



1 **STIPULATED PROTECTIVE ORDER**

2 A party to this action has moved that the Court enter a protective order. The  
3 Court has determined that the terms set forth herein are appropriate to protect the  
4 respective interests of the terms, the public, and the Court. Accordingly, it is  
5 ORDERED:

6 **1. Scope.** All documents produced in the course of discovery,  
7 including initial disclosures, all responses to discovery requests, all deposition  
8 testimony and exhibits, other materials which may be subject to restrictions on  
9 disclosure for good cause and information derived directly therefrom (hereinafter  
10 collectively "documents"), shall be subject to this Order concerning confidential  
11 information as set forth below. As there is a presumption in favor of open and  
12 public judicial proceedings in the federal courts, this Order shall be strictly  
13 construed in favor of public disclosure and open proceedings wherever possible.  
14 The Order is also subject to the applicable rules of procedure and local rules on  
15 matters of procedure and calculation of time periods.

16 **2. Form and Timing of Designation.** A party may designate  
17 documents as confidential and restricted in disclosure under this Order by placing  
18 or affixing the words "CONFIDENTIAL – SUBJECT TO PROTECTIVE  
19 ORDER" on the document in a manner that will not interfere with the legibility of  
20 the document and that will permit complete removal of the CONFIDENTIAL –  
21 SUBJECT TO PROTECTIVE ORDER designation. Documents shall be  
22 designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER prior to or  
23 at the time of the production or disclosure of the documents. The designation  
24 "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" does not mean that  
25 the document has any status or protection by statute or otherwise except to the  
26 extent and for the purposes of this Order.

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1           **3. Documents Which May be Designated CONFIDENTIAL –**  
2 **SUBJECT TO PROTECTIVE ORDER.** Any party may designate documents  
3 as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER upon making a  
4 good faith determination that the documents contain information protected from  
5 disclosure by statute or that should be protected from disclosure as confidential  
6 personal information, medical or psychiatric information, trade secrets, personnel  
7 records, or such other sensitive commercial information that is not publicly  
8 available.

9           **4. Depositions.** Deposition testimony shall be deemed  
10 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER only if designated as  
11 such within 30 days of receipt of the deposition transcript, in writing. Such  
12 designation shall be specific as to the portions of the transcript or any exhibit to  
13 be designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.  
14 Thereafter, the deposition transcripts and any those portions so designated shall be  
15 protected as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER, pending  
16 objection, under the terms of this Order.

17           **5. Protection of Confidential Material.**

18           **(a) General Protections.** Documents designated  
19 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this  
20 Order shall not be used or disclosed by the parties, counsel for the parties or  
21 any other persons identified in ¶5(b) for any purpose whatsoever other than  
22 to prepare for and to conduct discovery and trial in this action, including  
23 any appeal thereof.

24           **(b) Limited Third-Party Disclosures.** The parties and counsel  
25 for the parties shall not disclose or permit the disclosure of any  
26 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER documents to  
27 any third person or entity except as set forth in subparagraphs (1)-(5).  
28 Subject to these requirements, the following categories of persons may be

1 allowed to review documents that have been designated CONFIDENTIAL  
2 – SUBJECT TO PROTECTIVE ORDER:

3 (1) **Counsel.** Counsel (or the parties and employees and  
4 agents of counsel) who have responsibility for the preparation  
5 and trial of the action;

6 (2) **Parties.** Parties and employees of a party to this Order.

7 (3) **Court Reporters and Recorders.** Court reporters and  
8 recorders engaged for depositions;

9 (4) **Consultants, Investigators and Experts.** Consultants,  
10 investigators, or experts (hereinafter referred to collectively as  
11 "experts") employed by the parties or counsel for the parties to  
12 assist in the preparation and trial of this action or proceeding,  
13 but only after such persons have completed the certification  
14 contained in Attachment A, Acknowledgment of  
15 Understanding and Agreement to Be Bound; and

16 (5) **Others by Consent.** Other persons only by written  
17 consent of the producing party or upon order of the Court and  
18 on such conditions as may be agreed or ordered. All such  
19 persons shall execute the certification contained in Attachment  
20 A, Acknowledgment of Understanding and Agreement to Be  
21 Bound.

22 (c) **Control of Documents.** Counsel for the parties shall take  
23 reasonable and appropriate measures to prevent unauthorized disclosure of  
24 documents designated as CONFIDENTIAL pursuant to the terms of this  
25 Order. Counsel shall maintain the originals of the forms signed by persons  
26 acknowledging their obligations under this Order for a period of 1 year  
27 after dismissal of the action, the entry of final judgment and/or the  
28 conclusion of any appeals arising therefrom.

