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FERGUSON ENTERPRISES, INC.

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT**

11 LEE BOND, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 FERGUSON ENTERPRISES, INC.,
16 a corporation, and DOES 1-50,
inclusive,

17 Defendants.

Case No. 1:09-CV-01662-OWW-SKO

**STIPULATION AND PROTECTIVE
ORDER**

Complaint Filed: July 17, 2009

18
19 The parties hereto, through their respective attorneys of record provide the
20 following stipulation regarding a Protective Order.

21 1. For purposes of this Order, “Confidential Information” shall mean all
22 items or information produced or generated during the course of discovery in this
23 matter, whether by a party or a non-party, that the party designating the material as
24 confidential (the “Designating Party”) reasonably believes contains private,
25 proprietary, confidential, or trade secret information of the Designating Party or of
26 any third person or entity to which the Designating Party owes a duty of
27 confidentiality. “Highly Confidential Information” shall mean all items or
28 information produced or generated during the course of discovery in this matter,

1 whether by a party or a non-party, that the Designating Party reasonably believes
2 contains extremely sensitive private, confidential, and/or proprietary information,
3 the disclosure of which, even if limited, may compromise and/or jeopardize the
4 business or personal interests of the Designating Party or of any third person or
5 entity to which the Designating Party owes a duty of confidentiality. The parties
6 agree that the individual page of a document containing the complete Social Security
7 of any member of the putative class, or any class that may be certified, who are not
8 named Plaintiffs, shall be “Highly Confidential Information.” Items or information
9 may be designated as “Confidential Information” or “Highly Confidential
10 Information” regardless of the medium or manner generated, stored, or maintained
11 including, among other things, testimony, transcripts, discovery responses,
12 documents, or other tangible things. Any Designating Party shall have the right to
13 identify and designate items or information as “Confidential Information” or
14 “Highly Confidential Information.”

15 2. “Confidential Information” in written or documentary form produced
16 by the Designating Party shall be designated as “Confidential Information” by the
17 Designating Party by marking each page of the writing or document, or each storage
18 device containing data exchanged in electronic format, with the legend
19 “CONFIDENTIAL.” “Confidential Information” in written or documentary form
20 produced by a person or entity other than the Designating Party as “Confidential
21 Information” by providing written notice to all other counsel of record in this action
22 specifically identifying by Bates Number, Bates Number ranges, or other similarly
23 specific description of the documents being designated.

24 3. “Highly Confidential Information” in written or documentary form
25 produced by the Designating Party shall be designated as “Highly Confidential
26 Information” by the Designating Party by marking each page of the writing or
27 document, or each storage device containing data exchanged in electronic format,
28 with the legend “HIGHLY CONFIDENTIAL INFORMATION.” “Highly

1 Confidential Information" in written or documentary form produced by a person or
2 entity other than the Designating Party shall be designated as "Highly Confidential
3 Information" by providing written notice to all other counsel of record in this action
4 specifically identifying by Bates Number, Bates Number ranges, or other similarly
5 specific description of the documents being designated.

6 4. It shall be the duty of the Designating Party to inform all other parties
7 as to which materials that are not in written or documentary form are to be treated as
8 "Confidential Information" or as "Highly Confidential Information" by designating
9 the information with reasonable particularity.

10 5. Items or information produced or generated by a non-party shall be
11 treated as "Confidential Information" for a period of ten (10) business days
12 after their production or disclosure. If, at the conclusion of ten (10) business
13 days, no party has designated the items or information as "Confidential
14 Information" or "Highly Confidential Information," the documents or
15 information shall not be protected. Nothing in this provision shall waive the right to
16 re-designate pursuant to Paragraph 16, below. During the ten (10) business day
17 period, any party may request from any party a determination as to whether specific
18 items or information contain "Confidential Information." The party to whom the
19 request is made shall respond in five (5) business days.

