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14 NIMBUS DATA SYSTEMS, INC.

15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA

18 MAXIMUS, INC., a Virginia Corporation,
19 Plaintiff,

20 v.

21 NIMBUS DATA SYSTEMS, INC., a
22 Delaware corporation, and DOES 1-50,
23 Defendants.

24 AND RELATED COUNTER ACTION

STIPULATED PROTECTIVE ORDER

Case No. 2:14-cv-00841-JAM-KJN

25
26
27 **1. PURPOSES AND LIMITATIONS**

28 Disclosure and discovery activity in this action are likely to involve production of

1 confidential, proprietary, or private information for which special protection from public
2 disclosure and from use for any purpose other than prosecuting this or related litigation may be
3 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
4 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
5 blanket protections on all disclosures or responses to discovery and that the protection it affords
6 from public disclosure and use extends only to the limited information or items that are entitled to
7 confidential treatment under the applicable legal principles.

8 **2. DEFINITIONS**

9 2.1. Challenging Party: a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 2.2. “CONFIDENTIAL” Information or Items: information (regardless of how it is
12 generated, stored or maintained) or tangible things that contain confidential, proprietary, or
13 private information.

14 2.3. Counsel: Outside Counsel.

15 2.4. Designating Party: a Party or Non-Party that designates information or items that it
16 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18 2.5. Disclosure or Discovery Material: all items or information, regardless of the
19 medium or manner in which it is generated, stored, or maintained (including, among other things,
20 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
21 responses to discovery in this matter.

22 2.6. Expert: a person with specialized knowledge or experience in a matter pertinent to
23 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
24 consultant in this action.

25 2.7. “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
26 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
27 Party or Non-Party would create a substantial risk of harm that could not be avoided by less
28 restrictive means.

1 2.8. Non-Party: any natural person, partnership, corporation, association, or other legal
2 entity not named as a Party to this action.

3 2.9. Party: any party to this action, including all of its officers, directors, employees,
4 consultants, retained experts, and Counsel (and their support staffs).

5 2.10. Producing Party: a Party or Non-Party that produces Disclosure or Discovery
6 Material in this action.

7 2.11. Professional Vendors: persons or entities that provide litigation support services
8 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
9 organizing, storing, or retrieving data in any form or medium) and their employees and
10 subcontractors.

11 2.12. Protected Material: any Disclosure or Discovery Material that is designated as
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

13 2.13. Receiving Party: a Party that receives Disclosure or Discovery Material from a
14 Producing Party.

15 **3. SCOPE**

16 The protections conferred by this Stipulation and Order cover not only Protected Material
17 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
18 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
19 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
20 However, the protections conferred by this Stipulation and Order do not cover the following
21 information: (a) any information that is properly in the public domain at the time of disclosure to
22 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party
23 as a result of permitted publication not involving a violation of this Order; and (b) any
24 information properly known and within the Receiving Party’s possession prior to the disclosure or
25 obtained by the Receiving Party after the disclosure from a source who obtained the information
26 lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected
27 Material at trial shall be governed by a separate agreement or order.

28

1 **4. DURATION**

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

9 **5. DESIGNATING PROTECTED MATERIAL**

10 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party
11 or Non-Party that designates information or items for protection under this Order must take care
12 to limit any such designation to specific material that qualifies under the appropriate standards.
13 The Designating Party must designate for protection only those parts of material, documents,
14 items, or oral or written communications that qualify – so that other portions of the material,
15 documents, items, or communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this Order. If it comes to a Designating Party’s attention that
17 information or items that it designated for protection do not qualify for protection, that
18 Designating Party must promptly notify all other Parties that it is withdrawing the mistaken
19 designation.

20 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order,
21 or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
22 protection under this Order must be clearly so designated before the material is disclosed or
23 produced. Designation in conformity with this Order requires:

24 5.2.1. for information in documentary form (e.g., paper or electronic documents,
25 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
26 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
27 EYES ONLY” to each page that contains protected material. If only a portion or portions of the
28 material on a page qualifies for protection, the Producing Party also must clearly identify the

1 protected portion(s) (e.g., by making appropriate markings in the margins). A Party or Non-Party
2 that makes original documents or materials available for inspection need not designate them for
3 protection until after the inspecting Party has indicated which material it would like copied and
4 produced. During the inspection and before the designation, all of the material made available for
5 inspection shall be deemed “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
7 copied and produced, the Producing Party must determine which documents, or portions thereof,
8 qualify for protection under this Order. Then, before producing the specified documents, the
9 Producing Party must affix the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY” legend to each page that contains Protected Material. If only a
11 portion or portions of the material on a page qualifies for protection, the Producing Party also
12 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
13 margins).