1           (d) **Copies.** Prior to production to another party, all copies,  
2 electronic images, duplicates, extracts, summaries or descriptions  
3 (hereinafter referred to collectively as ("copies")) of documents designated  
4 as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this  
5 Order, or any individual portion of such a document, shall be affixed with  
6 the designation "CONFIDENTIAL – SUBJECT TO PROTECTIVE  
7 ORDER" if the word does not already appear on the copy. All such copies  
8 shall thereafter be entitled to the protection of this Order. The term  
9 "copies" shall not include indices, electronic databases or lists of  
10 documents provided these indices, electronic databases or lists do not  
11 contain substantial portions or images of the text of confidential documents  
12 or otherwise disclose the substance of the confidential information  
13 contained in those documents.

14           (e) **Inadvertent Production.** Inadvertent production of any  
15 document or information without a designation of "CONFIDENTIAL –  
16 SUBJECT TO PROTECTIVE ORDER" shall be governed by the  
17 applicable rules of procedure.

18       **6. Filing of CONFIDENTIAL – SUBJECT TO PROTECTIVE**  
19 **ORDER Documents Under Seal.** The Court highly discourages the manual  
20 filing of any pleadings or documents under seal. To the extent that a brief;  
21 memorandum or pleading references any document marked as CONFIDENTIAL  
22 – SUBJECT TO PROTECTIVE ORDER, then the brief, memorandum or  
23 pleading shall refer the Court to the particular exhibit filed under seal without  
24 disclosing the contents of any confidential information

25           (a) Before any document marked as CONFIDENTIAL –  
26 SUBJECT TO PROTECTIVE ORDER is filed under seal with the Clerk,  
27 the filing party shall first consult with the party that originally designated  
28 the document as CONFIDENTIAL – SUBJECT TO PROTECTIVE

1 ORDER to determine whether, with the consent of that party, the document  
2 or a redacted version of the document may be filed with the Court not  
3 under seal.

4 (b) Where agreement is not possible or adequate, before a  
5 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER document is  
6 filed with the Clerk, it shall be placed in a sealed envelope marked  
7 "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER  
8 DOCUMENTS", displaying the case name, docket number, a designation  
9 of what the document is, the name of the party in whose behalf it is  
10 submitted, and name of the attorney who has filed the documents on the  
11 front of the envelope. A copy of any document filed under seal shall also  
12 be delivered to the judicial officer's chambers.

13 (c) To the extent that it is necessary for a party to discuss the  
14 contents of any confidential information in a written pleading, then such  
15 portion of the pleading may be filed under seal with leave of Court. In such  
16 circumstances, counsel shall prepare two versions of the pleadings, a public  
17 and a confidential version. The public version shall contain a redaction of  
18 references to CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER  
19 documents. The confidential version shall be a full and complete version of  
20 the pleading and shall be filed with the Clerk under seal as above. A copy  
21 of the unredacted pleading also shall be delivered to the judicial officer's  
22 chambers.

23 (d) If any party notifies another party that they intend or need to  
24 file one or more of the Protected Documents in response to a motion  
25 previously filed, the party who filed such motion specifically agrees to  
26 provide whatever extension or continuance is necessary to file such  
27 response to allow for compliance with paragraph. Specifically, upon  
28 request, the parties agree to provide an extension or continuance for the

1 filing of any response to any motion to provide appropriate time to comply  
2 with applicable law regarding filing such documents under seal.

3 **7. Challenges by a Party to Designation as Confidential.** Any  
4 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER designation is subject  
5 to challenge by any party or nonparty with standing to object (hereafter "party").  
6 Before filing any motions or objections to a confidentiality designation with the  
7 Court, the objecting party shall have an obligation to meet and confer in a good  
8 faith effort to resolve the objection by agreement. If agreement is reached  
9 confirming or waiving the CONFIDENTIAL – SUBJECT TO PROTECTIVE  
10 ORDER designation as to any documents subject to the objection, the designating  
11 party shall serve on all parties a notice specifying the documents and the nature of  
12 the agreement.

13 **8. Action by the Court.** Applications to the Court for an order relating  
14 to any documents designated CONFIDENTIAL – SUBJECT TO PROTECTIVE  
15 ORDER shall be by motion under the applicable rules of procedure and local  
16 rules of the Court and any other procedures set forth in the presiding judge's  
17 standing orders or other relevant orders. Nothing in this Order or any action or  
18 agreement of a party under this Order limits the Court's power to make any orders  
19 that may be appropriate with respect to the use and disclosure of any documents  
20 produced or use in discovery or at trial.

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22 **9. Use of Confidential Documents or Information at Trial.** All trials  
23 are open to the public. Absent order of the Court, there will be no restrictions on  
24 the use of any document that may be introduced by any party during the trial. If a  
25 party intends to present at trial CONFIDENTIAL – SUBJECT TO PROTECTIVE  
26 ORDER documents or information derived therefrom, such party shall provide  
27 advance notice to the other party at least five (5) days before the commencement  
28 of trial by identifying the documents or information at issue as specifically as

1 possible (i.e., by Bates number, page range, deposition transcript lines, etc.)  
2 without divulging the actual CONFIDENTIAL – SUBJECT TO PROTECTIVE  
3 ORDER documents or information. The Court may thereafter make such orders as  
4 are necessary to govern the use of such documents or information at trial.