20 6. Any designation of deposition testimony as "Confidential Information"
21 or "Highly Confidential Information" shall be made when the testimony is given or
22 within a reasonable time thereafter, but in no event later than thirty (30) days after
23 the delivery of the original or a copy of the transcript of such testimony to counsel
24 for all parties who requested such transcript at the time of such deposition testimony.
25 Prior to the disclosure of "Confidential Information" or "Highly Confidential
26 Information" at any deposition, the reporter recording the same shall be furnished
27 with a copy of this order and shall be informed that the testimony, exhibits, and
28 other information designated as "Confidential Information" or "Highly Confidential

1 Information” may be disclosed only in accordance with the terms of this Order. Any
2 document attached to any deposition transcript previously marked as “Confidential
3 Information” or “Highly Confidential Information” shall remain so designated
4 whether or not so designated at deposition. Similarly, all testimony related to a
5 document so marked shall also be treated as “Confidential Information” or “Highly
6 Confidential Information” whether or not so designated at deposition. When
7 transcripts of any testimony are prepared, the reporter shall conspicuously mark each
8 page that is designated at the time of the deposition as containing “Confidential
9 Information” or “Highly Confidential Information” with an appropriate legend
10 signifying its confidential status and shall place the following legend on the cover of
11 the transcript containing “Confidential Information” or “Highly Confidential
12 Information”: “This transcript contains Confidential Information and/or Highly
13 Confidential Information subject to a Protective Order of the Court.”

14 7. “Confidential Information” may not be disclosed to any person other
15 than:

16 (a) in-house counsel, counsel of record in this litigation, and their partners,
17 employees, including temporary or contract employees, or associates to whom such
18 disclosure is deemed reasonably necessary by such counsel for the conduct of this
19 litigation;

20 (b) court reporters and videographers while in the performance of their
21 official duties;

22 (c) any party to this litigation and officers, directors, and employees,
23 including temporary or contract employees, of a party who are assisting counsel, but
24 only to the extent that such disclosure is deemed reasonably necessary by such
25 counsel for the conduct of this litigation, and provided further that a party may not
26 retain Confidential Information;

27 (d) independent experts and consultants retained by or associated with any
28 party in order to assist his, her, or its counsel in the conduct of this litigation and the

1 employees of such independent experts and consultants. Any disclosure pursuant to
2 this paragraph shall be made only to the extent that the disclosure of Confidential
3 Information is deemed reasonably necessary by the counsel who has retained the
4 expert or consultant for performance of the expert's or consultant's work. Any
5 expert or consultant who receives "Confidential Information" pursuant to this
6 paragraph may retain "Confidential Information" only as long as is necessary for the
7 performance of his or her expert or consulting services and may use "Confidential
8 Information" only for the purpose of providing assistance to counsel in this
9 litigation;

10 (e) any other person who may be designated, whether by name or
11 otherwise, by consent of counsel for the Designating Party or pursuant to further
12 Order of the Court on motion of any party to this action;

13 (f) the Court before whom or which this litigation is pending, including
14 any court personnel (filed under seal and subject to the terms and provisions of this
15 Stipulation and Order);

16 (g) employees and former employees of the Designating Party if
17 reasonably necessary for the purposes of the litigation, and persons who have
18 prepared or assisted in the preparation of such documents or to whom the documents
19 or copies thereof were addressed or delivered, but only to the extent that such
20 disclosure is necessary for the conduct of this litigation, and provided that such
21 persons may not retain any "Confidential Information" obtained as a result of this
22 litigation;

23 (h) insurers, accountants, or auditors engaged by or associated with any
24 party, to the extent that counsel for that party reasonably deems disclosure necessary
25 for the business purposes of the insurer, accountant, or auditor;

26 (i) mediators retained by the parties to mediate this matter; and

27 (j) any special master or discovery referee appointed by the Court or
28 retained by the parties.

