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18 MORGAN STANLEY & CO., INCORPORATED and  
MORGAN STANLEY SMITH BARNEY, LLC  
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20 UNITED STATES DISTRICT COURT

21 EASTERN DISTRICT OF CALIFORNIA — FRESNO DIVISION

22 DAVID COUCH,

23 Plaintiff,

24 vs.

25 MORGAN STANLEY & CO.,  
INCORPORATED and MORGAN  
26 STANLEY SMITH BARNEY, LLC,

27 Defendants.  
28

CASE NO. 1:14-CV-00010-LJO-JLT

**JOINT STIPULATED PROTECTIVE  
ORDER AND ORDER GRANTING THE  
SAME**

1 The discovery procedures and other activities related to this case may result in the  
2 acquisition and/or disclosure of Information regarded by the Designating Party as Confidential.  
3 Accordingly, Plaintiff David Couch (“Plaintiff”) and Defendants Morgan Stanley & Co.,  
4 Incorporated and Morgan Stanley Smith Barney LLC (together, “Defendant”), and their  
5 respective counsel, are HEREBY ORDERED to safeguard Confidential Information that may be  
6 disclosed or acquired in the course of this action as set forth below:

7 **1. Definitions:**

8 a. Confidential: As used herein, “Confidential” means any information that is in the  
9 possession of a Designating Party who believes in good faith that such information is entitled to  
10 confidential treatment under applicable law.

11 b. Confidential Material: As used herein, “Confidential Materials” means any  
12 Documents, Testimony or Information as defined below designated as “Confidential” pursuant to  
13 the provisions of this Stipulation and Protective Order.

14 c. Designating Party: As used herein, “Designating Party” means the Party that  
15 designates Materials as “Confidential.”

16 d. Disclose: As used herein, “Disclose” or “Disclosed” or “Disclosure” means to  
17 reveal, divulge, give, or make available Materials, or any part thereof, or any information  
18 contained therein.

19 e. Documents: As used herein, the term “Documents” shall be broadly construed to  
20 include information that is recorded in any form, including but not limited to written, electronic,  
21 coded, or graphic material, whether produced or created by a party or another person, whether  
22 produced pursuant to discovery demands, subpoena, agreement, or otherwise.

23 f. Information: As used herein, the term “Information” means the content of  
24 Documents or Testimony.

25 g. Testimony: As used herein, the term “Testimony” means all depositions,  
26 declarations or other testimony taken or used in this action.

1           **2. Process of Designating Material as “CONFIDENTIAL”:**

2           a. The Designating Party shall have the right to designate as “CONFIDENTIAL” any  
3 Information, Document, or materials that constitute a trade secret or other Confidential  
4 Information. Confidential Information includes Testimony, written or recorded materials, and  
5 Information in any other form, produced or Disclosed by any Designating Party in connection  
6 with discovery proceedings in this case, in which the following is discussed or in any way  
7 referred to: (a) nonpublic Information including customer lists; (b) financial Information as to  
8 either Designating Party that is not publically available; (c) actual customer contracts between  
9 any Designating Party and/or other persons or entities; (d) any Information that is so proprietary  
10 or competitively sensitive that its disclosure is likely to cause irreparable competitive or  
11 commercial injury to the Designating Party; (e) any Information that the Designating Party  
12 reasonably believes in good faith is entitled to Confidential treatment under applicable law.  
13 Confidential Information does not include Information that that has been conveyed through any  
14 form of mass communication or broadly disseminated.

15           b. Any Designating Party who believes in good faith that Information contains or  
16 reflects Confidential Information should affix, stamp or print the word “CONFIDENTIAL” on all  
17 relevant pages or electronic files. The Designating Party shall thus inform all parties in writing as  
18 to the designation of any and all material as “CONFIDENTIAL.”

19           c. Any Designating Party agrees to designate Information as “CONFIDENTIAL” on  
20 a good faith basis and not for purposes of harassing the receiving party or for purposes of  
21 unnecessarily restricting the receiving party's access to Information concerning the lawsuit.

