identify the protected portion(s)
22 (e.g., by making appropriate markings in the margins).

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

8 (b) for testimony given in depositions that the Designating Party
9 identifies the Disclosure or Discovery Material on the record, before the close of
10 the deposition all protected testimony.

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

17
18 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive
20 the Designating Party’s right to secure protection under this Order for such
21 material. Upon timely correction of a designation, the Receiving Party must make
22 reasonable efforts to assure that the material is treated in accordance with the
23 provisions of this Order.

1 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court’s
4 Scheduling Order.

5 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37-1 et seq.

7 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
8 joint stipulation pursuant to Local Rule 37-2.

9 8.4 The burden of persuasion in any such challenge proceeding shall be on
10 the Designating Party. Frivolous challenges, and those made for an improper
11 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
12 parties) may expose the Challenging Party to sanctions. Unless the Designating
13 Party has waived or withdrawn the confidentiality designation, all parties shall
14 continue to afford the material in question the level of protection to which it is
15 entitled under the Producing Party’s designation until the Court rules on the
16 challenge.
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18 9. ACCESS TO AND USE OF PROTECTED MATERIAL

19 9.1 Basic Principles. A Receiving Party may use Protected Material that is
20 disclosed or produced by another Party or by a Non-Party in connection with this
21 Action only for prosecuting, defending or attempting to settle this Action. Such
22 Protected Material may be disclosed only to the categories of persons and under
23 the conditions described in this Order. When the Action has been terminated, a
24 Receiving Party must comply with the provisions of section 15 below (FINAL
25 DISPOSITION).
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1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated
7 “CONFIDENTIAL” only to:

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

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

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

16 (d) the court and its personnel;

17 (e) court reporters and their staff;

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

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

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

5 (i) any mediators or settlement officers and their supporting personnel,
6 mutually agreed upon by any of the parties engaged in settlement discussions.

7 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
8 PRODUCED IN OTHER LITIGATION

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

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

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

18 (c) cooperate with respect to all reasonable procedures sought to be
19 pursued by the Designating Party whose Protected Material may be affected. If the
20 Designating Party timely seeks a protective order, the Party served with the
21 subpoena or court order shall not produce any information designated in this action
22 as “CONFIDENTIAL” before a determination by the court from which the
23 subpoena or order issued, unless the Party has obtained the Designating Party’s
24 permission. The Designating Party shall bear the burden and expense of seeking
25 protection in that court of its confidential material and nothing in these provisions
26 should be construed as authorizing or encouraging a Receiving Party in this Action
27 to disobey a lawful directive from another court.
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1 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO
2 BE PRODUCED IN THIS LITIGATION

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

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

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

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

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

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

3 12. UNAUTHORIZED DISCLOSURE OF PROTECTED
4 MATERIAL

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

13 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
14 OTHERWISE PROTECTED MATERIAL

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

25 14. MISCELLANEOUS

26 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
27 person to seek its modification by the Court in the future.
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1 14.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order, no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on
5 any ground to use in evidence of any of the material covered by this Protective
6 Order.

7 14.3 Filing Protected Material. A Party that seeks to file under seal any
8 Protected Material must comply with Local Civil Rule 79-5. Protected Material
9 may only be filed under seal pursuant to a court order authorizing the sealing of the
10 specific Protected Material. If a Party's request to file Protected Material under
11 seal is denied by the court, then the Receiving Party may file the information in the
12 public record unless otherwise instructed by the court.

13 15. FINAL DISPOSITION

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

5 16. VIOLATION

6 Any violation of this Order may be punished by appropriate measures
7 including, without limitation, contempt proceedings and/or monetary sanctions.

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9
10 DATED: November 17, 2022

/s/ Todd M. Friedman
Attorneys for Plaintiffs

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12
13 DATED: November 17, 2022

Carter R. Nichols, Esq. (*pro hac vice*)
Attorneys for Defendant
LOANCARE, LLC

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17 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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19 DATED: 11/17/2022

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22 KENLY KUYA KATO
23 United States Magistrate Judge
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1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND BY TERMS OF**
3 **THE PROTECTIVE ORDER**

4
5
6 I, _____, have received a copy of the Stipulation for Protective
7 Order and Protective Order entered in the action entitled:

8 *Keri Neilsen et. al. v. Loancare, LLC et. al.* (U.S.D.C., Central District of
9 California, Case No. 5:21-cv-02053-JGB-KK).

10 I have carefully read and understand the provisions of the Protective Order. I
11 agree that I will comply with all provision of the Protective Order and will use any
12 “CONFIDENTIAL” information only for purposes of this action. At the end of this
13 litigation or my involvement in this litigation, whichever occurs first, I will either
14 destroy or return to counsel for the party by whom I am employed or retained all
15 such “CONFIDENTIAL” documents or information that comes into my
16 possession.

17
18
19 DATED: _____
20 Name _____

1 Filed electronically on this 17th Day of November, 2022, with:
2 United States District Court CM/ECF system.

3 Notification sent electronically on this 17th Day of November, 2022, to:

4
5 Honorable Kenly K. Kato
6 United States District Court
7 Central District of California

8 And All Counsel of Record as Recorded On The Electronic Service List

9
10 /s/ Todd M. Friedman, Esq.

11 TODD M. FRIEDMAN