14 5.2.2. for testimony given in deposition or in other pretrial or trial proceedings,
15 that the Designating Party identify on the record, before the close of the deposition, hearing, or
16 other proceeding, all protected testimony.

17 5.2.3. for information produced in some form other than documentary and for any
18 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
19 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
20 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of
21 the information or item warrant protection, the Producing Party, to the extent practicable, shall
22 identify the protected portion(s).

23 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
24 designate qualified information or items does not, standing alone, waive the Designating Party’s
25 right to secure protection under this Order for such material. Upon timely correction of a
26 designation, the Receiving Party must make reasonable efforts to assure that the material is
27 treated in accordance with the provisions of this Order.

28

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of
3 confidentiality at any time. A Party does not waive its right to challenge a confidentiality
4 designation by electing not to mount a challenge promptly after the original designation is
5 disclosed.

6 6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution
7 process by providing written notice of each designation it is challenging and describing the basis
8 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
9 notice must recite that the challenge to confidentiality is being made in accordance with this
10 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
11 good faith and must begin the process by conferring within 14 days of the date of service of
12 notice. In conferring, the Challenging Party must explain the basis for its belief that the
13 confidentiality designation was not proper and must give the Designating Party an opportunity to
14 review the designated material, to reconsider the circumstances, and, if no change in designation
15 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
16 the next stage of the challenge process only if it has engaged in this meet and confer process first
17 or establishes that the Designating Party is unwilling to participate in the meet and confer process
18 in a timely manner.

19 6.3. Judicial Intervention. If the Parties cannot resolve a challenge without court
20 intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21
21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
22 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
23 accompanied by a competent declaration affirming that the movant has complied with the meet
24 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
25 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
26 shall automatically waive the confidentiality designation for each challenged designation. In
27 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
28 time if there is good cause for doing so, including a challenge to the designation of a deposition

1 transcript or any portions thereof. Any motion brought pursuant to this provision must be
2 accompanied by a competent declaration affirming that the movant has complied with the meet
3 and confer requirements imposed by the preceding paragraph.

4 The burden of persuasion in any such challenge proceeding shall be on the Designating
5 Party. Unless the Designating Party has waived the confidentiality designation by failing to file a
6 motion to retain confidentiality as described above, all parties shall continue to afford the material
7 in question the level of protection to which it is entitled under the Producing Party's designation
8 until the court rules on the challenge.

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

10 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or
11 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
12 defending, or attempting to settle this litigation or related litigation. Such Protected Material may
13 be disclosed only to the categories of persons and under the conditions described in this Order.
14 When the litigation has been terminated, a Receiving Party must comply with the provisions of
15 section 13 below (FINAL DISPOSITION).

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

18 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
19 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
20 information or item designated "CONFIDENTIAL" only to:

- 21 (a) the Receiving Party's Counsel, as well as employees or contractors of said Counsel
22 to whom it is reasonably necessary to disclose the information for this litigation;
- 23 (b) the officers, directors, and employees of the Receiving Party to whom disclosure is
24 reasonably necessary for this litigation;
- 25 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
26 reasonably necessary for this litigation and who have signed the
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- 28 (d) the Court and its personnel;

1 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
2 and Professional Vendors to whom disclosure is reasonably necessary for this
3 litigation and who have signed the “Acknowledgment and Agreement to Be
4 Bound” (Exhibit A);

5 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
6 necessary and who have signed the “Acknowledgment and Agreement to Be
7 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
8 by the court. Pages of transcribed deposition testimony or exhibits to depositions
9 that reveal Protected Material must be separately bound by the court reporter and
10 may not be disclosed to anyone except as permitted under this Stipulated
11 Protective Order.

12 (g) the author or recipient of a document containing the information or a custodian or
13 other person who otherwise properly possesses or knows the information.

14 **7.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**

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

18 (a) the Receiving Party’s Counsel, as well as employees of said Counsel to whom it is
19 reasonably necessary to disclose the information for this litigation;

20 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
21 reasonably necessary for this litigation and who have signed the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (c) the Court and its personnel;

24 (d) court reporters and their staff, professional jury or trial consultants, mock jurors,
25 and Professional Vendors to whom disclosure is reasonably necessary for this
26 litigation and who have signed the “Acknowledgment and Agreement to Be
27 Bound” (Exhibit A);

28 (e) the author or recipient of a document containing the information or a custodian or

1 other person who otherwise properly possesses or knows the information.

