

1 JONATHAN D. WOLF, CA STATE BAR NO. 127043
2 SUSAN E. BISHOP, CA STATE BAR NO. 187253
3 KATHLEEN F. SHERMAN, CA STATE BAR NO. 241200
4 BERLINER COHEN, LLP
5 TEN ALMADEN BOULEVARD
6 ELEVENTH FLOOR
7 SAN JOSE, CALIFORNIA 95113-2233
8 TELEPHONE: (408) 286-5800
9 FACSIMILE: (408) 998-5388
10 jonathan.wolf@berliner.com
11 susan.bishop@berliner.com
12 kathleen.sherman@berliner.com

13 ATTORNEYS FOR PLAINTIFF AND COUNTER-DEFENDANT
14 CAPITAL MAILING SERVICES, INC. AND COUNTER-
15 DEFENDANTS PERICE D. SIBLEY AND APC HOLDING
16 AND MANAGEMENT, INC.

17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA

19 SACRAMENTO DIVISION

20 CAPITAL MAILING SERVICES, INC., a
21 California corporation,

22 Plaintiff,

23 v.

24 SALT CREEK MEDIA, INC., a California
25 corporation; ANDREW CODY, an individual;
26 MATTHEW KELSOE, an individual;
27 ROBERT RICO, an individual; JOSHUA
28 BYRD, an individual; and DOES 1-20,

Defendants.

ANDREW CODY, an individual,

Counterclaimant,

v.

PERICE D. SIBLEY, aka PERICE D.
SIBLEY-CODY, an individual; CAPITAL
MAILING SERVICES, INC., a California
corporation; APC HOLDING &
MANAGEMENT, INC., a California
corporation; and DOES 1-10, inclusive,

Counter-Defendants.

CASE NO. 2:15-CV-02337-TLN-CKD

STIPULATED PROTECTIVE ORDER

[Case Filed: November 10, 2015]

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
7 protections on all disclosures or responses to discovery and that the protection it affords from
8 public disclosure and use extends only to the limited information or items that are entitled to
9 confidential treatment under the applicable legal principles. The parties further acknowledge, as
10 set forth in Section 13.3, below, that this Stipulated Protective Order does not entitle them to file
11 confidential information under seal; General Local Rule 141 sets forth the procedures that must
12 be followed and the standards that will be applied when a party seeks permission from the court
13 to file material under seal.

14 2. DEFINITIONS

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

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

20 2.3 Counsel: Outside Counsel of Record (as well as their support staff).

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

25 2.5 Disclosure or Discovery Material: all items or information, regardless of the
26 medium or manner in which it is generated, stored, or maintained (including, among other things,
27 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
28 responses to discovery in this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
2 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
3 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
4 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
5 or of a Party's competitor.

6 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
7 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
8 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
9 less restrictive means.

10 2.8 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:
11 extremely sensitive "Confidential Information or Items" representing computer code and
12 associated comments and revision histories, formulas, engineering specifications, or schematics
13 that define or otherwise describe in detail the algorithms or structure of software or hardware
14 designs, disclosure of which to another Party or Non-Party would create a substantial risk of
15 serious harm that could not be avoided by less restrictive means.

16 2.9 House Counsel: attorneys who are employees of a party to this action. House
17 Counsel does not include Outside Counsel of Record or any other outside counsel.

18 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
19 entity not named as a Party to this action.

20 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
21 action but are retained to represent or advise a party to this action and have appeared in this
22 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
23 that party.

24 2.12 Party: any party to this action, including all of its officers, directors, employees,
25 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

26 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
27 Material in this action.

28

1 2.14 Professional Vendors: persons or entities that provide litigation support services
2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
3 organizing, storing, or retrieving data in any form or medium) and their employees and
4 subcontractors.

5 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
6 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
7 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

8 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
9 Producing Party.

