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 17 JOURNEY SPA & WELLNESS CENTER, INC.

18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA
 20 SOUTHERN DIVISION

22 **NEW ENCHANTMENT, L.L.C.**,
 an Arizona limited liability company,
 23 Plaintiff,

24 v.

25 **THE JOURNEY SPA &**
WELLNESS CENTER, INC., a
 26 California corporation,

27 Defendant.

28 **AND COUNTERCLAIMS**

Case No. SACV 12-1382 JGB (RNBx)

[PROPOSED] STIPULATED*
PROTECTIVE ORDER

**[*This document is Docket No. 33
 revised in response to Magistrate
 Block's minutes dated July 19, 2013.
 Only ¶ 3 is substantively different.]**

STIPULATED PROTECTIVE ORDER
 SACV 12-1382 JGB (RNBx)

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STIPULATED PROTECTIVE ORDER

All parties having agreed a protective order (“Order”) pursuant to Rule 26(c) of the Federal Rules of Civil Procedure is both necessary and appropriate, and the U.S. District Court, Central District of California (“Court”) having approved such an agreement:

IT IS HEREBY ORDERED that Plaintiffs, (defined below) and Defendants, (defined below) are bound by the following Order for the protection of confidential information, documents, and other things produced, served, or otherwise provided in this action by the parties, or by third parties.

BACKGROUND

Plaintiffs and Defendants are parties to the above-captioned action (the “Action”)

Plaintiff New Enchantment, LLC (“PLAINTIFF”) and Defendant The Journey Spa & Wellness Center, Inc. (“DEFENDANT”) are involved in, among other things, the provision of spa services.

Each party derives commercial advantage from maintaining the confidentiality of certain confidential and proprietary information and each party has served written discovery in the Action upon the other requesting access to and/or information relating to certain confidential and proprietary information, including without limitation, information relating to the identity of customers, sales data, marketing data, sales and profits. Each party has agreed to provide the other with such requested information pursuant to a stipulated protective order. Accordingly, the parties seek to prevent the use and disclosure of confidential and proprietary information gathered in connection with the Action for any purpose other than as provided in this Order.

The following purpose, procedures, terms and conditions shall apply to the disclosure of designated material (defined below):

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation would be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that it affords protection only to the
9 limited information or items entitled to treatment as confidential under applicable
10 legal principles. The parties further acknowledge, as set forth in Section 10, below,
11 that this Stipulated Protective Order creates no entitlement to file confidential
12 information under seal; Civil Local Rule 79-5 sets forth the procedures that the
13 parties must follow and reflects the standards that the Court will apply when a party
14 seeks permission from the Court to file material under seal. If any papers to be
15 filed with the Court contain information to be protected under this Stipulated
16 Protective Order, the proposed filing shall be accompanied by an application to file
17 the papers or the portion thereof containing the protected information (if such
18 portion is segregable) under seal pursuant to Civil Local Rule 79-5; and the
19 application to file under seal will be directed to the judge to whom the papers are
20 directed. For motions, the parties will also file a redacted version of the motion and
21 supporting papers.

22 **2. DEFINITIONS**

23 2.1 Party: any party to this action, including all of its officers, directors,
24 employees, consultants, retained experts, insurers, and outside counsel (and their
25 support staff).

26 2.2 Disclosure or Discovery Material: all items or information, regardless
27 of the medium or manner generated, stored, or maintained (including, among other
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1 things, testimony, transcripts, or tangible things) that are produced or generated in
2 disclosures or responses to discovery in this matter.

3 2.3 “Confidential” Information or Items: information (regardless of how
4 generated, stored or maintained) or tangible things that qualify for protection under
5 the standards developed under either FRCP 26(c) or the definition of “trade secret”
6 identified in California Civil Code § 3426.1, which provides that trade secret
7 “means information, including a formula, pattern, compilation, program, device,
8 method, technique, or process, that: (1) Derives independent economic value,
9 actual or potential, from not being generally known to the public or to other persons
10 who can obtain economic value from its disclosure or use; and (2) Is the subject of
11 efforts that are reasonable under the circumstances to maintain its secrecy.” Among
12 other things, the parties anticipate that that Confidential Information will include
13 financial information (such as insurance policies, financial statements, and other
14 records of income and expenses), as well as other commercial information that has
15 value by virtue of its non-public nature, such as customer information.

16 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
17 extremely sensitive “Confidential Information or Items” whose disclosure to
18 another Party or non-party would create a substantial risk of serious injury,
19 including competitive injury, that could not be avoided by less restrictive means.

20 2.5 Receiving Party: a Party that receives Disclosure or Discovery
21 Material from a Producing Party.

22 2.6 Producing Party: a Party or non-party that produces Disclosure or
23 Discovery Material in this action.

24 2.7 Designating Party: a Party or non-party that designates information or
25 items that it produces in disclosures or in responses to discovery as “Confidential”
26 or “Highly Confidential — Attorneys’ Eyes Only.”

27 2.8 Protected Material: any Disclosure or Discovery Material that is
28 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

1 2.9 Outside Counsel: attorneys who are not employees of a Party but who
2 are retained to represent or advise a Party in this action.

3 2.10 House Counsel: attorneys who are employees of a Party.

4 2.11 Counsel (without qualifier): Outside Counsel and House Counsel, as
5 well as their support staffs.

6 2.12 Expert: a person with specialized knowledge or experience in a matter
7 pertinent to the litigation who has been retained by a Party or its counsel to serve as
8 an expert witness or as a consultant in this action and who is not a current employee
9 of a Party or of a competitor of a Party and who, at the time of retention, is not
10 anticipated to become an employee of a Party or a competitor of a Party. This
11 definition includes a professional jury or trial consultant retained in connection with
12 this litigation.

13 2.13 Professional Vendors: persons or entities that provide litigation
14 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
15 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
16 and their employees and subcontractors.

17 3. **SCOPE**

18 The protections conferred by this Stipulated Protective Order cover not only
19 Protected Material (as defined above), but also any information copied or extracted
20 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
21 conversations, or presentations by parties or counsel in any settings that might
22 reveal Protected Material, with the exception that this Stipulated Protective Order
23 shall not apply to or govern presentations at Court proceedings. The parties will
24 need to take up any matters they want to be subject to a protective order relative to
25 presentations at Court proceedings with the appropriate judicial officer at the
26 appropriate time.

1 4. **DURATION**

2 Even after the termination of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs.

5
6 5. **DESIGNATING PROTECTED MATERIAL**

7 5.1 Exercise of Restraint and Care in Designating Material for Protection.

8 Each Party or non-party that designates information or items for protection under
9 this Order must take care to limit any such designation to specific material that
10 qualifies under the appropriate standards. A Designating Party must take care to
11 designate for protection only those parts of material, documents, items, or oral or
12 written communications that qualify – so that other portions of the material,
13 documents, items, or communications for which protection is not warranted are not
14 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or
15 routinized designations are prohibited.

16 If it comes to a Party’s or a non-party’s attention that information or items
17 that it designated for protection do not qualify for protection at all, or do not qualify
18 for the level of protection initially asserted, that Party or non-party must promptly
19 notify all other parties that it is withdrawing the mistaken designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided in
21 this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise
22 stipulated or ordered, material that qualifies for protection under this Order must be
23 clearly so designated before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (apart from transcripts of
26 depositions), that the Producing Party affix the legend “CONFIDENTIAL” or
27 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top or bottom
28 of each page that contains protected material. If only a portion or portions of the

1 material on a page qualifies for protection, the Producing Party also must clearly
2 identify the protected portion(s) (e.g., by making appropriate markings in the
3 margins) and must specify, for each portion, the level of protection being asserted
4 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
5 EYES ONLY”).

6 A Party or non-party that makes original documents or materials available for
7 inspection need not designate them for protection until after the inspecting Party
8 has indicated which material it would like copied and produced. During the
9 inspection and before the designation, all of the material made available for
10 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY.” After the inspecting Party has identified the documents it wants copied
12 and produced, the Producing Party must determine which documents, or portions
13 thereof, qualify for protection under this Order, then, before producing the specified
14 documents, the Producing Party must affix the appropriate legend
15 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY”) at the top or bottom of each page that contains Protected Material. If only
17 a portion or portions of the material on a page qualifies for protection, the
18 Producing Party also must clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins) and must specify, for each portion, the level
20 of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

22 (b) for testimony given in deposition, that the Party or non-party offering
23 or sponsoring the testimony identify on the record, before the close of the
24 deposition, all protected testimony, and further specify any portions of the
25 testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
26 ONLY.” When it appears that substantial portions of the testimony may qualify for
27 protection, any Party or non-party may invoke on the record (at any time before the
28 conclusion of the deposition or proceeding) a right to have up to 20 days to identify

1 the specific portions of the testimony as to which the Party or non-party seeks
2 protection and to specify the level of protection being asserted (i.e.,
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY”).

5 Only those portions of the testimony that are appropriately designated for
6 protection within the 20 days shall be covered by the provisions of this Stipulated
7 Protective Order.

8 Transcript pages containing Protected Material must be separately bound by
9 the court reporter, who must affix to the top of each such page the legend
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY,” as instructed by the Party or non-party offering or sponsoring the witness
12 or presenting the testimony.