2 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
3 **OTHER LITIGATION**

4 If a Party is served with a subpoena or a court order issued in other litigation that compels
5 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that Party must:

- 7 (a) promptly notify in writing the Designating Party. Such notification shall include a
8 copy of the subpoena or court order;
- 9 (b) promptly notify in writing the party who caused the subpoena or order to issue in
10 the other litigation that some or all of the material covered by the subpoena or
11 order is subject to this Protective Order. Such notification shall include a copy of
12 this Stipulated Protective Order; and
- 13 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
14 Designating Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party served with the
16 subpoena or court order shall not produce any information designated in this action as
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
18 determination by the court from which the subpoena or order issued, unless the Party has obtained
19 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
20 seeking protection in that court of its confidential material – and nothing in these provisions
21 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a
22 lawful directive from another court.

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

25 9.1. The terms of this Order are applicable to information produced by a Non-Party in
26 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with
28 this litigation is protected by the remedies and relief provided by this Order. Nothing in these

1 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

2 9.2. In the event that a Party is required, by a valid discovery request, to produce a
3 Non-Party's confidential information in its possession, and the Party is subject to an agreement
4 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

5 (a) promptly notify in writing the Requesting Party and the Non-Party that some or all
6 of the information requested is subject to a confidentiality agreement with a Non-
7 Party;

8 (b) promptly provide the Non-Party with a copy of the Stipulated Protective Order in
9 this litigation, the relevant discovery request(s), and a reasonably specific
10 description of the information requested; and

11 (c) make the information requested available for inspection by the Non-Party.

12 9.3. If the Non-Party fails to object or seek a protective order from this court within 14
13 days of the notice, the Receiving Party may produce the Non-Party's confidential information
14 responsive to the discovery request. If the Non-Party timely seeks a protective order, the
15 Receiving Party shall not produce any information in its possession or control that is subject to
16 the confidentiality agreement with the Non-Party before a determination by the court. Absent a
17 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection
18 in this court of its Protected Material.

19 The purpose of this provision is to alert the interested parties to the existence of
20 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its
21 confidentiality interests in this court.

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

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
24 Material to any person or in any circumstance not authorized under this Stipulated Protective
25 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
26 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
27 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
28 made of all the terms of this Order, and (d) when applicable, request such person or persons to

1 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

2 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
3 **PROTECTED MATERIAL**

4 When a Producing Party gives notice to a Receiving Party that certain inadvertently
5 produced material is subject to a claim of privilege or other protection, the Receiving Party must
6 promptly return or destroy said material, and may not use said material in any manner. Such
7 inadvertent production shall not be deemed a waiver of privilege or other applicable protection.

8 **12. MISCELLANEOUS**

9 12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to
10 seek its modification by the Court in the future.

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

16 12.3. Filing Protected Material. Without written permission from the Designating Party
17 or a court order secured after appropriate notice to all interested persons, any filing in the public
18 record by a Party of Protected Material must be done conditionally under seal and then followed
19 by an application for an order permanently sealing said records. If a Party’s application to file
20 Protected Material under seal is denied by the court, then the Protected Material may not be filed
21 by a Party.

22 **13. FINAL DISPOSITION.**

23 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
24 Receiving Party must return all Protected Material to the Producing Party or destroy such
25 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
26 compilations, summaries, and any other format reproducing or capturing any of the Protected
27 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
28 submit a written certification to the Producing Party (and, if not the same person or entity, to the

1 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
2 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
3 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
4 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
5 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
6 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
7 product, and consultant and expert work product, even if such materials contain Protected
8 Material. Any such archival copies that contain or constitute Protected Material remain subject to
9 this Protective Order as set forth in Section 4 (DURATION).

10 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

11
12 **GREENBERG TRAUIG, LLP**

13
14 DATED: _____

By: _____

ANTHONY J. CORTEZ

15
16 Attorneys for Plaintiff and Counter Defendant
MAXIMUS, INC.

17
18 **SEUBERT FRENCH FRIMEL AND WARNER**

19 DATED: _____

By: _____

WILLIAM J. FRIMEL


20
21 Attorneys for Defendant and Counter Complainant
NIMBUS DATA SYSTEMS, INC.

22 **ORDER**

23 **PURSUANT TO STIPULATION, IT IS SO ORDERED, except that the parties must**
24 **comply with Local Rule 141 with respect to requests to file documents under seal.**

25 **Provisions contrary to Local Rule 141, if any, are disapproved.**

26 Dated: December 7, 2015

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28 

KENDALL J. NEWMAN

UNITED STATES MAGISTRATE JUDGE