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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 KENNETH L. WITT,

11 Plaintiff,

12 v.

13 EXPERIAN INFORMATION SOLUTIONS,
14 INC., et al,

15 Defendants.

16 **Case No. 1:08-CV-00553 LJO DLB**

17 **STIPULATED PROTECTIVE ORDER**

18 **1. PURPOSES AND LIMITATIONS**

19 Disclosure and discovery activity in this action are likely to involve production of
20 confidential, proprietary, or private information for which special protection from public
21 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
22 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
23 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
24 all disclosures or responses to discovery and that the protection it affords extends only to the
25 limited information or items that are entitled under the applicable legal principles to treatment as
26 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
27 Stipulated Protective Order creates no entitlement to file confidential information under seal;
28 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors,

1 employees, consultants, retained experts, and outside counsel (and their support staff).

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

6 2.3 “Confidential” Information or Items: information (regardless of how
7 generated, stored or maintained) or tangible things that qualify for protection under standards
8 developed under Fed. R. Civ. P. 26(c).

9 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
10 extremely sensitive “Confidential Information or Items” whose disclosures to another Party or
11 non-party would create a substantial risk of serious injury that could not be avoided by less
12 restrictive means.

13 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
14 from a Producing Party.

15 2.6 Producing Party: a Party or non-party that produces Disclosure or
16 Discovery Material in this action.

17 2.7. Designating Party: a Party or non-party that designates information or
18 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
19 Confidential – Attorneys’ Eyes Only.”

20 2.8 Protected Material: any Disclosure or Discovery Material that is designated
21 as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

22 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
23 retained to represent or advise a Party in this action.

24 2.10 House Counsel: attorneys who are employees of a Party.

25 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
26 as their support staffs).

27 2.12 Expert: a person with specialized knowledge or experience in a matter
28 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert

1 witness or as a consultant in this action and who is not a past or a current employee of a Party or
2 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an
3 employee of a Party or a competitor of a Party's. This definition includes a professional jury or
4 trial consultant retained in connection with this litigation.

5 2.13 Professional Vendors: persons or entities that provide litigation support
6 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
7 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
8 subcontractors.

9 **3. SCOPE**

10 The protections conferred by this Stipulation and Order cover not only Protected
11 Material (as defined above), but also any information copied or extracted therefrom, as well as all
12 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
13 presentations by parties or counsel to or in court or in other settings that might reveal Protected
14 Material.

15 **4. DURATION**

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

19 **5. DESIGNATING PROTECTED MATERIAL**

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
21 Party or non-party that designates information or items for protection under this Order must take
22 care to limit any such designation to specific material that qualifies under the appropriate
23 standards. A Designating Party must take care to designate for protection only those parts of
24 material, documents, items, or oral or written communications that qualify – so that other portions
25 of the material, documents, items, or communications for which protection is not warranted are
26 not swept unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that
28 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to

1 unnecessarily encumber or retard the case development process, or to impose unnecessary
2 expenses and burdens on other parties), expose the Designating Party to sanctions as may be
3 requested per section 6, *infra*.

4 If it comes to a Party's or a non-party's attention that information or items that it
5 designated for protection do not qualify for protection at all, or do not qualify for the level of
6 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
7 withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this
9 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
10 material that qualifies for protection under this Order must be clearly so designated before the
11 material is disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (apart from transcripts of depositions or
14 other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL"
15 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on each page of a document
16 [the top, bottom or where there is available space] that contains protected material. If only a
17 portion or portions of the material on a page qualifies for protection, the Producing Party also
18 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
19 margins) and must specify, for each portion, the level of protection being asserted (either
20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

21 A Party or non-party that makes original documents or materials available for
22 inspection need not designate them for protection until after the inspecting Party has indicated
23 which material it would like copied and produced. During the inspection and before the
24 designation, all of the material made available for inspection shall be deemed "HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
26 documents it wants copied and produced, the Producing Party must determine which documents,
27 or portions thereof, qualify for protection under this Order, then, before producing the specified
28 documents, the Producing Party must affix the legend "CONFIDENTIAL" or "HIGHLY

