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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FREDERICK C. ANDERSON

Plaintiff,

vs.

**RIVERWALK HOLDINGS, LTD;
NELSON & KENNARD;
ROBERT S. KENNARD; DONALD
NELSON**

Defendant.

) CASE NO. 1:16-CV-00251-LJO-JLT

) **STIPULATED PROTECTIVE ORDER**

) (Doc. 30)

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

1 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
2 Stipulated Protective Order does not entitle them to file confidential information under seal;
3 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will
4 be applied when a party seeks permission from the court to file material under seal.

5 **B. GOOD CAUSE STATEMENT**

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

24 **2. DEFINITIONS**

25 2.1 Action: this pending federal law suit.

26 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
27 information or items under this Order.
28

1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
2 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
3 of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

4 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support
5 staff).

6 2.5 Designating Party: a Party or Non-Party that designates information or items that
7 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

8 2.6 Disclosure or Discovery Material: all items or information, regardless of the
9 medium or manner in which it is generated, stored, or maintained (including, among other things,
10 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
11 responses to discovery in this matter.

12 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
13 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
14 consultant in this Action.

15 2.8 House Counsel: attorneys who are employees of a party to this Action. House
16 Counsel does not include Outside Counsel of Record or any other outside counsel.

17 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
18 entity not named as a Party to this action.

19 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
20 Action but are retained to represent or advise a party to this Action and have appeared in this
21 Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
22 that party, and includes support staff.

23 2.11 Party: any party to this Action, including all of its officers, directors, employees,
24 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

25 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
26 Material in this Action.

27 2.13 Professional Vendors: persons or entities that provide litigation support services
28 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and

1 organizing, storing, or retrieving data in any form or medium) and their employees and
2 subcontractors.

3 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
4 “CONFIDENTIAL.”

5 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
6 Producing Party.

7 **3. SCOPE**

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

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

14 **4. DURATION**

15 Even after final disposition of this litigation, the confidentiality obligations imposed by
16 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
17 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
18 claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after
19 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
20 Action, including the time limits for filing any motions or applications for extension of time
21 pursuant to applicable law.

22 **5. DESIGNATING PROTECTED MATERIAL**

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
24 or Non-Party that designates information or items for protection under this Order must take care
25 to limit any such designation to specific material that qualifies under the appropriate standards.
26 The Designating Party must designate for protection only those parts of material, documents,
27 items, or oral or written communications that qualify so that other portions of the material,
28

1 documents, items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this Order.

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

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

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

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents,
16 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
17 Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL
18 legend"), to each page that contains protected material. If only a portion or portions of the
19 material on a page qualifies for protection, the Producing Party also must clearly identify the
20 protected portion(s) (e.g., by making appropriate markings in the margins).

21 A Party or Non-Party that makes original documents available for inspection need not
22 designate them for protection until after the inspecting Party has indicated which documents it
23 would like copied and produced. During the inspection and before the designation, all of the
24 material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting
25 Party has identified the documents it wants copied and produced, the Producing Party must
26 determine which documents, or portions thereof, qualify for protection under this Order. Then,
27 before producing the specified documents, the Producing Party must affix the
28 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a portion or

1 portions of the material on a page qualifies for protection, the Producing Party also must clearly
2 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

3 (b) for testimony given in depositions that the Designating Party identify the
4 Disclosure or Discovery Material on the record, before the close of the deposition all protected
5 testimony.

6 (c) for information produced in some form other than documentary and for
7 any other tangible items, that the Producing Party affix in a prominent place on the exterior of
8 the container or containers in which the information is stored the legend "CONFIDENTIAL." If
9 only a portion or portions of the information warrants protection, the Producing Party, to the
10 extent practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
12 designate qualified information or items does not, standing alone, waive the Designating Party's
13 right to secure protection under this Order for such material. Upon timely correction of a
14 designation, the Receiving Party must make reasonable efforts to assure that the material is
15 treated in accordance with the provisions of this Order.

16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
18 confidentiality at any time that is consistent with the Court's Pretrial Scheduling Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
20 process under Local Rule 251 or the assigned Magistrate Judge's Chambers Rules and Orders, as
21 applicable.

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

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

1 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
2 or produced by another Party or by a Non-Party in connection with this Action only for
3 prosecuting, defending, or attempting to settle this Action. Such Protected Material may be
4 disclosed only to the categories of persons and under the conditions described in this Order.
5 When the Action has been terminated, a Receiving Party must comply with the provisions of
6 section 13 below (FINAL DISPOSITION).

7 Protected Material must be stored and maintained by a Receiving Party at a location and
8 in a secure manner that ensures that access is limited to the persons authorized under 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 Outside Counsel of Record to whom it is reasonably necessary to disclose the
14 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 “Acknowledgment
19 and Agreement to Be Bound” (Exhibit A);

20 (d) the court and its personnel;

21 (e) court reporters and their staff;

22 (f) professional jury or trial consultants, mock jurors, and Professional
23 Vendors to whom disclosure is reasonably necessary for this Action and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (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 requests that

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

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

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

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

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

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

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

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

1 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
2 **THIS LITIGATION**

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

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

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

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

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

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

26 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
28 Material to any person or in any circumstance not authorized under this Stipulated Protective

1 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
2 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
3 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
4 made of all the terms of this Order, and (d) request such person or persons to execute the
5 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

6 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
7 **PROTECTED MATERIAL**

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

17 **12. MISCELLANEOUS**

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
19 seek its modification by the Court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
21 Order no Party waives any right it otherwise would have to object to disclosing or producing any
22 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
23 no Party waives any right to object on any ground to use in evidence of any of the material
24 covered by this Protective Order.

25 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
26 Material must comply with Local Rule 141. Protected Material may only be filed under seal
27 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a
28

1 Party's request to file Protected Material under seal is denied by the court, then the Receiving
2 Party may file the information in the public record unless otherwise instructed by the court.

3 **13. FINAL DISPOSITION**

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

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

22
23 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

24
25 DATED: November 1, 2016

KAZEROUNI LAW GROUP, APC

26
27 By: /s/ Matthew M. Loker
28 MATTHEW M. LOKER
ATTORNEY FOR PLAINTIFF

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DATED: November 1, 2016

CARLSON & MESSER LLP

By: /s/Tamar Gabriel
Charles R. Messer
David J. Kaminski
Tamar Gabriel
Attorneys for Defendant
*Nelson & Kennard; Robert S. Kennard;
Donald Nelson*

ORDER

Based upon the stipulation of the parties, the Court **GRANTS** the protective order.

IT IS SO ORDERED.

Dated: November 1, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Eastern District of California on [date] in the
7 case of *Frederick J. Anderson v. Riverwalk Holdings, LTD et al*, Case No. 1:16-CV-00251-LJO-
8 JLT. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
9 and I understand and acknowledge that failure to so comply could expose me to sanctions and
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
11 any information or item that is subject to this Stipulated Protective Order to any person or entity
12 except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action. I hereby
16 appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone
18 number] as my California agent for service of process in connection with this action or any
19 proceedings related to enforcement of this Stipulated Protective Order.

20
21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24
25 Signature: _____
26
27
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