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8
 9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

11 **THE MONEYSUITE COMPANY,**
 12 **Plaintiff**

13
 14 v.

15
 16 **INSURANCE ANSWER CENTER,**
 17 **LLC; et al.,**

18
 19 **Defendants.**

LEAD
Case No. 8:11-cv-01847-AG-JPR
 CONSOLIDATED:
 Case No. 8:11-cv-01848-AG-JPRx and
 Case No. 8:11-cv-01850-AG-JPRx

STIPULATED PROTECTIVE ORDER

20
 21 **STIPULATED PROTECTIVE ORDER**

22 **WHEREAS,** Plaintiffs The MoneySuite Company (“MoneySuite”) and
 23 Defendants Insurance Answer Center, LLC, Answer Financial Inc., Esurance
 24 Insurance Services, Inc., and the Allstate Insurance Company (“Defendants”)
 25 possess information relating to this matter that is confidential;

26 **WHEREAS,** the parties recognize that, in the course of discovery in this
 27 lawsuit, it may be necessary to disclose such confidential matter to the other party,
 28 but each of them desires to ensure that such confidential matter shall not be used

1 for any purpose other than this action, and shall not be made public or otherwise
2 disseminated, except to the extent necessary for purposes of this action;

3 **WHEREAS**, the parties, by and through their respective counsel of record,
4 have agreed to the text of a Protective Order to prevent unnecessary disclosure or
5 dissemination of their confidential information;

6 Upon consideration of the foregoing, it is hereby ORDERED as follows:

7 1. In connection with discovery proceedings in this action, the parties may
8 designate any document, thing, material, testimony or other information derived
9 therefrom, as "Confidential" or "Highly Confidential" under the terms of this
10 Protective Order (hereinafter "Order"). Confidential information is trade secrets,
11 proprietary information, and other highly confidential commercial information, or
12 material required to be kept confidential by state or federal law.

13 2. By designating a document, thing, material, testimony or other
14 information derived therefrom as Confidential or Highly Confidential under the
15 terms of this Order, the party making the designation is certifying to the Court that
16 there is a good faith basis in law and in fact for the designation within the meaning
17 of Federal Rule of Civil Procedure 26(g).

18 3. Documents shall be designated Confidential or Highly Confidential by
19 stamping copies of the document produced to a party with the legend
20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
21 ONLY" Stamping the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
22 - ATTORNEYS' EYES ONLY" on the cover of any multipage documents shall
23 designate all pages of the document as Confidential or Highly Confidential, unless
24 otherwise indicated by the producing party.

25 4. Testimony taken at a deposition may be designated as Confidential or
26 Highly Confidential by making a statement to that effect on the record at the
27 deposition. Arrangements shall be made with the court reporter taking and
28 transcribing such deposition to separately bind such portions of the transcript

1 containing information designated as confidential, and to label such portions
2 appropriately.

3 5. Material designated as Confidential or Highly Confidential under this
4 Order, the information contained therein, and any summaries, copies, abstracts, or
5 other documents derived in whole or in part from material designated as
6 confidential or highly confidential (hereinafter "Designated Material") shall be
7 used only for the purpose of the prosecution, defense, or settlement of this action,
8 and for no other purpose.

9 6. Designated Material produced pursuant to this Order may be disclosed or
10 made available only to the Court, to outside counsel for a party (including
11 paralegal, clerical, and other support personnel employed by such counsel as well
12 as litigation support services (such as personnel providing e-discovery, graphics, or
13 jury or trial consulting support)), and to the "qualified persons" designated below:

- 14 (a) a party, or an officer, director, or employee of a party deemed
15 necessary by outside counsel to aid in the prosecution, defense,
16 or settlement of this action;
- 17 (b) experts or consultants (together with their clerical staff) retained
18 by such counsel to assist in the prosecution, defense, or
19 settlement of this action but only beginning 5 business days
20 after the identity of such expert or consultant has been disclosed
21 (including all information required by Federal Rule of Civil
22 Procedure 26(a)(2)(iv)-(v) and a statement indicating any past
23 or present relationships to the parties) without objection from
24 the producing party, or, in the event of objection, after Court
25 order permitting the disclosure. In the event of an objection,
26 the parties shall adhere to the dispute resolution procedure in
27 paragraph 10 below;
- 28 (c) court reporter(s) employed in this action;

1 (d) any other person as to whom the parties in writing agree.
2 Prior to receiving any Designated Material, each “qualified person” shall be
3 provided with a copy of this Order and shall execute a nondisclosure agreement in
4 the form of Attachment A, a copy of which shall be retained by outside counsel for
5 the disclosing party.