5 **10. Obligations on Conclusion of Litigation.**

6 (a) **Order Remains in Effect.** Unless otherwise agreed or  
7 ordered, this Order shall remain in force after dismissal or entry of  
8 judgment not subject to further appeal.

9 (b) **Return of CONFIDENTIAL – SUBJECT TO**  
10 **PROTECTIVE ORDER Documents.** Within thirty days after dismissal  
11 or entry of final judgment not subject to further appeal of all other lawsuits  
12 in which HOP is lead counsel in an FTS Cases, all documents treated as  
13 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this  
14 Order, including copies as defined in ¶5(d), shall be returned to the  
15 producing party unless: (1) the document has been offered into evidence or  
16 filed without restriction as to disclosure; OR (2) the party in possession of  
17 such document(s) elects to destroy the documents and certifies to the  
18 producing party that it has done so. Notwithstanding the above  
19 requirements to return or destroy documents, counsel may retain attorney  
20 work product, including an index which refers or relates to information  
21 designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER, so  
22 long as that work product does not duplicate verbatim substantial portions  
23 of the text or images of confidential documents. This work product shall  
24 continue to be CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER  
25 under this Order. An attorney may use his or her work product in a  
26 subsequent litigation provided that its use does not disclose or use  
27 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER documents.

28 (c) **Return of Documents Filed under Seal.** After dismissal or

1 entry of final judgment not subject to further appeal, the Clerk may elect to  
2 return to counsel for the parties or, after notice, destroy documents filed or  
3 offered at trial under seal or otherwise restricted by the Court as to  
4 disclosure.

5 **11. Order Subject to Modification.** This Order shall be subject to  
6 modification by the Court on its own motion or on motion of a party or any other  
7 person with standing concerning the subject matter.

8 **12. No Prior Judicial Determination.** This Order is entered based on  
9 the representations and agreements of the parties and for the purpose of  
10 facilitating discovery. Nothing herein shall be construed or presented as a judicial  
11 determination that any documents or information designated CONFIDENTIAL -  
12 SUBJECT TO PROTECTIVE ORDER by counsel or the parties is subject to  
13 protection applicable law until such time as the Court may rule on a specific  
14 document or issue.

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1           **13. Persons Bound.** This Order shall take effect when entered and shall  
2 be binding upon all counsel and their law firms, the parties, and persons made  
3 subject to this Order by its terms.

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5           **SO ORDERED.**

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7 Dated: August 26, 2010

/s/ John A. Mendez  
Hon. John A. Mendez

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11 AGREED TO BY:

12 /s/ Julian G. Senior  
13 Julian G. Senior, Esq.  
14 O'Hagan Spencer LLP  
15 509 N. Sepulveda Blvd., Suite 101  
Manhattan Beach, CA 90266  
*Counsel for Defendants*

/s/ Mark P. Robinson, Jr.  
Mark P. Robinson, Jr., Esq.  
Daniel Robinson, Esq.  
Michelle West, Esq.  
Robinson, Calcagnie & Robinson  
620 Newport Beach, CA 92660  
*Counsel for Plaintiff*

16  
17 /s/ Clem C. Trischler  
18 Clem C. Trischler, Esq.  
19 Pietragallo Gordon Alfano Bosick &  
Raspanti, LLP  
20 The Thirty-Eighth Floor  
One Oxford Centre  
Pittsburgh, PA 15219  
*Counsel for Defendants*

/s/ Michael Heygood  
Michael Heygood, Esq.  
James Craig Orr, Jr., Esq.  
Charles Miller, Esq.  
Heygood, Orr & Pearson  
2331 W. Northwest Hwy., 2<sup>nd</sup> Floor  
Dallas, TX 75220  
*Counsel for Plaintiff*

1 **ATTACHMENT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 The undersigned hereby acknowledges that he/she has read the Stipulated  
4 Protective Order dated \_\_\_\_\_ in the above-captioned action and attached  
5 hereto, understands the terms thereof; and agrees to be bound by its terms. The  
6 undersigned submits to the jurisdiction of the Court herein in matters relating to the  
7 Protective Order and understands that the terms of the Protective Order obligate  
8 him/her to use documents designated CONFIDENTIAL – SUBJECT TO  
9 PROTECTIVE ORDER in accordance with the Order solely for the purposes of  
10 the above captioned action, and not to disclose any such documents or  
11 information derived directly therefrom to any other person, firm or concern.

12 The undersigned acknowledges that violation of the Protective Order may  
13 result in penalties for contempt of court.

14 Name: \_\_\_\_\_

15 Job Title: \_\_\_\_\_

16 Employer: \_\_\_\_\_

17 Business Address: \_\_\_\_\_

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21 Date: \_\_\_\_\_

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Signature