10 3. SCOPE

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

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations imposed by
26 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
27 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
28 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after

1 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
2 action, including the time limits for filing any motions or applications for extension of time
3 pursuant to applicable law.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
6 or Non-Party that designates information or items for protection under this Order must take care
7 to limit any such designation to specific material that qualifies under the appropriate standards.
8 To the extent it is practical to do so, the Designating Party must designate for protection only
9 those parts of material, documents, items, or oral or written communications that qualify – so
10 that other portions of the material, documents, items, or communications for which protection is
11 not warranted are not swept unjustifiably within the ambit of this Order.

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

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

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
21 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
22 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
23 designated before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic documents,
26 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
27 Party affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS'
28 EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains

1 protected material. If only a portion or portions of the material on a page qualifies for protection,
2 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
3 appropriate markings in the margins) and must specify, for each portion, the level of protection
4 being asserted.

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

18 (b) for testimony given in deposition or in other pretrial or trial proceedings,
19 that the Designating Party identify on the record, before the close of the deposition, hearing, or
20 other proceeding, all protected testimony and specify the level of protection being asserted.
21 When it is impractical to identify separately each portion of testimony that is entitled to
22 protection and it appears that substantial portions of the testimony may qualify for protection, the
23 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding
24 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
25 which protection is sought and to specify the level of protection being asserted. Only those
26 portions of the testimony that are appropriately designated for protection within the 21 days shall
27 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
28 Party may specify, at the deposition or up to 21 days afterwards if that period is properly

1 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and may de-designate portions of the
3 transcript within 21 days after the certified transcript has been delivered.

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

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

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

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
27 designate qualified information or items does not, standing alone, waive the Designating Party’s
28 right to secure protection under this Order for such material. Upon timely correction of a

1 designation, the Receiving Party must make reasonable efforts to assure that the material is
2 treated in accordance with the provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

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

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
25 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
26 Civil Local Rule 230 within 21 days of the initial notice of challenge or within 14 days of the
27 parties agreeing that the meet and confer process will not resolve their dispute, whichever is
28 later. Each such motion must be accompanied by a competent declaration affirming that the

1 movant has complied with the meet and confer requirements imposed in the preceding
2 paragraph. Failure by the Designating Party to make such a motion including the required
3 declaration within the required time shall automatically waive the confidentiality designation for
4 each challenged designation. After three failed challenges, the burden shall shift to the
5 Challenging Party to move to challenge the confidentiality designation for any further
6 designation disputes. In addition, the Challenging Party may file a motion challenging a
7 confidentiality designation at any time if there is good cause for doing so, including a challenge
8 to the designation of a deposition transcript or any portions thereof. Any motion brought
9 pursuant to this provision must be accompanied by a competent declaration affirming that the
10 movant has complied with the meet and confer requirements imposed by the preceding
11 paragraph.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating
13 Party, except that as stated above the burden shall shift to the Challenging Party after three failed
14 challenges by that Challenging Party. Frivolous challenges and those made for an improper
15 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
16 expose the Challenging Party to sanctions. Unless the Designating Party has waived the
17 confidentiality designation by failing to file a motion to retain confidentiality as described above,
18 all parties shall continue to afford the material in question the level of protection to which it is
19 entitled under the Producing Party's designation until the court rules on the challenge.

20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
22 or produced by another Party or by a Non-Party in connection with this case only for
23 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
24 disclosed only to the categories of persons and under the conditions described in this Order.
25 When the litigation has been terminated, a Receiving Party must comply with the provisions of
26 section 14 below (FINAL DISPOSITION).

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

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
3 disclose any information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
6 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
7 Bound” that is attached hereto as Exhibit A;

8 (b) the officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
10 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

14 (d) the court and its personnel;

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

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

24 (g) the author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the information.

26 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
27 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise
28 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may

1 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
4 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
5 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
6 Bound” that is attached hereto as Exhibit A;

7 (b) Experts (as defined in this Order) of the Receiving Party (1) to whom
8 disclosure is reasonably necessary for this litigation, and (2) who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (c) the court and its personnel;

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

14 (e) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information.