22           d. With respect to material designated “CONFIDENTIAL,” access shall be limited  
23 to: (1) the parties to this action; (2) counsel of record for the parties in this action who are  
24 actively engaged in the conduct of this litigation, including any paralegal, clerical and other  
25 agents employed by such counsel and assigned to this matter; (3) any person identified as having  
26 authored or previously having received the designated material; (4) the Court and any court  
27 officials involved in this litigation, including court reporters and persons operating video  
28 recording equipment at depositions; (5) such other outside consultants, experts and photocopy

1 services retained for the purpose of assisting counsel in this litigation as well as the support  
2 personnel of such outside consultants or retained experts; (6) a deponent during the course of his  
3 or her deposition; (7) any other person approved in advance by counsel for the Designating Party.  
4 With respect to all of the above-mentioned categories of individuals, access to Confidential  
5 Information may be granted only to the extent that it is necessary to the prosecution or defense of  
6 this action and such Confidential Information may be used only for those litigation-related  
7 purposes. Any retained consultant or expert or any individual or entity entitled to receipt of  
8 Confidential Information must, in a form identical in all material respects to the form attached  
9 hereto as Appendix 1, agree in advance of disclosure of such Confidential Information to be  
10 bound by the provisions of this Protective Order and agree to be subject to the Court's jurisdiction  
11 to enforce the terms of this Protective Order.

12 **3. Confidential Information in Depositions:**

13 a. With respect to depositions, the stenographer or other person recording each  
14 deposition will be informed of this Protective Order and will be directed to operate in a manner  
15 consistent with the provisions of this Protective Order. For deposition transcripts containing  
16 Information designated "CONFIDENTIAL," the stenographer shall place on the cover of any  
17 deposition a legend to the effect that the transcript contains Confidential Information subject to  
18 the Protective Order.

19 b. In the event that deposition Testimony is to be given that is subject to the  
20 provisions of paragraph 2., or if material designated "CONFIDENTIAL" is in any way used  
21 during a deposition, any party may designate such Testimony as "CONFIDENTIAL" and so  
22 inform the stenographer and all counsel of record of the designation either at the deposition itself  
23 or within thirty (30) days after receipt of the transcript thereof. The stenographer shall clearly  
24 mark as "CONFIDENTIAL" those portions of the transcript so designated. The deponent shall  
25 have access to his or her Confidential Testimony for the purpose of making corrections to the  
26 transcript only. Thereafter, only the persons allowed access to Confidential Information under  
27 subparagraphs 2c. and 2d. of this Protective Order may have access to the "CONFIDENTIAL"  
28 portions of the transcript for the limited purposes provided in this Protective Order. All

1 Confidential Testimony, however recorded, shall be appropriately labeled “CONFIDENTIAL,”  
2 and is not to be used outside of the action.

3 **4. Inadvertent Production:**

4 Any Information or Document or thing not designated as “CONFIDENTIAL” shall not be  
5 covered by this Protective Order, provided, however, that inadvertent production of any  
6 Information or Document or thing without such designation shall not in and of itself be deemed a  
7 waiver of any party’s claim of confidentiality as to such matter, and that any party may thereafter  
8 designate the same as “CONFIDENTIAL.” Disclosure by any party of such undesignated  
9 Confidential Material prior to notice by any party of the Confidential nature thereof shall not be  
10 deemed a violation of this Protective Order.

11 **5. Confidential Material Filed With The Court:**

12 The parties agree that if the non-Designating Party seeks to file Documents marked  
13 “CONFIDENTIAL” with the Court for any reason, the party seeking to use the Confidential  
14 Information will notify the Designating Party at least fourteen (14) days prior to filing. If within  
15 ten (10) days of the notice described in this Section 5, the Designating Party requests that the  
16 Document(s) be filed under seal, the parties will comply with the procedures set forth in Local  
17 Rule 141 prior to filing the Confidential Material. The Designating Party will be deemed to have  
18 forfeited the right to request sealing if such a request is not made within the ten (10) days  
19 referenced herein. If any such Confidential Material is eventually filed with the Court, it shall be  
20 in accordance with the Court’s instructions.

21 **6. Challenging Material Marked Confidential:**

22 A non-Designating Party may object to the designation of any Information as  
23 “CONFIDENTIAL” by giving written notice to the Designating Party of the dispute. The written  
24 notice shall identify the Document and/or Information to which the objection is made, and the  
25 reason for the objection as to each challenged Document. The Designating Party shall respond to  
26 the objection within fifteen (15) calendar days either by (a) withdrawing the designation in  
27 question; or (b) refusing to withdraw the designation and the reason for such refusal. If the  
28 confidentiality designation continues to be contested, the parties shall then meet and confer. In

1 the event there is no agreement, the Designating Party shall file and serve a motion to resolve the  
2 dispute over the designation of the material and shall bear the burden of proof on the issue. If no  
3 such motion is filed within fifteen (15) calendar days after the meet and confer, the Confidential  
4 designation will be re-designated or removed as appropriate. If a motion is filed, the Information  
5 subject to the dispute shall, until further order of the Court, be treated consistently with its  
6 designation. With respect to any material which is re-designated or ceases to be subject to the  
7 protection of this Confidentiality Order, the Designating Party shall, at its expense, provide to  
8 each party which so requests additional copies thereof from which all confidentiality legends  
9 affixed hereunder have been adjusted to reflect the re-designation or removed as appropriate.