1 8. “Highly Confidential Information” may not be disclosed to any person
2 other than:

3 (a) in-house counsel, counsel of record in this litigation, and their partners,
4 employees, including temporary and contract employees, or associates to whom
5 such disclosure is reasonably deemed necessary by such counsel for the conduct of
6 this litigation;

7 (b) court reporters and videographers while in the performance of their
8 official duties;

9 (c) independent experts and consultants retained by or associated with
10 any party in order to assist his, her, or its counsel in the conduct of this litigation and
11 the employees of such independent experts and consultants. Any disclosure
12 pursuant to this paragraph shall be made only to the extent that the disclosure of
13 “Highly Confidential Information” is reasonably deemed necessary by the counsel
14 who has retained the expert or consultant for performance of the expert's or
15 consultant's work. Any expert or consultant who receives “Highly Confidential
16 Information” pursuant to this paragraph may retain “Highly Confidential
17 Information” only as long as is necessary for the performance of his or her expert
18 or consulting services and may use “Highly Confidential Information” only for the
19 purpose of providing assistance to counsel in this litigation.

20 (d) any other person who may be designated, whether by name or
21 otherwise, by consent of counsel for the Designating Party or pursuant to further
22 Order of the Court on motion of any party to this action;

23 (e) the Court before whom or which this litigation is pending, including
24 any court personnel (filed under seal and subject to the terms and provisions of this
25 Stipulation and Order);

26 (f) employees and former employees of the Designating Party if
27 reasonably necessary for the purposes of litigation, and persons who have prepared
28 or assisted in the preparation of such documents or to whom the documents or

1 copies thereof were addressed or delivered, but only to the extent that such
2 disclosure is necessary for the conduct of this litigation, and provided that such
3 persons may not retain any “Highly Confidential Information” obtained as a result of
4 this litigation;

5 (g) insurers, accountants, or auditors engaged by or associated with any
6 party, to the extent that counsel for that party reasonably deems disclosure necessary
7 for the business purposes of the insurer, accountant, or auditor;

8 (h) mediators retained by the parties to mediate this matter; and

9 (i) any special master or discovery referee appointed by the Court or
10 retained by the parties.

11 9. Prior to the disclosure of any “Confidential Information” or “Highly
12 Confidential Information” to any person identified in paragraphs 7(b), (d), (e), (i), or
13 (j) and 8(b), (c), (d), (h), and (i) hereof, the intended recipient of Confidential
14 Information or Highly Confidential Information shall be furnished with a copy of
15 this Protective Order and shall be required to certify in writing or under oath at
16 deposition that he or she has read this Protective Order, understands it, agrees to be
17 bound by its terms, and subjects himself or herself to the jurisdiction of the Court for
18 the purpose of contempt proceedings in the event of any violation of this Protective
19 Order. Counsel for the party disclosing “Confidential Information” or “Highly
20 Confidential Information” shall maintain these written certifications. In the event
21 that a witness at deposition refuses to provide such certification after having been
22 given a copy of this Protective Order and an opportunity to read the order in its
23 entirety, and with respect to those persons identified in paragraphs 7(g) and 8(f)
24 whether in deposition or not, disclosure of “Confidential Information” or “Highly
25 Confidential Information” to the person may occur only after the following
26 statement is read to the person (and if in a deposition, such reading will be on the
27 record): “A Protective Order has been entered by the court in this action. You have
28 been informed of the contents of the Protective Order. Documents and information

1 designated as “Confidential Information” or “Highly Confidential Information” on
2 their face, or if designated as such in a deposition by counsel during the course of
3 the deposition, shall be subject to the terms of the Protective Order, and violations of
4 the order may subject the violator to contempt proceedings or other remedies to the
5 extent provided by law.”

6 10. If counsel for the Disclosing Party has reason to believe that
7 “Confidential Information” or “Highly Confidential Information” has been disclosed
8 in violation of this Order, counsel shall advise counsel for the opposing party of the
9 purported disclosure. Counsel will make an immediate effort to determine whether
10 any person known to that party has disclosed “Confidential Information” or “Highly
11 Confidential Information.” If the party identifies a person or persons as having
12 made an unauthorized disclosure, the names of that person or persons shall
13 immediately be provided to counsel for the Designating Party. Other than
14 identifying the person(s) who made an unauthorized disclosure, nothing in this
15 Paragraph shall require a party to produce written certifications or identify any
16 person who has received “Confidential Information” or “Highly Confidential
17 Information,” other than pursuant to Court Order. Nothing in this Paragraph shall
18 preclude a party from seeking a court order compelling production of the written
19 certifications.

