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 12 CABLE COM, LLC

13 UNITED STATES DISTRICT COURT  
 14 EASTERN DISTRICT OF CALIFORNIA

15 DEJANEE BURRIS,

16 Plaintiff,

17 v.

18 CABLE COM, LLC; DOES 1-10,  
 19 inclusive,

20 Defendant.

Case No. 2:16-CV-02296-LEK

**STIPULATED PROTECTIVE ORDER**

Trial Date: June 18, 2018

Judge: Leslie E. Kobayashi

21  
 22 1. PURPOSES AND LIMITATIONS

23 Disclosure and discovery activity in this action are likely to involve production of  
 24 confidential, proprietary, or private information for which special protection from public disclosure  
 25 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
 26 the Parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
 27 Order. The Parties acknowledge that this Order does not confer blanket protections on all  
 28 disclosures or responses to discovery and that the protection it affords from public disclosure and use

1 extends only to the limited information or items that are entitled to confidential treatment under the  
2 applicable legal principles. The Parties further acknowledge, as set forth in Section 12.3, below, that  
3 this Stipulated Protective Order does not entitle them to file confidential information under seal;  
4 Local Rule 141 sets forth the procedures that must be followed and the standards that will be applied  
5 when a Party seeks permission from the court to file material under seal.

6 2. DEFINITIONS

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
8 information or items under this Order.

9 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it  
10 is generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule  
11 of Civil Procedure 26(c) or are marked “CONFIDENTIAL” by producing Party including any  
12 documents or materials, including but not limited to medical records, FMLA and leave records, and  
13 PII (personally identifiable information), including addresses, social security and telephone numbers,  
14 and dates of birth, which the Parties designate as confidential. Information covered by the Health  
15 Insurance Portability and Accountability Act of 1996 (“HIPAA”), a federal law which protects a  
16 patient’s health and related financial information from inappropriate and unauthorized usage, is also  
17 considered a Confidential Document.

18 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
19 (as well as their support staff).

20 2.4 Designating Party: a Party or Non-Party that designates information or items  
21 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

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

1           2.7    House Counsel: attorneys who are employees of a Party to this action. House  
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

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

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

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

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

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

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

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

21    3.       SCOPE

22           The protections conferred by this Stipulation and Order cover not only Protected  
23 Material (as defined above), but also (a) any information copied or extracted from Protected  
24 Material; (b) all copies, excerpts, summaries, or compilations of Protected Material; and (c) any  
25 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected  
26 Material. However, the protections conferred by this Stipulation and Order do not cover the  
27 following information: (a) any information that is in the public domain at the time of disclosure to a  
28 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a

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

6 4. DURATION

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

13 5. DESIGNATING PROTECTED MATERIAL

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

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

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

1           5.2    Manner and Timing of Designations. Except as otherwise provided in this  
2 Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,  
3 Disclosure of Discovery Material that qualifies for protection under this Order must be clearly so  
4 designated before the material is disclosed or produced.

5           Designation in conformity with this Order requires:

6           (a)    for information in documentary form (*e.g.*, paper or electronic documents, but  
7 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
8 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion  
9 or portions of the material on a page qualifies for protection, the Producing Party also must clearly  
10 identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

11           A Party or Non-Party that makes original documents or materials available for  
12 inspection need not designate them for protection until after the inspecting Party has indicated which  
13 material it would like copied and produced. During the inspection and before the designation, all of  
14 the material made available for inspection shall be deemed “CONFIDENTIAL.” After the  
15 inspecting Party has identified the documents it wants copied and produced, the Producing Party  
16 must determine which documents, or portions thereof, qualify for protection under this Order. Then,  
17 before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL”  
18 legend to each page that contains Protected Material. If only a portion or portions of the material on  
19 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)  
20 (*e.g.*, by making appropriate markings in the margins).

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

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

1           5.3    Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
2 to designate qualified information or items does not, standing alone, waive the Designating Party's  
3 right to secure protection under this Order for such material. Upon timely correction of a  
4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in  
5 accordance with the provisions of this Order.