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

7 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
8 the Party or non-party offering or sponsoring the testimony identify on the record, before the
9 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
10 any portions of the testimony that qualify as "CONFIDENTIAL" or “HIGHLY CONFIDENTIAL
11 – ATTORNEYS’ EYES ONLY.” The Party or non-party that sponsors, offers, or gives the
12 testimony may also invoke on the record (before the deposition or proceeding is concluded) a
13 right to have up to twenty (20) days from receipt of a transcript of the testimony to identify the
14 specific portions of the testimony as to which protection is sought and to specify the level of
15 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
16 EYES ONLY”). Only those portions of the testimony that are appropriately designated for
17 protection within the twenty (20) days shall be covered by the provisions of this Order.

18 Transcript pages containing Protected Material must be separately bound by the
19 court reporter, who must affix to the bottom of each such page the legend “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or
21 nonparty offering or sponsoring the witness or presenting the testimony.

22 The designating party can request that all non-attorneys leave the deposition room if the
23 witness will be discussing documents or other information designated as “HIGHLY
24 CONFIDENTIAL –ATTORNEY’S EYES ONLY.”

25 (c) for information produced in some form other than documentary, and for any
26 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
27 container or containers in which the information or item is stored the legend “CONFIDENTIAL
28 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the

1 information or item warrant protection, the Producing Party, to the extent practicable, shall
2 identify the protected portions.

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items as “Confidential or Highly Confidential –
5 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure
6 protection under this Order for such material. If material is appropriately designated as
7 “Confidential or Highly Confidential – Attorneys’ Eyes Only” after the material was initially
8 produced, the Receiving Party, on timely notification of the designation, must make reasonable
9 efforts to assure that the material is treated in accordance with the provisions of this Order.

10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 6.1 Timing of Challenges. If any Party decides that a challenge to a
12 Designating Party’s confidentiality designation is necessary, it must make that challenge within
13 fourteen days after the original designation is disclosed.

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

23 6.3 Judicial Intervention. A Party that elects to press a challenge to a
24 confidentiality designation after considering the justification offered by the Designating Party
25 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
26 79-5, if applicable).

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

28 7.1 Basic Principles. A Receiving Party may use Protected Material that is

1 disclosed or produced by another Party or by a non-party in connection with this case only for
2 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
3 disclosed only to the categories of persons and under the conditions described in this Order.
4 When the litigation has been terminated, a Receiving Party must comply with the provisions of
5 section 11, below (FINAL DISPOSITION).

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

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

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

15 (b) experts (as defined in this Order) of the Receiving Party to whom disclosure is
16 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
17 Protective Order” (Exhibit A);

18 (c) the Court and its personnel;

19 (d) court reporters, their staffs, and professional vendors to whom disclosure is
20 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
21 Protective Order” (Exhibit A);

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

27 (f) the author of the document or the original source of the information.

28 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

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

4 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
5 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
6 litigation;

7 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
8 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective
9 Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have
10 been followed;

11 (c) the Court and its personnel;

12 (d) court reporters, their staffs, and professional vendors to whom disclosure is
13 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound
14 by Protective Order” (Exhibit A); and

15 (e) the author of the document or the original source of the information.

16 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

18 (a) Unless otherwise ordered by the court or agreed in writing by the Designating
19 Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any information or
20 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” first
21 must make a written request to the Designating Party that (1) identifies the specific HIGHLY
22 CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the
23 Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary
24 residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current
25 employer(s), (5) identifies each person or entity from whom the Expert has received
26 compensation for work in his or her areas of expertise or to whom the expert has provided
27 professional services at any time during the preceding five years, and (6) identifies (by name and
28 number of the case, filing date, and location of court) any litigation in connection with which the

1 Expert has provided any professional services during the preceding five years.

2 (b) A Party that makes a request and provides the information specified in the
3 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
4 within seven court days of delivering the request, the Party receives a written objection from the
5 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

6 (c) A Party that receives a timely written objection must meet and confer with the
7 Designating Party (including a reasonable attempt at direct voice to voice dialogue) to try to
8 resolve the matter by agreement. If no agreement is reached, the Party seeking to make the
9 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance
10 with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so..