13 (c) for information produced in some form other than documentary, and
14 for any other tangible items, that the Producing Party affix in a prominent place on
15 the exterior of the container or containers in which the information or item is stored
16 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
17 EYES ONLY.” If only portions of the information or item warrant protection, the
18 Producing Party, to the extent practicable, shall identify the protected portions,
19 specifying whether they qualify as “Confidential” or as “Highly Confidential –
20 Attorneys’ Eyes Only.”

21 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate
22 qualified information or items as “Confidential” or “Highly Confidential –
23 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s
24 right to secure protection under this Order for such material. If material is
25 appropriately designated as “Confidential” or “Highly Confidential – Attorneys’
26 Eyes Only” after the material was initially produced, the Receiving Party, on timely
27 notification of the designation, must make reasonable efforts to assure that the
28 material is treated in accordance with the provisions of this Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
3 Party’s confidentiality designation is necessary to avoid foreseeable substantial
4 unfairness, unnecessary economic burdens, or a later significant disruption or delay
5 of the litigation, a Party does not waive its right to challenge a confidentiality
6 designation by electing not to assert a challenge promptly after the designation.

7 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
8 Designating Party’s confidentiality designation must do so in good faith and must
9 begin the process by conferring directly (in voice to voice dialogue; other forms of
10 communication are not sufficient) with counsel for the Designating Party. In
11 conferring, the challenging Party must explain the basis for its belief that the
12 particular confidentiality designation was not proper and must give the Designating
13 Party an opportunity to review the designated material, to reconsider the
14 circumstances, and, if no change in designation is offered, to explain the basis for
15 the chosen designation. A challenging Party may proceed to the next stage of the
16 challenge process only if it first engage in this meet and confer process.

17 6.3 Judicial Intervention. A Party that elects to press a challenge to a
18 confidentiality designation after considering the justification offered by the
19 Designating Party may file and serve a Joint Stipulation under Civil Local Rules
20 37-1 and 37-2 (and in compliance with Civil Local Rule 79-5, if applicable) that
21 identifies the challenged material and sets forth in detail the basis for the challenge.
22 The burden of establishing the confidentiality in any such challenge proceeding
23 shall be on the Designating Party. Until the Court rules on the challenge, all parties
24 shall continue to afford the material in question the level of protection to which it is
25 entitled under the Producing Party’s designation.

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

27 7.1 Basic Principles. A Receiving Party may use Disclosure or Discovery
28 Material only for prosecuting, defending, or attempting to settle this litigation.

1 Protected Material may be disclosed only to the categories of persons and under the
2 conditions described in this Order. When the litigation has been terminated, a
3 Receiving Party must comply with the provisions of section 11, below (FINAL
4 DISPOSITION).

5 A Receiving Party must store and maintain Protected Material at a location
6 and in a secure manner that ensures that only the persons authorized under this
7 Order have access.

8 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
9 otherwise ordered by the court or permitted in writing by the Designating Party, a
10 Receiving Party may disclose any information or item designated
11 CONFIDENTIAL only to:

- 12 (a) the Court and its personnel;
- 13 (b) the author of the document or the original source of the information;
- 14 (c) the Receiving Party’s Outside Counsel of record in this action, as well
15 as employees of said Counsel to whom it is reasonably necessary to disclose the
16 information for this litigation;
- 17 (d) court reporters, their staffs, and professional vendors to whom
18 disclosure is reasonably necessary for this litigation;
- 19 (e) the officers, directors, and employees (including House Counsel) of
20 the Receiving Party to whom disclosure is reasonably necessary for this litigation;
- 21 (f) Experts (as defined in this Order) of the Receiving Party to whom
22 disclosure is reasonably necessary for this litigation and who have signed the
23 “Agreement to Be Bound by Protective Order” (Exhibit A); and,
- 24 (g) during their depositions, witnesses in the action to whom disclosure is
25 reasonably necessary and who have signed the “Agreement to Be Bound by
26 Protective Order” (Exhibit A). Pages of transcribed deposition testimony or
27 exhibits to depositions that reveal Protected Material must be separately bound by
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1 the court reporter and may not be disclosed to anyone except as permitted under
2 this Stipulated Protective Order.

3 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY” Information or Items. Unless otherwise ordered by the court or permitted
5 in writing by the Designating Party, a Receiving Party may disclose any
6 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
7 EYES ONLY” only to:

8 (a) the Court and its personnel;

9 (b) the author of the document or the original source of the information;

10 (c) the Receiving Party’s Outside Counsel of record in this action, as well
11 as employees of said Counsel to whom it is reasonably necessary to disclose the
12 information for this litigation;

13 (d) House Counsel and non-attorney members of House Counsel’s legal
14 staff to whom it is reasonably necessary to disclose the information for this
15 litigation;

16 (e) court reporters, their staffs, and professional vendors to whom
17 disclosure is reasonably necessary for this litigation; and,

18 (f) Experts (as defined in this Order) of the Receiving Party to whom
19 disclosure is reasonably necessary for this litigation, and who have signed the
20 “Agreement to Be Bound by Protective Order” (Exhibit A); and,

21 (h) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Agreement to Be Bound by
23 Protective Order” (Exhibit A). Pages of transcribed deposition testimony or
24 exhibits to depositions that reveal Protected Material must be separately bound by
25 the court reporter and may not be disclosed to anyone except as permitted under
26 this Stipulated Protective Order.