20 11. Any party that files with the Court any documents that have been
21 designated as “Confidential Information” or “Highly Confidential Information” shall
22 follow the procedures set forth in Rule 5.2 of the Federal Rules of Civil Procedure
23 and Rule 141 of the Local Rules of Eastern District of California. The parties shall
24 treat any documents designated as “Confidential Information” or “Highly
25 Confidential Information” as protected pursuant to the terms of this Order until such
26 time as the Court rules on any motion or application made pursuant to Rule 5.2 of
27 the Federal Rules of Civil Procedure and Rule 141 of the Local Rules of Eastern
28 District of California. Any documents produced to a party subject to this Protective

1 Order and containing the following information of putative class members shall be
2 redacted to omit such information prior to being submitted to the court: home
3 addresses, phone numbers, social security numbers, medical information, and
4 financial information (including, without limitation, bank account numbers and bank
5 account information). Upon approval by the Court, this Stipulation and Protective
6 Order shall constitute an Order for Redactions pursuant to Rule 140(b) of the Local
7 Rules of the Eastern District of California.

8 12. No person shall make copies, extracts, or summaries of “Confidential
9 Information” or “Highly Confidential Information” except when directed by counsel
10 and when, in the judgment of counsel, such copies or other papers are reasonably
11 necessary for the conduct of this litigation. Each copy or other paper containing
12 “Highly Confidential Information” shall be conspicuously marked with an
13 appropriate legend signifying its Highly Confidential status. Except for
14 “Confidential Information” that remains in the sole possession of counsel and is not
15 disclosed to any non-party, each copy or other paper containing “Confidential
16 Information” shall be conspicuously marked with an appropriate legend signifying
17 its confidential status. “Confidential Information” that is not so marked may be
18 disclosed to a party only in the presence of and under the immediate supervision of
19 counsel: Counsel will advise the party that the data or information is “Confidential
20 Information” that is protected by this Stipulated Protective Order. Moreover, work
21 product containing “Confidential Information” need not be marked with any legend
22 unless the work product is disclosed to any person other than counsel. Counsel and
23 all persons to whom “Confidential Information” or “Highly Confidential
24 Information” is disclosed shall take reasonable and appropriate precautions to avoid
25 loss or inadvertent disclosure of such material.

26 13. Following any designation of a document as “Confidential
27 Information,” any party may challenge that designation by giving written notice of a
28 challenge to the Designating Party, specifically identifying by the Bates Number,

1 Bates Number ranges, or other similarly specific description of the documents or
2 other data being challenged. The objection to the designation need not be any more
3 specific than the designation itself, that is, if the Designating Party designates a
4 document or other material as Confidential Information without explaining the
5 factual or legal basis for that designation, the Receiving Party's objection need not
6 explain the factual or legal basis for the objection. Conversely, if the Designating
7 Party provides a specific legal and/or factual basis for a particular document or set of
8 documents, the Receiving Party shall provide a specific legal and/or factual basis for
9 the objection(s). The Designating Party shall have the burden of proving that the
10 designated information satisfies the definition of Confidential Information set forth
11 above, and the burden of seeking to maintain protection for the documents by filing
12 a Motion for a Protective Order, or other appropriate request for relief within ten
13 (10) business days following delivery of the written notice of challenge. If the
14 Designating Party does not file an appropriate motion within ten (10) business days
15 following delivery of the written notice of challenge, the items or data challenged
16 shall automatically lose its or their confidential designation in this action. If the
17 Designating Party files an appropriate motion within ten (10) business days
18 following delivery of the written notice of challenge, the challenged items or data
19 shall remain "Confidential Information" until the court rules upon the motion.

20 14. Following any designation of a document as "Highly Confidential
21 Information," any party may challenge that designation by giving written notice of a
22 challenge to the Designating Party, specifically identifying by Bates Number, Bates
23 Number ranges, or other similarly specific description of the documents or other
24 data being challenged. The objection to the designation need not be any more
25 specific than the designation itself, that is, if the Designating Party designates a
26 document or other material as Highly Confidential Information without explaining
27 the factual or legal basis for that designation, the Receiving Party's objection need
28 not explain the factual or legal basis for the objection. Conversely, if the

1 Designating Party provides a specific legal and/or factual basis for a particular
2 document or set of documents, the Receiving Party shall provide a specific legal
3 and/or factual basis for the objection(s). The Designating Party shall have the
4 burden of proving that the designated information satisfies the definition of Highly
5 Confidential Information set forth above, and the burden of seeking to maintain
6 protection for the documents by filing a Motion for a Protective Order, or other
7 appropriate request for relief, within ten (10) business days following delivery of the
8 written notice of challenge. If the Designating Party does not file an appropriate
9 motion within ten (10) business days following delivery of the written notice of
10 challenge, the items or data challenged shall automatically be re-designated as
11 “Confidential Information.” If the Designating Party files an appropriate motion
12 within ten (10) business days following delivery of the written notice of challenge,
13 the challenged items or data shall remain “Highly Confidential Information” until
14 the court rules upon the motion.

15 15. Nothing in this Protective Order shall be construed as a waiver of any
16 party's right to object on any grounds whatsoever to any requests for discovery or as
17 an agreement by the parties to produce any documents or to supply any information.
18 Furthermore, a party's failure to challenge the propriety of the designation of
19 documents or other items as Confidential or Highly Confidential Information shall
20 not preclude subsequent challenges to the admissibility of such documents or other
21 tangible items. Additionally, in no event shall the production of a document or other
22 item designated as Confidential or Highly Confidential Information be deemed a
23 concession by the producing party as to the admissibility of such document or item.
24 In no event shall the designation of a document or information as Confidential or
25 Highly Confidential Information, alone, preclude its introduction or presentation as
26 evidence at trial.

27 16. Inadvertent production of any document or information without a
28 designation as provided herein will not be deemed to waive a later claim as to its

1 confidential nature or stop the Designating Party from re-designating a document or
2 information as “Confidential Information” or “Highly Confidential Information” at a
3 later date. For the purposes of this Order, any document or information that is
4 subsequently designated shall be “Re-designated Material.” Disclosure of such a
5 document or information by any party prior to such later re-designation shall not be
6 deemed a violation of the provisions of this Protective Order; provided, however,
7 that the party that disclosed the Re-designated Material shall promptly endeavor to
8 procure all copies of such previously disclosed Re-designated Material from any
9 persons known to have possession of any such previously disclosed Re-designated
10 Material who are not entitled to receipt under the new designation under Paragraphs
11 7 or 8, above. Following such re-designation, any use of “Re-designated Material”
12 shall be governed by the terms of this Protective Order.

13 17. This Protective Order shall not prevent the marking or the exhibition to
14 a witness or the offering in evidence of any “Confidential Information” or “Highly
15 Confidential Information” during depositions, hearings or other pretrial proceedings,
16 at the trial, or on appeal, but no copy of any “Confidential Information” or “Highly
17 Confidential Information” shall be retained by any such witness. Nothing in this
18 Protective Order shall be read to require a formal order of the Court before use of
19 “Confidential Information” or “Highly Confidential Information”, so long as its use
20 is consistent with the terms of this Protective Order.

21 18. Upon the final disposition of this action and the receipt of a written
22 request from the attorneys for the Designating Party, all hard copies of
23 “Confidential Information” or “Highly Confidential Information” shall be destroyed
24 or returned to the Designating Party within sixty (60) days after the final disposition
25 of this action. However, counsel shall be entitled to retain all work product,
26 regardless of whether the work product contains “Confidential Information” or
27 “Highly Confidential Information” for a period of four (4) years following final
28 disposition of this Action, at which time such materials shall be destroyed. Counsel

1 shall also be entitled to retain a single copy of any “Confidential Information” or
2 “Highly Confidential Information” filed with the Court for a period of four (4) years
3 following final disposition of this Action, at which time such materials shall be
4 returned or destroyed upon request from the Designating Party. Upon request by the
5 Designating Party, Counsel shall promptly certify in writing to opposing counsel
6 that all hard copies of “Confidential Information” or “Highly Confidential
7 Information” that is required to be returned to the Designating Party or destroyed
8 has in fact been returned or destroyed. Prior to return or destruction, all
9 “Confidential Information” and all “Highly Confidential Information” shall remain
10 protected pursuant to the terms of this Protective Order.