10 **7. Non-Termination:**

11 This Protective Order shall survive the termination of this litigation. For all  
12 original and copies of materials designated as "CONFIDENTIAL," including deposition  
13 transcripts, any party or person and their attorneys or representatives in possession of that  
14 CONFIDENTIAL Material will ensure that the originals and copies are either destroyed or  
15 remain Confidential after termination of this litigation.

16 **8. Responsibilities:**

17 a. The parties and their attorneys, and all other persons agreeing to this undertaking,  
18 shall be responsible to see that the purpose and effect of this Protective Order is achieved.

19 b. If any person subject to this Joint Stipulated Protective Order who has custody of  
20 any Confidential Information receives a subpoena or other process ("Subpoena") from any  
21 government or other person or entity demanding production of Confidential Information, the  
22 recipient of the Subpoena shall promptly give notice of the same electronic mail transmission,  
23 followed by either express mail or overnight delivery to counsel of record for the Designating  
24 Party, and shall furnish such counsel with a copy of the Subpoena. Upon receipt of this notice,  
25 the Designating Party may, in its sole discretion and at its own cost, move to quash or limit the  
26 Subpoena, otherwise oppose production of the Confidential Information, and/or seek to obtain  
27 Confidential treatment of such Confidential Information from the subpoenaing person or entity to  
28 the fullest extent available under law. The recipient of the Subpoena may not produce any

1 Documents, Testimony or Information pursuant to the Subpoena prior to the date specified for  
2 production on the Subpoena.

3 **9. No Waiver of Rights:**

4 a. Nothing contained in this Protective Order and no action taken pursuant to  
5 it shall prejudice the right of any party to contest the alleged relevancy, admissibility or  
6 discoverability of the Confidential Documents and Information sought.

7 b. Any Document, exhibit, or transcript designated “CONFIDENTIAL” in  
8 accordance with this Order, and which is otherwise admissible, may be used at trial, provided,  
9 however, that the parties agree that they will work with the Court to identify trial procedures,  
10 such as in camera review, that will protect and maintain the non-public nature of highly sensitive  
11 Information, including for example, proprietary Information and/or trade secrets. Prior to the use  
12 at trial of Confidential Documents, any markings designating a Document “CONFIDENTIAL”  
13 pursuant to this Order shall be removed.

14 d. Nothing contained in this Order, nor any action taken in compliance with it, shall  
15 (i) operate as an admission or assertion by any non-Designating Party that any particular  
16 Document or Information is, or is not, Confidential, or (ii) prejudice in any way the right of any  
17 party to seek a Court determination of whether it should or should not remain Confidential and  
18 subject to the terms of this Order.

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**10. Parties' Consent**

The parties agree to move jointly for the Court to enter this Protective Order.

DATED this 2nd day of June, 2014.

/s/Mary C. Dollarhide  
MARY C. DOLLARHIDE  
Attorney for Defendants  
MORGAN STANLEY & CO.,  
INCORPORATED and MORGAN  
STANLEY SMITH BARNEY LLC

DATED this 29th day of May, 2014.

/s/Deborah A. Klar (as authorized on 5/29/14)  
DEBORAH A. KLAR  
Attorney for Plaintiff  
DAVID COUCH

IT IS SO ORDERED.

Dated: June 2, 2014

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE



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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA — FRESNO DIVISION

DAVID COUCH,  
  
Plaintiff,  
  
vs.  
  
MORGAN STANLEY & CO.,  
INCORPORATED and MORGAN  
STANLEY SMITH BARNEY, LLC,  
  
Defendants.

CASE NO. 1:14-CV-00010-LJO-JLT  
  
**JOINT STIPULATED PROTECTIVE  
ORDER AND [PROPOSED] ORDER  
GRANTING THE SAME**

**APPENDIX 1**

I, \_\_\_\_\_, state that:

- 1. I have carefully read and understood the provisions of the Stipulated Protective Order in this case, and I will comply with all of its provisions.
- 2. I will hold in confidence and not Disclose to anyone not qualified under the Stipulated Protective Order any “Confidential” Material as defined in the Stipulated Protective Order, or any words, summaries, abstracts, or indices of Confidential material Disclosed to me.
- 3. I will limit use of Confidential Material Disclosed to me solely for the purpose of this action.
- 4. No later than the final conclusion of the case, I will return all Confidential Material, and all summaries, abstracts, and indices thereof which come into my possession, and Documents or things which I have prepared relating thereto, to counsel for the party for whom I was employed or retained.

I declare under penalty of perjury that the foregoing is true and correct.

Date: \_\_\_\_\_ Name \_\_\_\_\_