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

13 If a Receiving Party is served with a subpoena or an order issued in other litigation
14 that would compel disclosure of any information or items designated in this action as
15 “CONFIDENTIAL or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
16 Receiving Party must so notify the Designating Party, in writing (by fax ore-mail if possible)
17 immediately and in no event more than three court days after receiving the subpoena or order.
18 Such notification must include a copy of the subpoena or court order.

19 The Receiving Party also must immediately inform in writing the Party who
20 caused the subpoena or order to issue in the other litigation that some or all the material covered
21 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
22 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action
23 that caused the subpoena or order to issue.

24 The purpose of imposing these duties is to alert the interested parties to the
25 existence of this Protective Order and to afford the Designating Party in this case an opportunity
26 to try to protect its confidentiality interests in the court from which the subpoena or order issued.
27 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
28 of its confidential material – and nothing in these provisions should be construed as authorizing or

1 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

2 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

10 **10. FILING PROTECTED MATERIAL.**

11 Without written permission from the Designating Party or a court order secured
12 after appropriate notice to all interested persons, a Party may not file in the public record in this
13 action any Protected Material. A Party that seeks to file under seal any Protected Material must
14 comply with Civil Local Rule 79-5.

15 **11. FINAL DISPOSITION.**

16 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
17 days after the final termination of this action, each Receiving Party must return all Protected
18 Material to the Producing Party. As used in this subdivision, “all Protected Material” includes all
19 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of
20 the Protected Material. With permission in writing from the Designating Party, the Receiving
21 Party may destroy some or all of the Protected Material instead of returning it. Whether the
22 Protected Material is returned or destroyed, the Receiving Party must submit a written
23 certification to the Producing Party (and, if not the same person or entity, to the Designating
24 Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected
25 Material that was returned or destroyed and that affirms that the Receiving Party has not retained
26 any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of
27 the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
28 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney

1 work product, even if such materials contain Protected Material. Any such archival copies that
2 contain or constitute Protected Material remain subject to this Protective Order as set forth in
3 Section 4 (DURATION), above.

4 **12. MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
6 person to seek its modification by the Court in the future.

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

12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 Dated: February 13, 2009.

KEMNITZER, ANDERSON, BARRON,
OGILVIE and BREWER LLP

14
15
16 By: /s/ Mark F. Anderson
Mark Anderson
Attorney for Plaintiff Kenneth L. Witt

17
18 Dated: February 13, 2009.

JONES DAY

19
20 By: /s/ Angela M. Taylor
Angela M. Taylor
Attorney for Defendant EXPERIAN
INFORMATION SOLUTIONS, INC.

21
22
23 Dated: February 13, 2009.

SPENCER FANE BRITT & BROWNE LLP

24
25 By: /s/ Leslie A. Greathouse
Leslie A. Greathouse
Attorney for Defendant REAL TIME
RESOLUTIONS, INC.

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PURSUANT TO STIPULATION, IT IS SO ORDERED and IT IS FURTHER ORDERED that, since this matter is pending in the U.S. District Court for the E.D. CA, parties seeking to file documents under seal must comply with CA E.D. Local Rule 39-141, rather than CA N.D. Local Rule 79.5.

Dated: February 17, 2009. _____

/s/ Dennis L. Beck
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 Eastern District of California on [date] in the case of *Witt v Experian, et al.*
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 Northern 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: _____
[printed name]

Signature: _____
[signature]