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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
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12 SCOTT BISCHOFF; LERON DEMPSEY; and
PROJECT SENTINEL, INC.,

13 Plaintiffs,

14 v.

15 SANDRA BRITTAİN; KEITH JOHNSON;
16 RZM INVESTMENTS ENTERPRISE, LLC;
and J.A. BRITTAİN, LIMITED,

17 Defendants.
18

Case No. 2:14-cv-01970-KJM-CKD

**STIPULATION AND PROTECTIVE
ORDER**

Before: Hon. Carolyn K. Delaney

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential or private information for which special protection from public disclosure and from
4 use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
5 parties hereby stipulate to and petition the Court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords from public disclosure and
8 use extends only to the limited information or items that are entitled to confidential treatment
9 under the applicable legal principles. The parties further acknowledge that this Stipulated
10 Protective Order does not entitle them to file confidential information under seal. General Local
11 Rules 140 and 141 and the Court’s Status (Pretrial Scheduling) Order (ECF No. 42) set forth the
12 procedures that must be followed for the sealing and redaction of documents.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party that challenges the designation of information or items
15 under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
18 of Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
20 well as their support staff, employees and independent contractors).

21 2.4 Designating Party: a Party that designates information or items that it produces in
22 disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
23 – ATTORNEYS’ EYES ONLY.”

1 2.5 Disclosure or Discovery Material: all items or information, regardless of the
2 medium or manner in which it is generated, stored, or maintained (including, among other things,
3 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
4 responses to discovery in this matter.

5 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
6 the litigation who has been retained by a Party or Counsel to serve as an expert witness or as a
7 consultant in this action.

8 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
9 Items: extremely sensitive “CONFIDENTIAL Information or Items,” disclosure of which to
10 another Party or Non-Party would create a substantial risk of serious harm that could not be
11 avoided by less restrictive means. “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY” Information or Items should generally be limited to portions of documents, such as
13 medical or health care records, credit check reports and background check reports, that contain
14 extremely sensitive information pertaining to specifically identified natural persons or entities.

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.

23 2.11 Party: any party to this action, including all of its officers, directors, employees,
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1 independent contractors, consultants, Experts, and Outside Counsel of Record (and their support
2 staffs).

3 2.12 Producing Party: a Party that produces Disclosure or Discovery Material in this
4 action.

5 2.13 Professional Vendors: persons or entities that provide litigation support services
6 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
7 organizing, storing, or retrieving data in any form or medium) and their employees and
8 subcontractors.

9 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
10 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

11 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
12 Producing Party.

13 3. SCOPE

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

18 However, the protections conferred by this Stipulation and Order do not cover the following
19 information: (a) any information that is in the public domain at the time of disclosure to a
20 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
21 a result of publication not involving a violation of this Order, including becoming part of the
22 public record through trial or otherwise; (b) any information known to the Receiving Party prior
23 to the disclosure or obtained by the Receiving Party after the disclosure from a source other than
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1 the Designating Party's Protected Material; and (c) general or aggregated descriptions of
2 Protected Material. Any use of Protected Material at trial shall be governed by a separate
3 agreement or order.

4 4. DURATION

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

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
14 that designates information or items for protection under this Order must take care to limit any
15 such designation to specific material that qualifies under the appropriate standards. To the extent
16 it is practical to do so, the Designating Party must designate for protection only those parts of
17 material, documents, items, or oral or written communications that qualify – so that other
18 portions of the material, documents, items, or communications for which protection is not
19 warranted are not swept unjustifiably within the ambit of this Order.

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

1 If it comes to a Designating Party's attention that information or items that it designated
2 for protection do not qualify for protection at all or do not qualify for the level of protection
3 initially asserted, that Designating Party must promptly notify all other parties that it is
4 withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
6 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
7 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
8 designated before the material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic documents, but
11 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
12 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
13 EYES ONLY" to each page that contains protected material. If only a portion or portions of the
14 material on a page qualifies for protection, the Producing Party also must clearly identify the
15 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
16 each portion, the level of protection being asserted.

17 (b) for testimony given in deposition or in other pretrial proceedings, that the
18 Designating Party identify on the record, before the close of the deposition, hearing, or other
19 proceeding, all protected testimony and specify the level of protection being asserted. When it is
20 impractical to identify separately each portion of testimony that is entitled to protection and it
21 appears that substantial portions of the testimony may qualify for protection, the Designating
22 Party may invoke on the record (before the deposition, hearing, or other proceeding is
23 concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
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1 which protection is sought and to specify the level of protection being asserted. Only those
2 portions of the testimony that are appropriately designated for protection within the 21 days shall
3 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
4 Party may specify, at the deposition or up to 21 days afterwards if that period is properly
5 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

7 Parties shall give the other parties notice if they reasonably expect a deposition, hearing
8 or other proceeding to include Protected Material so that the other parties can ensure that only
9 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
10 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
11 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

13 Transcripts containing Protected Material shall have an obvious legend on the title page
14 that the transcript contains Protected Material, and the title page shall be followed by a list of all
15 pages (including line numbers as appropriate) that have been designated as Protected Material
16 and the level of protection being asserted by the Designating Party. The Designating Party shall
17 inform the court reporter of these requirements. Any transcript that is prepared before the
18 expiration of a 21-day period for designation shall be treated during that period as if it had been
19 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
20 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
21 actually designated.