16 8. SOURCE CODE

17 (a) To the extent production of source code becomes necessary in this case, a
18 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE”
19 if it comprises or includes confidential, proprietary or trade secret source code.

20 (b) Protected Material designated as “HIGHLY CONFIDENTIAL –
21 SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information, and may be disclosed only to
23 the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
24 information may be disclosed, as set forth in Section 7.3.

25 (c) The Receiving Party shall maintain a record of any individual who has
26 inspected any portion of the source code in electronic or paper form. The Receiving Party shall
27 maintain all paper copies of any printed portions of the source code in a secured, locked area.
28 The Receiving Party shall maintain all electronic copies of any source code on a secured

1 computer in a secured room without Internet access or network access to other computers. Any
2 paper copies of source code that are used in depositions or included within court filings,
3 pleadings, or other papers (including a testifying expert's report) shall be submitted to the court
4 along with a request pursuant to General Local Rule 141 to file the documents under seal if that
5 source code was designated "HIGHLY CONFIDENTIAL – SOURCE CODE" by the Producing
6 Party.

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

9 If a Party is served with a subpoena or a court order issued in other litigation that compels
10 disclosure of any information or items designated in this action as "CONFIDENTIAL,"
11 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL
12 – SOURCE CODE," that Party must:

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

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

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

21 If the Designating Party timely seeks a protective order, the Party served with the
22 subpoena or court order shall not produce any information designated in this action as
23 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or
24 "HIGHLY CONFIDENTIAL – SOURCE CODE" before a determination by the court from
25 which the subpoena or order issued, unless the Party has obtained the Designating Party's
26 permission. The Designating Party shall bear the burden and expense of seeking protection in
27 that court of its confidential material. Nothing in these provisions should be construed as
28

1 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
2 another court.

3 10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
4 LITIGATION

5 (a) The terms of this Order are applicable to information produced by a Non-
6 Party in this action and designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL –
7 ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE." Such
8 information produced by Non-Parties in connection with this litigation is protected by the
9 remedies and relief provided by this Order. Nothing in these provisions should be construed as
10 prohibiting a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to
12 produce a Non-Party's confidential information in its possession, and the Party is subject to an
13 agreement with the Non-Party not to produce the Non-Party's confidential information, then the
14 Party shall:

15 1. promptly notify in writing the Requesting Party and the Non-Party
16 that some or all of the information requested is subject to a confidentiality agreement with a
17 Non-Party;

18 2. promptly provide the Non-Party with a copy of the Stipulated
19 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
20 description of the information requested; and

21 3. make the information requested available for inspection by the
22 Non-Party.

23 (c) If the Non-Party fails to object or seek a protective order from this court
24 within 14 days of receiving the notice and accompanying information, the Receiving Party may
25 produce the Non-Party's confidential information responsive to the discovery request. If the
26 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
27 in its possession or control that is subject to the confidentiality agreement with the Non-Party
28

1 before a determination by the court.¹ Absent a court order to the contrary, the Non-Party shall
2 bear the burden and expense of seeking protection in this court of its Protected Material.

3 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
12 MATERIAL

13 When a Producing Party gives notice to Receiving Parties that certain inadvertently
14 produced material is subject to a claim of privilege or other protection, the obligations of the
15 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
16 provision is not intended to modify whatever procedure may be established in an e-discovery
17 order that provides for production without prior privilege review. Furthermore, if a receiving
18 party discovers that it has come into possession of materials that it reasonably should understand
19 would be subject to a claim of privilege or other protection by the producing party, and which
20 reasonably appear under the circumstances to have been produced inadvertently, the receiving
21 party will give immediate notice to the producing party. If the producing party then confirms that
22 the materials are subject to a claim of privilege or other protection, and were inadvertently
23 produced, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
24 Procedure 26(b)(5)(B).

25 13. MISCELLANEOUS

26
27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-
28 Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
2 seek its modification by the court in the future.