6    6.       CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

26          6.3    Judicial Intervention. If the Parties cannot resolve a challenge without court  
27 intervention and they have complied with the scheduling order (Doc. 10), the Designating Party shall  
28 file and serve a motion to retain confidentiality under Local Rule 251 within 21 days of the initial

1 notice of challenge or within 14 days of the Parties agreeing that the meet and confer process will  
2 not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
3 competent declaration affirming that the movant has complied with the meet and confer  
4 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a  
5 motion including the required declaration within 21 days (or 14 days, if applicable) shall  
6 automatically waive the confidentiality designation for each challenged designation. In addition, the  
7 Challenging Party may file a motion challenging a confidentiality designation at any time if there is  
8 good cause for doing so, including a challenge to the designation of a deposition transcript or any  
9 portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
10 competent declaration affirming that the movant has complied with the meet and confer  
11 requirements imposed by the preceding paragraph.

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

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

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
21 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
22 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
23 disclosed only to the categories of persons and under the conditions described in this Order. When  
24 the litigation has been terminated, a Receiving Party must comply with the provisions of Section 13  
25 below (FINAL DISPOSITION).

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

28 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise

1 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
2 disclose any information or item designated “CONFIDENTIAL” 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) the officers, directors, and employees (including House Counsel) of the  
8 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed  
9 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

13 (d) the court and its personnel;

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

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

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

25 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
26 LITIGATION

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



1 Party must:

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

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

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

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

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

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

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

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

28 (2) promptly provide the Non-Party with a copy of the Stipulated Protective

1 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the  
2 information requested; and

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

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

11 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

19 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
20 MATERIAL

21 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
22 produced material is subject to a claim of privilege or other protection, the obligations of the  
23 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
24 is not intended to modify whatever procedure may be established in an e-discovery order that  
25 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)  
26 and (e), insofar as the Parties reach an agreement on the effect of disclosure of a communication or  
27 information covered by the attorney-client privilege or work product protection, the Parties may  
28 incorporate their agreement in the stipulated protective order submitted to the court.

1      12.      MISCELLANEOUS

2                   12.1      Right to Further Relief. Nothing in this Order abridges the right of any person  
3 to seek its modification by the court in the future.

4                   12.2      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, no  
7 Party waives any right to object on any ground to use in evidence of any of the material covered by  
8 this Protective Order.

9                   12.3      Filing Protected Material. Without written permission from the Designating  
10 Party or a court order secured after appropriate notice to all interested persons, a Party may not file  
11 in the public record in this action any Protected Material. A Party that seeks to file under seal any  
12 Protected Material must comply with Local Rule 141. Protected Material may only be filed under  
13 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. A  
14 sealing order will issue only upon a request establishing that the Protected Material at issue is  
15 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a  
16 Receiving Party's request to file Protected Material under seal is denied by the court, then the  
17 Receiving Party may file the information in the public record unless otherwise instructed by the  
18 court.

19      13.      FINAL DISPOSITION

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

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

7  
8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9 Dated: May 24, 2017

10  
11 /s/ Na'il Benjamin  
12 NA'IL BENJAMIN  
13 CAROL A. TREASURE  
14 RINA WANG  
15 BENJAMIN LAW GROUP, P.C.  
16 Attorneys for Plaintiff  
17 DEJANEE BURRIS

18 Dated: May 24, 2017

19 /s/ Johnny A. Colon  
20 BENJAMIN L. WEBSTER  
21 JOHNNY A. COLÓN  
22 LITTLER MENDELSON, P.C.  
23 Attorneys for Defendant  
24 CABLE COM, LLC

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26 DATED: May 25, 2017.



/s/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under  
penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that  
was issued by the United States District Court for the Eastern District of California on \_\_\_\_\_  
[insert date] in the case of Dejanee Burris v. Cable Com LLC. I hereby agree to comply with and to  
be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that  
failure to so comply could expose me to sanctions and punishment in the nature of contempt. I  
solemnly promise that I will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance with the provisions of  
this Order.

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

Dated: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_