

1 ROPERS, MAJESKI, KOHN & BENTLEY
2 LAWRENCE BORYS (SBN 60625)
3 TIMOTHY J. LEPORE (SBN 294247)
4 445 South Figueroa Street, Suite 3000
5 Los Angeles, CA 90071-1619
6 Telephone: (213) 312-2000
7 Facsimile: (213) 312-2001
8 Email: lawrence.borys@rmkb.com
9 timothy.lepore@rmkb.com

6 Attorneys for Defendant
PRE-EMPLOY.COM, INC.

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

11 ANTONIO A. LOPEZ,
12 Plaintiff,
13 v.
14 PRE-EMPLOY.COM, INC.,
15 Defendant.

CASE NO. 2:16-cv-02205-TLN-KJN

**STIPULATED PROTECTIVE
ORDER FOR STANDARD
LITIGATION**

17 1. PURPOSES AND LIMITATIONS

18 Disclosure and discovery activity in this action are likely to involve
19 production of confidential, proprietary, or private information for which special
20 protection from public disclosure and from use for any purpose other than
21 prosecuting this litigation may be warranted. Specifically, this action implicates
22 whether Defendant's business practices are compliant with state and federal
23 statutes, which will likely require the disclosure of confidential proprietary
24 information and possibly Defendant's trade secrets, which Defendant has made
25 reasonable efforts to maintain the secrecy of. Moreover, due to Plaintiff's claimed
26 damages, this action will likely require the disclosure of his confidential financial
27 information. Accordingly, the parties hereby stipulate to and petition the court to
28 enter the following Stipulated Protective Order. The parties acknowledge that this

1 Order does not confer blanket protections on all disclosures or responses to
2 discovery and that the protection it affords from public disclosure and use extends
3 only to the limited information or items that are entitled to confidential treatment
4 under the applicable legal principles. The parties further acknowledge, as set forth
5 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
6 file confidential information under seal; Local Rule 141 sets forth the procedures
7 that must be followed and the standards that will be applied when a party seeks
8 permission from the court to file material under seal.

9 **2. DEFINITIONS**

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

12 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
13 how it is generated, stored or maintained) or tangible things that qualify for
14 protection under Federal Rule of Civil Procedure 26(c).

15 2.3 Counsel (without qualifier): Outside Counsel of Record and House
16 Counsel (as well as their support staff).

17 2.4 Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

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

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

27 2.7 House Counsel: attorneys who are employees of a party to this action.
28 House Counsel does not include Outside Counsel of Record or any other outside

1 counsel.

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

4 2.9 Outside Counsel of Record: attorneys who are not employees of a
5 party to this action but are retained to represent or advise a party to this action and
6 have appeared in this action on behalf of that party or are affiliated with a law firm
7 which has appeared on behalf of that party.

8 2.10 Party: any party to this action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their
10 support staffs).

11 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
12 Discovery Material in this action.

13 2.12 Professional Vendors: persons or entities that provide litigation
14 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)
16 and their employees and subcontractors.

17 2.13 Protected Material: any Disclosure or Discovery Material that is
18 designated as "CONFIDENTIAL."

19 2.14 Receiving Party: a Party that receives Disclosure or Discovery
20 Material from a Producing Party.

21 3. SCOPE

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

27 However, the protections conferred by this Stipulation and Order do not cover the
28 following information: (a) any information that is in the public domain at the time

1 of disclosure to a Receiving Party or becomes part of the public domain after its
2 disclosure to a Receiving Party as a result of publication not involving a violation
3 of this Order, including becoming part of the public record through trial or
4 otherwise; and (b) any information known to the Receiving Party prior to the
5 disclosure or obtained by the Receiving Party after the disclosure from a source
6 who obtained the information lawfully and under no obligation of confidentiality to
7 the Designating Party. Any use of Protected Material at trial shall be governed by a
8 separate agreement or order.

9 4. DURATION

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

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.

20 Each Party or Non-Party that designates information or items for protection under
21 this Order must take care to limit any such designation to specific material that
22 qualifies under the appropriate standards. The Designating Party must designate for
23 protection only those parts of material, documents, items, or oral or written
24 communications that qualify – so that other portions of the material, documents,
25 items, or communications for which protection is not warranted are not swept
26 unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations
28 that are shown to be clearly unjustified or that have been made for an improper

1 purpose (e.g., to unnecessarily encumber or retard the case development process or
2 to impose unnecessary expenses and burdens on other parties) expose the
3 Designating Party to sanctions.

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

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

12 Designation in conformity with this Order requires:

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

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

1 Producing Party also must clearly identify the protected portion(s) (e.g., by making
2 appropriate markings in the margins).

3 (b) for testimony given in deposition or in other pretrial or trial
4 proceedings, that the Designating Party identify on the record, before the close of
5 the deposition, hearing, or other proceeding, all protected testimony.

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

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

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time. Unless a prompt challenge to a
21 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
22 substantial unfairness, unnecessary economic burdens, or a significant disruption or
23 delay of the litigation, a Party does not waive its right to challenge a confidentiality
24 designation by electing not to mount a challenge promptly after the original
25 designation is disclosed.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
27 resolution process by providing written notice of each designation it is challenging
28 and describing the basis for each challenge. To avoid ambiguity as to whether a

1 challenge has been made, the written notice must recite that the challenge to
2 confidentiality is being made in accordance with this specific paragraph of the
3 Protective Order. The parties shall attempt to resolve each challenge in good faith
4 and must begin the process by conferring directly (in voice to voice dialogue; other
5 forms of communication are not sufficient) within 14 days of the date of service of
6 notice. In conferring, the Challenging Party must explain the basis for its belief that
7 the confidentiality designation was not proper and must give the Designating Party
8 an opportunity to review the designated material, to reconsider the circumstances,
9 and, if no change in designation is offered, to explain the basis for the chosen
10 designation. A Challenging Party may proceed to the next stage of the challenge
11 process only if it has engaged in this meet and confer process first or establishes
12 that the Designating Party is unwilling to participate in the meet and confer process
13 in a timely manner.

14 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
15 court intervention, the Designating Party shall file and serve a motion to retain
16 confidentiality within 30 days of the initial notice of challenge or within 21 days of
17 the parties agreeing that the meet and confer process will not resolve their dispute,
18 whichever is earlier. Each such motion must be accompanied by a competent
19 declaration affirming that the movant has complied with the meet and confer
20 requirements imposed in the preceding paragraph. Failure by the Designating Party
21 to make such a motion including the required declaration within 30 days (or 21
22 days, if applicable) shall automatically waive the confidentiality designation for
23 each challenged designation. In addition, the Challenging Party may file a motion
24 challenging a confidentiality designation at any time if there is good cause for doing
25 so, including a challenge to the designation of a deposition transcript or any
26 portions thereof. Any motion brought pursuant to this provision must be
27 accompanied by a competent declaration affirming that the movant has complied
28 with the meet and confer requirements imposed by the preceding paragraph.

1 The burden of persuasion in any such challenge proceeding shall be on the
2 Designating Party. Frivolous challenges, and those made for an improper purpose
3 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
4 expose the Challenging Party to sanctions. Unless the Designating Party has waived
5 the confidentiality designation by failing to file a motion to retain confidentiality as
6 described above, all parties shall continue to afford the material in question the
7 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
11 disclosed or produced by another Party or by a Non-Party in connection with this
12 case only for prosecuting, defending, or attempting to settle this litigation. Such
13 Protected Material may be disclosed only to the categories of persons and under the
14 conditions described in this Order. When the litigation has been terminated, a
15 Receiving Party must comply with the provisions of section 13 below (FINAL
16 DISPOSITION).

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

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

24 (a) the Receiving Party's Outside Counsel of Record in this action, as
25 well as employees of said Outside Counsel of Record to whom it is reasonably
26 necessary to disclose the information for this litigation and who have signed the
27 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
28 A;

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

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

8 (d) the court and its personnel;

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

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

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

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
23 IN OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation
25 that compels disclosure of any information or items designated in this action as
26 “CONFIDENTIAL,” that Party must:

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

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

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

7 If the Designating Party timely seeks a protective order, the Party served with
8 the subpoena or court order shall not produce any information designated in this
9 action as “CONFIDENTIAL” before a determination by the court from which the
10 subpoena or order issued, unless the Party has obtained the Designating Party’s
11 permission. The Designating Party shall bear the burden and expense of seeking
12 protection in that court of its confidential material – and nothing in these provisions
13 should be construed as authorizing or encouraging a Receiving Party in this action
14 to disobey a lawful directive from another court.

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
16 PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a Non-
18 Party in this action and designated as “CONFIDENTIAL.” Such information
19 produced by Non-Parties in connection with this litigation is protected by the
20 remedies and relief provided by this Order. Nothing in these provisions should be
21 construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

4 (3) make the information requested available for inspection by the Non-
5 Party.

6 (c) If the Non-Party fails to object or seek a protective order from this court
7 within 14 days of receiving the notice and accompanying information, the
8 Receiving Party may produce the Non-Party's confidential information responsive
9 to the discovery request. If the Non-Party timely seeks a protective order, the
10 Receiving Party shall not produce any information in its possession or control that
11 is subject to the confidentiality agreement with the Non-Party before a
12 determination by the court. Absent a court order to the contrary, the Non-Party
13 shall bear the burden and expense of seeking protection in this court of its Protected
14 Material.

15 10. 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
18 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
19 writing the Designating Party of the unauthorized disclosures, (b) use its best
20 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
21 person or persons to whom unauthorized disclosures were made of all the terms of
22 this Order, and (d) request such person or persons to execute the "Acknowledgment
23 and Agreement to Be Bound" that is attached hereto as Exhibit A.

24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
25 PROTECTED MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other
28 protection, the obligations of the Receiving Parties are those set forth in Federal

1 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
2 whatever procedure may be established in an e-discovery order that provides for
3 production without prior privilege review. Pursuant to Federal Rule of Evidence
4 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
5 of a communication or information covered by the attorney-client privilege or work
6 product protection, the parties may incorporate their agreement in the stipulated
7 protective order submitted to the court.

8 12. MISCELLANEOUS

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

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

17 12.3 Filing Protected Material. Without written permission from the
18 Designating Party or a court order secured after appropriate notice to all interested
19 persons, a Party may not file in the public record in this action any Protected
20 Material. A Party that seeks to file under seal any Protected Material must comply
21 with Local Rule 141. Protected Material may only be filed under seal pursuant to a
22 court order authorizing the sealing of the specific Protected Material at issue.
23 Pursuant to Local Rule 141, a sealing order will issue only upon a request
24 establishing that the Protected Material at issue is privileged, protectable as a trade
25 secret, or otherwise entitled to protection under the law. If a Receiving Party's
26 request to file Protected Material under seal pursuant to Local Rule 141 is denied
27 by the court, then the Receiving Party may file the information in the public record
28 unless otherwise instructed by the court.

1 13. FINAL DISPOSITION

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

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Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: October , 2017

ROPER, MAJESKI, KOHN & BENTLEY

By: _____
LAWRENCE BORYS
TIMOTHY J. LEPORE
Attorneys for Defendant
PRE-EMPLOY.COM, INC.

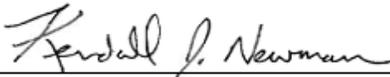
Dated: October , 2017

DEOS LAW, PC and
ATTORNEY JOHN B. KEATING

By: _____
LINDA DEOS
JOHN B. KEATING
Attorneys for Plaintiff
ANTONIO A. LOPEZ

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: November 8, 2017


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name],
4 of _____ [print or type full
5 address], declare under penalty of perjury that I have read in its entirety and
6 understand the Stipulated Protective Order that was issued by the United States
7 District Court for the Eastern District of California in the case of *Antonio A. Lopez,*
8 *V. Pre-Employ.Com, Inc.* I agree to comply with and to be bound by all the terms of
9 this Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item
12 that is subject to this Stipulated Protective Order to any person or entity except in
13 strict compliance with the provisions of this Order.

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

22 Date: _____

23 City and State
24 where sworn and signed: _____

25 Printed name: _____

26 Signature: _____

Ropers Majeski Kohn & Bentley
A Professional Corporation
Los Angeles