6 7. Only qualified persons may attend depositions at which Designated
7 Material is used or discussed.

8 8. The parties may further designate certain discovery material or testimony
9 of a highly confidential and/or proprietary nature as “HIGHLY CONFIDENTIAL -
10 ATTORNEYS’ EYES ONLY” (hereinafter “Highly Confidential Material”), in the
11 manner described in paragraphs 2 and 3 above. Highly Confidential Material, and
12 the information contained therein, shall be disclosed only to the Court, to outside
13 counsel for the parties (including the paralegal, clerical and secretarial staff
14 employed by such counsel), to one in-house attorney per party, and to the
15 “qualified persons” listed in subparagraphs 6(b) through (e) above, but shall not be
16 disclosed to a party, or to an officer, director or employee of a party, unless
17 otherwise agreed or ordered. If disclosure of Highly Confidential Material is made
18 pursuant to this paragraph, all other provisions in this Order with respect to
19 confidentiality shall also apply.

20 9. The parties may further designate source code as “HIGHLY
21 CONFIDENTIAL – SOURCE CODE” (hereinafter “Source Code Material”), in
22 the manner described in paragraphs 2 and 3 above. Source Code Material, and the
23 information contained therein, shall be disclosed only to the Court under seal, to
24 outside counsel for a party (including paralegal, clerical, and other support
25 personnel employed by such counsel as well as litigation support services (such as
26 personnel providing e-discovery, graphics, or jury or trial consulting support)), and
27 to the “qualified persons” listed in subparagraphs 6(b) through (e) above, but shall
28 not be disclosed to a party, or to an officer, director or employee of a party, unless

1 otherwise agreed or ordered. If disclosure of Source Code Material is made
2 pursuant to this paragraph, all other provisions in this Order with respect to
3 confidentiality shall also apply. Source Code Material shall also be subject to the
4 following additional protections, unless otherwise advised by the producing party:

5 a. Any Source Code Material that is produced in this case shall be made
6 available for inspection in electronic (*e.g.*, native) format at the offices
7 of lead outside counsel (Los Angeles for MoneySuite's Source Code,
8 and Chicago for Defendants' Source Code). Source Code Material
9 includes, but is not limited to, files in programming languages such as
10 C, C++, and C#. Source Code Material further includes include files,
11 make files, link files and other human-readable files used in the
12 generation of building of software or firmware.

13 b. Once Source Code Material has been made available for inspection,
14 the receiving party shall provide notice of its inspection two business
15 days prior to the inspection. The notice shall include the expected
16 dates of the inspection as well as who will be conducting the
17 inspection. The Source Code Material shall be available for
18 inspection from 8:00 a.m. to 6:00 p.m. local time, Monday through
19 Friday, and other days and/or times, including weekends, upon
20 reasonable request. Access on weekends or after hours shall be
21 permitted only on two days advance notice and only for good cause.

22 c. All Source Code Material shall be made available by the producing
23 party to the receiving party in a secure room on a secured computer
24 without Internet access or network access to other computers and with
25 all input/output ports (such as USB) blocked, as necessary and
26 appropriate to prevent and protect against any unauthorized copying,
27 transmission, removal or other transfer of any source code outside or
28 away from the computer on which the Source Code Material is

1 provided for inspection (the "Source Code Computer"). Unless
2 otherwise agreed to by the parties, the producing party shall install
3 tools requested by the reviewing party at the reviewing party's
4 expense. In the alternative, the producing party may require the
5 requesting party to supply the secured computer to the producing
6 party at the requesting party's expense, subject to the producing
7 party's examination of the computer to ensure it has been secured as
8 required.

- 9 d. The Source Code Material shall be produced, to the extent practicable,
10 as it is kept in the normal course of business. The receiving party's
11 outside counsel and/or experts shall be entitled to take notes relating
12 to the Source Code Material but may not copy large portions of the
13 Source Code Material into the notes. No copies of all or any portion
14 of the Source Code Material may leave the room in which the Source
15 Code Material is inspected except as otherwise provided in this order.
16 Further, no other written or electronic record of the Source Code
17 Material is permitted except as otherwise provided in this Order.
- 18 e. The producing party shall make available a laser printer with
19 commercially reasonable printing speeds for on-site printing during
20 inspection of the Source Code Material. The receiving party may
21 print portions of the Source Code Material when reasonably necessary
22 to facilitate the receiving party's furtherance of its claims and
23 defenses in this case. The receiving party shall print only such
24 portions as are relevant to the claims and defenses in the case and are
25 necessary for such purpose. Upon printing any such portions of
26 Source Code Material, the printed pages shall be collected by the
27 producing party. The producing party shall Bates number, copy, and
28 label "HIGHLY CONFIDENTIAL – SOURCE CODE" any pages