3 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
4 Order no Party waives any right it otherwise would have to object to disclosing or producing any
5 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
6 no Party waives any right to object on any ground to use in evidence of any of the material
7 covered by this Protective Order.

8 13.3 Filing Protected Material. Without written permission from the Designating Party
9 or a court order secured after appropriate notice to all interested persons, a Party may not file in
10 the public record in this action any Protected Material. A Party that seeks to file under seal any
11 Protected Material must comply with General Local Rule 141. Protected Material may only be
12 filed under seal pursuant to a court order authorizing the sealing of the specific Protected
13 Material at issue. Pursuant to General Local Rule 141, a sealing order will issue only upon a
14 request establishing that the Protected Material at issue is privileged, protectable as a trade
15 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file
16 Protected Material under seal pursuant to General Local Rule 141 is denied by the court, then the
17 Receiving Party may file the Protected Material in the public record unless otherwise instructed
18 by the court.

19 14. FINAL DISPOSITION

20 Within 60 days after the final disposition of this action, as defined in section 4
21 (DURATION), each Receiving Party must return all Protected Material to the Producing Party or
22 destroy such material. As used in this subdivision, "all Protected Material" includes all copies,
23 abstracts, compilations, summaries, and any other format reproducing or capturing any of the
24 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party
25 must submit a written certification to the Producing Party (and, if not the same person or entity,
26 to the Designating Party) by the 60-day deadline that (1) identifies (by category, where
27 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
28 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other

1 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
2 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
3 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
4 reports, attorney work product, and consultant and expert work product, even if such materials
5 contain Protected Material. Any such archival copies that contain or constitute Protected
6 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 DATED: JANUARY 25, 2016

BERLINER COHEN, LLP

9 BY: /s/ KATHLEEN F. SHERMAN

10 JONATHAN D. WOLF

SUSAN E. BISHOP

11 KATHLEEN F. SHERMAN

ATTORNEYS FOR PLAINTIFF AND COUNTER-

12 DEFENDANT CAPITAL MAILING SERVICES, INC.,

COUNTER-DEFENDANTS PERICE D. SIBLEY AND

13 APC HOLDING AND MANAGEMENT, INC., AND

14 THIRD PARTY HIRAM SIBLEY

15 Dated: January 25, 2016

LAW OFFICE OF DAVID S. BARRETT

16 Attestation of Consent to File:

17 BY: /s/ DAVID S. BARRETT

DAVID S. BARRETT

18 ATTORNEY FOR DEFENDANT AND COUNTER-

CLAIMANT ANDREW CODY AND DEFENDANTS

19 SALT CREEK MEDIA, INC., MATTHEW KELSO,

ROBERT RICO, AND JOSHUA BYRD

20 /s/ Kathleen F. Sherman

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 DATED: JANUARY 27, 2016

23 

24 CAROLYN K. DELANEY

UNITED STATES MAGISTRATE JUDGE

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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3 I, _____ [print or type full
4 name], of _____ [print or
5 type full address], declare under penalty of perjury that I have read in its entirety and understand
6 the Stipulated Protective Order that was issued by the United States District Court for the Eastern
7 District of California on [date] in the case of *Capital Mailing Systems, Inc. v. Salt Creek Media,*
8 *Inc., et al., and related Counterclaims*, Eastern District of California Case No. 2:15-CV-02337-
9 TLN-CKD. I agree to comply with and to be bound by all the terms of this Stipulated Protective
10 Order and I understand and acknowledge that failure to so comply could expose me to sanctions
11 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
12 manner any information or item that is subject to this Stipulated Protective Order to any person
13 or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective
16 Order, even if such enforcement proceedings occur after termination of this action.

17 I hereby appoint _____ [print or type full
18 name] of _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with this action or
20 any proceedings related to enforcement of this Stipulated Protective Order.

21
22 Date:

23 _____

24
25 City and State where sworn and signed:

26 _____

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Printed name: _____ -

Signature:
