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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSHUA DOAN and VAN DUONG, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

NETWORK CAPITAL FUNDING
CORPORATION, a Nevada Corporation,

Defendant.

) Case No. 8:16-CV-1678-CJC-JCG
)
) Judge: Hon. Cormac J. Carney
)
) Magistrate Judge:
) Hon. Jay C. Gandhi
)
) **STIPULATED PROTECTIVE**
) **ORDER**
)
) Complaint Filed: September 9, 2016
) Trial Date: April 10, 2018

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

1 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
2 that must be followed and the standards that will be applied when a party seeks
3 permission from the court to file material under seal.

4 B. GOOD CAUSE STATEMENT

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

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1 2. DEFINITIONS

2 2.1 Action: *JOSHUA DOAN and VAN DUONG, on behalf of themselves*
3 *and all others similarly situated v. NETWORK CAPITAL FUNDING*
4 *CORPORATION, a Nevada Corporation, Case No. 8:16-CV-1678.*

5 2.2 Challenging Party: a Party or Non-Party that challenges the designation
6 of information or items under this Order.

7 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
8 how it is generated, stored or maintained) or tangible things that qualify for
9 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
10 Good Cause Statement.

11 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
12 their support staff).

13 2.5 Designating Party: a Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL.”

16 2.6 Disclosure or Discovery Material: all items or information, regardless of
17 the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced or
19 generated in disclosures or responses to discovery in this matter.

20 2.7 Expert: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as
22 an expert witness or as a consultant in this Action.

23 2.8 House Counsel: attorneys who are employees of a party to this Action.
24 House Counsel does not include Outside Counsel of Record or any other outside
25 counsel.

26 2.9 Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.

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1 2.10 Outside Counsel of Record: attorneys who are not employees of a party
2 to this Action but are retained to represent or advise a party to this Action and have
3 appeared in this Action on behalf of that party or are affiliated with a law firm which
4 has appeared on behalf of that party, and includes support staff.

5 2.11 Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staffs).

8 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
9 Discovery Material in this Action.

10 2.13 Professional Vendors: persons or entities that provide litigation support
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
13 and their employees and subcontractors.

14 2.14 Protected Material: any Disclosure or Discovery Material that is
15 designated as “CONFIDENTIAL.”

16 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
17 from a Producing Party.

18 3. SCOPE

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

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

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1 4. DURATION

2 Even after final disposition 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. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
6 or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Non-Party that designates information or items for protection under
13 this Order must take care to limit any such designation to specific material that
14 qualifies under the appropriate standards. The Designating Party must designate for
15 protection only those parts of material, documents, items, or oral or written
16 communications that qualify so that other portions of the material, documents, items,
17 or communications for which protection is not warranted are not swept unjustifiably
18 within the ambit of this Order.

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

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in
28 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise

1 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
2 under this Order must be clearly so designated before the material is disclosed or
3 produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic documents,
6 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
7 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
8 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
9 portion or portions of the material on a page qualifies for protection, the Producing
10 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
11 markings in the margins).

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

24 (b) for testimony given in depositions that the Designating Party identify the
25 Disclosure or Discovery Material on the record, before the close of the deposition all
26 protected testimony, or within thirty (30) days thereafter.

27 (c) for information produced in some form other than documentary and for any
28 other tangible items, that the Producing Party affix in a prominent place on the

1 exterior of the container or containers in which the information is stored the legend
2 “CONFIDENTIAL.” If only a portion or portions of the information warrants
3 protection, the Producing Party, to the extent practicable, shall identify the protected
4 portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
6 failure to designate qualified information or items does not, standing alone, waive the
7 Designating Party’s right to secure protection under this Order for such material.
8 Upon timely correction of a designation, the Receiving Party must make reasonable
9 efforts to assure that the material is treated in accordance with the provisions of this
10 Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court’s
14 Scheduling Order.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process under Local Rule 37.1 et seq.

17 6.3 The burden of persuasion in any such challenge proceeding shall be on
18 the Designating Party. Frivolous challenges, and those made for an improper
19 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
20 parties) may expose the Challenging Party to sanctions. Unless the Designating
21 Party has waived or withdrawn the confidentiality designation, all parties shall
22 continue to afford the material in question the level of protection to which it is
23 entitled under the Producing Party’s designation until the Court rules on the
24 challenge.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Non-Party in connection with this
28 Action only for prosecuting, defending, or attempting to settle this Action. Such

1 Protected Material may be disclosed only to the categories of persons and under the
2 conditions described in this Order. When the Action has been terminated, a
3 Receiving Party must comply with the provisions of section 13 below (FINAL
4 DISPOSITION).

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

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 Receiving Party’s Outside Counsel of Record in this Action, as well as
13 employees of said Outside Counsel of Record to whom it is reasonably necessary to
14 disclose the information for this Action;

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

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

20 (d) the court and its personnel;

21 (e) court reporters and their staff;

22 (f) Professional Vendors to whom disclosure is reasonably necessary for this
23 Action and who have signed the “Acknowledgment and Agreement to Be Bound”
24 (Exhibit A);

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

27 (h) during their depositions, witnesses, and attorneys for witnesses, in the
28 Action to whom disclosure is reasonably necessary provided: (1) the deposing party

1 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
2 not be permitted to keep any confidential information unless they sign the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
4 agreed by the Designating Party or ordered by the court. Pages of transcribed
5 deposition testimony or exhibits to depositions that reveal Protected Material may be
6 separately bound by the court reporter and may not be disclosed to anyone except as
7 permitted under this Stipulated Protective Order; and

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

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

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

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

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

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

23 If the Designating Party timely seeks a protective order, the Party served with
24 the subpoena or court order shall not produce any information designated in this
25 action as “CONFIDENTIAL” before a determination by the court from which the
26 subpoena or order issued, unless the Party has obtained the Designating Party’s
27 permission. The Designating Party shall bear the burden and expense of seeking
28 protection in that court of its confidential material and nothing in these provisions

1 should be construed as authorizing or encouraging a Receiving Party in this Action to
2 disobey a lawful directive from another court.

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

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

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

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

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

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

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

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1 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
2 of seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
13 PROTECTED MATERIAL

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

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
6 only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue. If a Party's request to file Protected Material
8 under seal is denied by the court, then the Receiving Party may file the information
9 in the public record unless otherwise instructed by the court.

10 13. FINAL DISPOSITION

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

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

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 Dated: May 26, 2017

THE COOPER LAW FIRM, P.C.

8 By: /s/ Samantha A. Smith*
9 Scott B. Cooper
10 Samantha A. Smith
11 Attorneys for Plaintiffs
12 JOSHUA DOAN and VAN
13 DUONG

12 Dated: May 26, 2017


BREMER WHYTE BROWN & O'MEARA
LLP

14 By: /s/ Tiffany L. Bacon
15 Jeremy S. Johnson
16 Benjamin Price
17 Tiffany L. Bacon
18 Attorneys for Defendant
19 NETWORK CAPITAL FUNDING
20 CORPORATION

19 *I, Tiffany L. Bacon, attest that counsel concur in the content of this filing and have
20 authorized this filing.

22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24 Dated: August 29, 2017



25 Honorable Jay C. Gandhi
26 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [date] in the case of _____ [insert formal name of the case and the number
and initials assigned to it by the court]. I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order. I further agree to
submit to the jurisdiction of the United States District Court for the Central District
of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action. I
hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____