1 printed by the receiving party. The producing party may retain a copy
2 of such pages for its records. If the producing party objects that the
3 printed portions are excessive and/or not reasonably necessary to any
4 case preparation activity, the producing party shall make such
5 objection known to the receiving party within two (2) business days.
6 If, after meeting and conferring, the producing party and the receiving
7 party cannot resolve the objection, the producing party shall seek a
8 Court resolution of whether the printed Source Code Material in
9 question is narrowly tailored and reasonably necessary to any case
10 preparation activity as provided herein, as governed by Local Rules
11 37-1 and 37-2, including the Joint Stipulation requirement, subject to
12 the following expedited schedule. The producing party shall deliver
13 to the receiving party its portion of the Joint Stipulation and related
14 papers, as described in Local Rule 37-2.1, within two (2) business
15 days of the completion of the meet and confer process. Within two
16 (2) business days of receipt, the receiving party shall return its portion
17 of the required Joint Stipulation and related papers, as described in
18 Local Rule 37-2.1, to the producing party. The producing party must
19 use its power to object reasonably and may not, for example, make an
20 objection simply to introduce delay or attempt to discover privileged
21 information. In the absence of any objection, or upon resolution of
22 any such dispute by the Court, the producing party shall provide via
23 overnight mail one copy set of such pages to the receiving party
24 within two (2) business days of the printouts being made. The printed
25 pages shall constitute part of the Source Code Material produced by
26 the producing party in this action.

- 27 f. The receiving party's outside counsel of record may make no more
28 than two (2) additional paper copies of any portions of the Source

1 Code Material received from a producing party, not including copies
2 attached to court filings or used at depositions. The receiving party's
3 outside counsel of record shall maintain a log of all paper copies of
4 the Source Code Material that are delivered by the receiving party to
5 any qualified person under the provisions of this order. The log shall
6 include the names of the reviewers and/or recipients of paper copies
7 and locations where the paper copies are stored.

8 g. The receiving party's outside counsel of record and any person
9 receiving a copy of any source code shall maintain and store any
10 paper copies of the Source Code Material at their offices in a manner
11 that prevents duplication of or unauthorized access to the source code,
12 including, without limitation, storing the source code in a locked room
13 or cabinet at all times when it is not in use.

14 h. A party may make and use snippets and images of the Source Code
15 Material if necessary for court filings, expert reports, discovery
16 responses and other similar documents. All such documents shall be
17 clearly marked "HIGHLY CONFIDENTIAL – SOURCE CODE"
18 and, if filed, shall be filed under seal. In addition, any party making
19 such use of Source Code Material in documents filed with the court
20 shall also file redacted versions of said documents not under seal.

21 i. Defendants have objected to the production of source code, and do not
22 waive their objections by agreeing to these Source Code provisions,
23 and are unable to determine at this time whether more stringent
24 Source Code protection may be appropriate. In the event Defendants
25 agree or are required to produce source code and determine in good
26 faith that modifications to these Source Code provisions are
27 necessary, MoneySuite agrees to confer with Defendants in good faith
28 prior to such production to make any necessary modifications to this

1 Source Code provision to address Defendants' concerns. If the parties
2 are unable to agree upon such modifications, the parties shall adhere
3 to the dispute resolution procedure in paragraph 10 below.

4 Modifications to the Source Code provisions shall not have the force
5 and effect of a Court order unless approved by the Court.

6 10.If after meeting and conferring, the parties are unable to agree on experts
7 or consultants disclosed pursuant to paragraph 6(b) or to modifications to the Source
8 Code provisions in subparagraph 9(i), then the party objecting to the expert or
9 consultant, or requesting modifications to the Source Code provisions shall seek a
10 Court resolution of the parties' dispute, as governed by Local Rules 37-1 and 37-2,
11 including the Joint Stipulation requirement, subject to the following expedited
12 schedule. The moving party shall deliver to the opposing party its portion of the
13 Joint Stipulation and related papers, as described in Local Rule 37-2.1, within two
14 (2) business days of the completion of the meet and confer process. Within two (2)
15 business days of receipt, the opposing party shall return its portion of the required
16 Joint Stipulation and related papers, as described in Local Rule 37-2.1, to the
17 moving party. The moving party must use its power to object or seek modifications
18 reasonably and may not, for example, make an objection or seek modifications
19 simply to introduce delay or attempt to discover privileged information. Any
20 modification of this Order will not have the force and effect of a Court order unless
21 approved by the Court.