1 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION.**

3 If a Receiving Party is served with a subpoena or an order issued in other
4 litigation that would compel disclosure of any information or items designated in
5 this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating
7 Party, in writing (by fax or e-mail, if possible) immediately. Such notification must
8 include a copy of the subpoena or court order.

9 The Receiving Party also must immediately inform in writing the Party who
10 caused the subpoena or order to issue in the other litigation that some or all the
11 material covered by the subpoena or order is the subject of this Protective Order. In
12 addition, the Receiving Party must deliver a copy of this Stipulated Protective
13 Order promptly to the Party in the other action that caused the subpoena or order to
14 issue.

15 The purpose of imposing these duties is to alert the interested parties to the
16 existence of this Protective Order and to afford the Designating Party in this case an
17 opportunity to move to protect its confidentiality interests in the court from which
18 the subpoena or order issued. The Designating Party shall bear the burdens and the
19 expenses of seeking protection in that court of its confidential material – and
20 nothing in these provisions should be construed as authorizing a Party to disobey a
21 lawful subpoena issued in another action.

22 9. **UNAUTHORIZED DISCLOSURE OF PROTECTED**
23 **MATERIAL**

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

STIPULATED PROTECTIVE ORDER
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1 persons to whom unauthorized disclosures were made of all the terms of this Order,
2 and (d) request such person or persons to execute the “Acknowledgment and
3 Agreement to Be Bound” that is attached hereto as Exhibit A.

4 **10. FILING PROTECTED MATERIAL**

5 Without written permission from the Designating Party or a court order
6 secured after appropriate notice to all interested persons, a Party may not file in the
7 public record in this action any Protected Material without complying with Civil
8 Local Rule 79-5.

9 **11. FINAL DISPOSITION**

10 Unless otherwise ordered or agreed in writing by the Producing Party, within
11 sixty days after the final termination of this action, each Receiving Party must
12 return all Protected Material to the Producing Party. As used in this subdivision,
13 “all Protected Material” includes all copies, abstracts, compilations, summaries or
14 any other form of reproducing or capturing any of the Protected Material. With
15 permission in writing from the Designating Party, the Receiving Party may destroy
16 some or all of the Protected Material instead of returning it. Whether the Protected
17 Material is returned or destroyed, the Receiving Party must submit a written
18 certification to the Producing Party (and, if not the same person or entity, to the
19 Designating Party) by the sixty day deadline that identifies (by category, where
20 appropriate) all the Protected Material that was returned or destroyed and that
21 affirms that the Receiving Party has not retained any copies, abstracts,
22 compilations, summaries or other forms of reproducing or capturing any of the
23 Protected Material.

24 Notwithstanding this provision, Counsel are entitled to retain a single
25 archival electronic copy of all pleadings, motion papers, transcripts, legal
26 memoranda, correspondence or attorney work product, even if such materials
27 contain Protected Material. Any such archival copies that contain or constitute
28 Protected Material remain subject to this Protective Order as set forth in Section 4

1 (DURATION), above.

2 12. MISCELLANEOUS

3 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
4 person to seek its modification by the Court.

5 12.2 Right to Assert Other Objections. By stipulating to the entry of this
6 Protective Order no Party waives any right it otherwise would have to object to
7 disclosing or producing any information or item on any ground not addressed in
8 this Stipulated Protective Order. Similarly, no Party waives any right to object on
9 any ground to use in evidence of any of the material covered by this Protective
10 Order.

11 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

12 Dated: July 23, 2013 **ARENT FOX LLP**


13 By: ___s/David G. Bayles_____
14 David G. Bayles
15 Attorneys for Plaintiff and Counterdefendant
NEW ENCHANTMENT, L.L.C.

16 Dated: July 23, 2013 **THE KINDER LAW GROUP**

17 By: ___s/Brian Kinder_____
18 Brian P. Kinder
19 Attorneys for Defendant and Counterclaimant
20 THE JOURNEY SPA & WELLNESS CENTER,
INC.

21 **IT IS SO ORDERED.**

22 DATED: July 24, 2013



ROBERT N. BLOCK
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, 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 _____ in the action titled *New Enchantment, L.L.C. v. The Journey Spa & Wellness Center, Inc.*, case number SACV12-1382-JGB(RNBx). 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 may constitute contempt of Court. I 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.

Dated: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____