11 19. Neither “Confidential Information” nor “Highly Confidential
12 Information” shall be used or disclosed for any purpose whatsoever except the
13 conduct of this litigation. However, nothing in this Protective Order shall preclude a
14 Designating Party from using or disclosing its own documents for any purpose. A
15 Designating Party’s use or disclosure of its own documents (even if designated by
16 the Designating Party as “Confidential Information” or “Highly Confidential
17 Information”) for any purpose shall not constitute a waiver of the provisions or
18 protections contained in this Stipulation and Order. Additionally, nothing in this
19 Stipulation and Order shall prevent or restrict counsel from rendering advice to his
20 or her client during the course of this action, relying generally on his or her
21 examination of items designated as “Confidential Information” or “Highly
22 Confidential Information.”

23 20. If any party is notified of a subpoena, request for production, or other
24 court process requiring production of “Confidential Information” or “Highly
25 Confidential Information,” that party will promptly provide the Designating Party
26 with notice of the subpoena or other request. The Designating Party shall have the
27 burden of defending against such subpoena, process or order if it deems such action
28 appropriate. The party to whom the subpoena has been directed shall not produce

1 responsive documents prior to the date of production specified in the subpoena. If
2 the Designating Party has sought judicial relief, the party to whom the subpoena has
3 been directed shall not produce documents containing “Confidential Information” or
4 “Highly Confidential Information” until the Court has entered a ruling and shall,
5 thereafter, produce documents only in accordance with such ruling. Except as
6 specifically stated in this Paragraph, nothing shall prevent a party to whom a
7 subpoena has been directed from responding to the subpoena as required by law.

8 21. In the event of a proven willful violation of this Protective Order by
9 any of the parties in this action or others to whom “Confidential Information” or
10 “Highly Confidential Information” has been provided, all parties acknowledge that
11 the offending party or persons may be subject to sanctions as determined at the
12 discretion of the Court. The Court shall retain jurisdiction of all matters pertaining
13 to this Protective Order and each person who receives “Confidential Information” or
14 “Highly Confidential Information” subject to this order. The restrictions contained
15 herein on the use or disclosure of documents designated “Confidential Information”
16 or “Highly Confidential Information” and the information contained therein shall not
17 apply to documents or information that is public knowledge or which, after
18 disclosure pursuant to this Protective Order, becomes public knowledge other than

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1 through an act or omission in violation of this Protective Order,” or through a
2 wrongful act of an individual under confidentiality obligations as to the document or
3 item(s) involved.

4 Dated: May 24, 2010

CURIALE HIRSCHFELD KRAEMER LLP

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7 By: /s/ Kimberly G. Brener
8 Reed E. Schaper
9 Kirstin E. Muller
10 Kimberly G. Brener
11 Attorneys for Defendant
12 FERGUSON ENTERPRISES, INC.

13 Dated: May 24, 2010

14 WASSERMAN, COMDEN, CASSELMAN &
15 ESENSTEN, LLP

17

18 By: /s/ Melissa M. Harnett
19 Melissa M. Harnett
20 Gregory B. Scarlett
21 Jesse B. Levin

22 Attorneys for Plaintiffs

23 Dated: May 24, 2010

ACKERMAN & TILAJEF, PC

25

26 By: /s/ Craig J. Ackerman
27 Craig J. Ackerman
28 Tatiana Hernandez
Attorneys for Plaintiffs

IT IS SO ORDERED.

Dated: May 26, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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