22 11.Any individual to whom Highly Confidential information of a technical
23 nature is disclosed shall execute a nondisclosure agreement in the form of
24 Attachment A prior to disclosure, a copy of which shall be retained by outside
25 counsel for the disclosing party. Each such individual shall thereafter be
26 prohibited from being directly involved in preparing or prosecuting patent
27 applications, including but not limited to claim drafting, reviewing, or editing,
28 where such claims involve the same subject matter as the asserted patent. This bar

1 shall apply from the date commencing with such disclosure through a period of one
2 year after termination of this litigation. Nothing in this paragraph shall prevent
3 such individuals from sending non-confidential prior art to any person under a duty
4 of candor involved in patent prosecution for purposes of ensuring that such prior
5 art is submitted to the U.S. Patent and Trademark Office (or any similar agency of
6 a foreign government) to assist a patent applicant in complying with its duty of
7 candor, or from discussing any aspect of this case that is reasonably necessary for
8 the prosecution or defense of any claim or counterclaim in this litigation with
9 his/her client, but which shall not include any direct involvement in preparing or
10 prosecuting patent applications.

11 12.If timely corrected, an inadvertent failure to designate qualified
12 information or items as Confidential or Highly Confidential does not, standing
13 alone, waive the designating party's right to secure protection under this Order for
14 such material. If material is appropriately designated as Confidential or Highly
15 Confidential after the material was initially produced, the receiving party, on
16 timely notification of the designation, must make reasonable efforts to ensure that
17 the material is treated in accordance with the provisions of this Order.

18 13.Nothing herein shall impose any restrictions on the use or disclosure by a
19 party of material obtained by such party independent of discovery in this action,
20 whether or not such material is also obtained through discovery in this action, or
21 from disclosing its own Designated Material as it deems appropriate, or to restrict a
22 party's use of its own Designated Material.

23 14.A non-party producing information or material voluntarily or pursuant to
24 a subpoena or a court order may designate such material or information as
25 Designated Materials pursuant to the terms of this Protective Order.

26 15.If Designated Material, including any portion of a deposition transcript
27 designated as Confidential or Highly Confidential, is included in any papers to be
28 filed with the Court, such papers shall be accompanied by an application to (a) file

1 the confidential portions thereof under seal (if such portions are segregable), or (b)
2 file the papers in their entirety under seal (if the confidential portions are not
3 segregable). The application shall be directed to the judge to whom the papers are
4 directed. Pending the ruling on the application, the papers or portions thereof
5 subject to the sealing application shall be lodged under seal.

6 16. This Order shall be without prejudice to the right of the parties (i) to
7 bring before the Court at any time the question of whether any particular document
8 or information is confidential or whether its use should be restricted or (ii) to
9 present a motion to the Court under Fed. R. Civ. P. 26(c) for a separate protective
10 order as to any particular document or information, including restrictions differing
11 from those as specified herein. This Order shall not be deemed to prejudice the
12 parties in any way in any future application for modification of this Order,
13 notwithstanding that any modification of this Order will not have the force and
14 effect of a Court order unless approved by the Court.

15 17. This Order is entered solely for the purpose of facilitating the exchange
16 of documents and information between the parties to this action without involving
17 the Court unnecessarily in the process. Nothing in this Order nor the production of
18 any information or document under the terms of this Order nor any proceedings
19 pursuant to this Order shall be deemed to have the effect of an admission or waiver
20 by either party or of altering the confidentiality or nonconfidentiality of any such
21 document or information or altering any existing obligation of any party or the
22 absence thereof.

23 18. This Order shall survive the final termination of this action, to the extent
24 that the information contained in Designated Material is not or does not become
25 known to the public, and the Court shall retain jurisdiction to resolve any dispute
26 concerning the use of information disclosed hereunder. Upon termination of this
27 case, counsel for the parties shall assemble and return to each other all documents,
28 material and deposition transcripts designated as Confidential or Highly

1 Confidential and all copies of same, or shall certify the destruction thereof.

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Dated: April 6, 2012

Respectfully submitted,
RUSS AUGUST & KABAT

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Attorneys for Defendants
Insurance Answer Center,
Answer Financial, Inc.,
Esurance Insurance Services, Inc.,
Allstate Insurance Company

PURSUANT TO STIPULATION, IT IS SO ORDERED.



Dated: April 06, 2012

Honorable Jean P. Rosenbluth
Magistrate Judge
Central District of California

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Attachment A

Nondisclosure Agreement

I, _____, do solemnly swear that I am fully familiar with the terms of the Protective Order Concerning Confidential Information entered in [CASE NAME], and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of the Court. I hereby consent to the jurisdiction of the Court for purposes of enforcing this nondisclosure agreement.

DATED:

[Name of Signator Typed]