22 (c) for information produced in some form other than documentary and for any
23 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
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1 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
2 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions
3 of the information or item warrant protection, the Producing Party, to the extent practicable, shall
4 identify the protected portion(s) and specify the level of protection being asserted.

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items does not, standing alone, waive the Designating Party’s
7 right to secure protection under this Order for such material. Upon timely correction of a
8 designation, the Receiving Party must make reasonable efforts to assure that the material is
9 treated in accordance with the provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality
12 at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is
13 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
14 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
15 confidentiality designation by electing not to mount a challenge promptly after the original
16 designation is disclosed.

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

7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court
8 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
9 Civil Local Rule 251 (and in compliance with General Local Rules 140 or 141, if applicable)
10 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the
11 meet and confer process will not resolve their dispute, whichever is earlier. Each such motion
12 must be accompanied by a competent declaration affirming that the movant has complied with
13 the meet and confer requirements imposed in the preceding paragraph. Failure by the
14 Designating Party to make such a motion including the required declaration within 21 days (or
15 14 days, if applicable) shall automatically waive the confidentiality designation for each
16 challenged designation. In addition, the Challenging Party may file a motion challenging a
17 confidentiality designation at any time if there is good cause for doing so, including a challenge
18 to the designation of a deposition transcript or any portions thereof. Any motion brought
19 pursuant to this provision must be accompanied by a competent declaration affirming that the
20 movant has complied with the meet and confer requirements imposed by the preceding
21 paragraph.

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

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party in connection with this case only for prosecuting, defending, investigating, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order.

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

Transmission of Protected Material to a Professional Vendor for storage or delivery by that Professional Vendor shall not constitute disclosure to that Professional Vendor.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, any information or item designated "CONFIDENTIAL" may be disclosed only to:

(a) the Receiving Party;

(b) Outside Counsel of Record in this action, as well as employees and independent contractors of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(c) the officers, directors, independent contractors, and employees (including

1 House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
2 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) Experts to whom disclosure is reasonably necessary for this litigation and who
4 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (e) the Court and its personnel;

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

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

14 (h) the Designating Party and its officers, directors, independent contractors, and
15 employees; the author or recipient of a document containing the information; a custodian or other
16 person who otherwise possessed or knew the document or information; or a person or entity to
17 whom the document or information pertains.

18 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
19 Information or Items. Unless otherwise ordered by the Court or permitted in writing by the
20 Designating Party, any information or item designated “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY” may be disclosed only to:

22 (a) Outside Counsel of Record in this action, as well as employees and
23 independent contractors of said Outside Counsel of Record to whom it is reasonably necessary to
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1 disclose the information for this litigation and who have signed the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A;

3 (b) House Counsel to whom disclosure is reasonably necessary for this litigation
4 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (c) Experts to whom disclosure is reasonably necessary for this litigation and who
6 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (d) the Court and its personnel;

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

11 (f) the Designating Party and its officers, directors, independent contractors, and
12 employees; the author or recipient of a document containing the information; a custodian or other
13 person who otherwise possessed or knew the document or information; or a person or entity to
14 whom the document or information pertains.

15 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this Stipulated
18 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
19 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
20 the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
21 made of all the terms of this Order, and (d) request such person or persons to execute the
22 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

1 9. MISCELLANEOUS

2 9.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the Court in the future.

4 9.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
5 Order no Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
7 no Party waives any right to object on any ground to use in evidence of any of the material
8 covered by this Protective Order.

9 9.3 Filing Protected Material. Requests for redaction or sealing shall be governed by
10 General Local Rules 140 and 141 and the Court's Status (Pretrial Scheduling) Order (ECF No.
11 42). In accordance with the Court's Status (Pretrial Scheduling) Order (ECF No. 42), this
12 Protective Order shall not govern the filing of sealed or redacted documents on the public docket.

13 10. FINAL DISPOSITION

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

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name],
4 of _____ [print or type full address], declare under penalty
5 of 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 in the case of
7 *Bischoff, et al., v. Brittain, et al.*, No. 2:14-cv-01970-KJM-CKD. I agree to comply with and to
8 be bound by all the terms of the Stipulated Protective Order and I understand and acknowledge
9 that failure to so comply could expose me to sanctions and punishment in the nature of contempt.
10 I solemnly promise that I will not disclose in any manner any information or item that is subject
11 to this Stipulated Protective Order to any person or entity except in strict compliance with the
12 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.

16 I hereby appoint _____ [print or type full name],
17 of _____ [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 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____

23 Signature: _____

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Respectfully submitted,

3 Date: October 27, 2015

/s/ Todd Espinosa

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Date: October 27, 2015

/s/ David D. MacMillan
(as authorized on October 27, 2015)

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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3 Dated: October 28, 2015
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5 CAROLYN K. DELANEY
6 UNITED STATES MAGISTRATE JUDGE
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