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Attorney for Plaintiffs

5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF CALIFORNIA  
7 SACRAMENTO DIVISION  
8

9 SALT CREEK MEDIA, INC, a  
10 California corporation; REDSTONE  
11 PRINT & MAIL, INC., a California  
corporation;

12 Plaintiffs,

13 v.

14 MARKSYS, LLC, a California limited  
liability company; DMITRY  
15 BUDORAGIN, an individual; JEROD  
MEENTS, an individual; RYAN  
16 GUTSHALL, an individual; and DOES  
1-100, inclusive,

17 Defendants.  
18

Case No. 2:17-cv-00714-KJN

Honorable Magistrate Judge Kendall J.  
Newman  
Courtroom No. 25

**STIPULATED PROTECTIVE ORDER**

Complaint Filed: April 3, 2017  
Trial Date: February 22, 2019

1     1.     PURPOSES AND LIMITATIONS

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

15     2.     DEFINITIONS

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

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

21             2.3     Counsel: Outside Counsel of Record (as well as their support staff).

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

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

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

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

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

19 2.9 House Counsel: attorneys who are employees of a party to this action.  
20 House Counsel does not include Outside Counsel of Record or any other outside  
21 counsel.

22 2.10 Non-Party: any natural person, partnership, corporation, association, or  
23 other legal entity not named as a Party to this action.

24 2.11 Outside Counsel of Record: attorneys who are not employees of a party  
25 to this action but are retained to represent or advise a party to this action and have  
26 appeared in this action on behalf of that party or are affiliated with a law firm which  
27 has appeared on behalf of that party.

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1           2.12 Party: any party to this action, including all of its officers, directors,  
2 employees, consultants, retained experts, and Outside Counsel of Record (and their  
3 support staffs).

4           2.13 Producing Party: a Party or Non-Party that produces Disclosure or  
5 Discovery Material in this action.

6           2.14 Professional Vendors: persons or entities that provide litigation support  
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
9 and their employees and subcontractors.

10          2.15 Protected Material: any Disclosure or Discovery Material that is  
11 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
12 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

13          2.16 Receiving Party: a Party that receives Disclosure or Discovery Material  
14 from a Producing Party.

15    3.    SCOPE

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

4 4. DURATION

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

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

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

10 Designation in conformity with this Order requires:

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

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

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

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

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

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

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
23 failure to designate qualified information or items does not, standing alone, waive  
24 the Designating Party’s right to secure protection under this Order for such material.  
25 Upon timely correction of a designation, the Receiving Party must make reasonable  
26 efforts to assure that the material is treated in accordance with the provisions of this  
27 Order.

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1     6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

2             6.1     Timing of Challenges. Any Party or Non-Party may challenge a  
3 designation of confidentiality at any time. Unless a prompt challenge to a  
4 Designating Party’s confidentiality designation is necessary to avoid foreseeable,  
5 substantial unfairness, unnecessary economic burdens, or a significant disruption or  
6 delay of the litigation, a Party does not waive its right to challenge a confidentiality  
7 designation by electing not to mount a challenge promptly after the original  
8 designation is disclosed.

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

25             6.3     Judicial Intervention. If the Parties cannot resolve a challenge without  
26 court intervention, the Designating Party shall file and serve a motion to retain  
27 confidentiality under Civil Local Rule 230 within 21 days of the initial notice of  
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1 challenge or within 14 days of the parties agreeing that the meet and confer process  
2 will not resolve their dispute, whichever is later. Each such motion must be  
3 accompanied by a competent declaration affirming that the movant has complied  
4 with the meet and confer requirements imposed in the preceding paragraph. Failure  
5 by the Designating Party to make such a motion including the required declaration  
6 within the required time shall automatically waive the confidentiality designation  
7 for each challenged designation. After three failed challenges, the burden shall shift  
8 to the Challenging Party to move to challenge the confidentiality designation for any  
9 further designation disputes. In addition, the Challenging Party may file a motion  
10 challenging a confidentiality designation at any time if there is good cause for doing  
11 so, including a challenge to the designation of a deposition transcript or any portions  
12 thereof. Any motion brought pursuant to this provision must be accompanied by a  
13 competent declaration affirming that the movant has complied with the meet and  
14 confer requirements imposed by the preceding paragraph.

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

## 25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
10 otherwise ordered by the court or permitted in writing by the Designating Party, a  
11 Receiving Party may disclose any information or item designated  
12 “CONFIDENTIAL” only to:

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

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

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

25 (d) the court and its personnel;

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

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

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

12 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
13 ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or  
14 Items. Unless otherwise ordered by the court or permitted in writing by the  
15 Designating Party, a Receiving Party may disclose any information or item  
16 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
17 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

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

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

26 (c) the court and its personnel;

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

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

7 8. SOURCE CODE

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

12 (b) Protected Material designated as “HIGHLY CONFIDENTIAL –  
13 SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY  
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information, and may be  
15 disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –  
16 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Section  
17 7.3.

18 (c) The Receiving Party shall maintain a record of any individual  
19 who has inspected any portion of the source code in electronic or paper form. The  
20 Receiving Party shall maintain all paper copies of any printed portions of the source  
21 code in a secured, locked area. The Receiving Party shall maintain all electronic  
22 copies of any source code on a secured computer in a secured room without Internet  
23 access or network access to other computers. Any paper copies of source code that  
24 are used in depositions or included within court filings, pleadings, or other papers  
25 (including a testifying expert’s report) shall be submitted to the court along with a  
26 request pursuant to General Local Rule 141 to file the documents under seal if that  
27 source code was designated “HIGHLY CONFIDENTIAL – SOURCE CODE” by  
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1 the Producing Party.

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

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

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

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

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

16  
17 If the Designating Party timely seeks a protective order, the Party served with  
18 the subpoena or court order shall not produce any information designated in this  
19 action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
20 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a  
21 determination by the court from which the subpoena or order issued, unless the Party  
22 has obtained the Designating Party’s permission. The Designating Party shall bear  
23 the burden and expense of seeking protection in that court of its confidential  
24 material. Nothing in these provisions should be construed as authorizing or  
25 encouraging a Receiving Party in this action to disobey a lawful directive from  
26 another court.  
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1 10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
2 PRODUCED IN THIS LITIGATION

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

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

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

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

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

22 (c) If the Non-Party fails to object or seek a protective order from  
23 this court within 14 days of receiving the notice and accompanying information, the  
24 Receiving Party may produce the Non-Party's confidential information responsive  
25 to the discovery request. If the Non-Party timely seeks a protective order, the  
26 Receiving Party shall not produce any information in its possession or control that  
27 is subject to the confidentiality agreement with the Non-Party before a determination  
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1 by the court.<sup>1</sup> Absent a court order to the contrary, the Non-Party shall bear the  
2 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  
5 Protected Material to any person or in any circumstance not authorized under this  
6 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
7 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
8 to retrieve all unauthorized copies of the Protected Material, (c) inform the person  
9 or persons to whom unauthorized disclosures were made of all the terms of this  
10 Order, and (d) request such person or persons to execute the “Acknowledgment and  
11 Agreement to Be Bound” that is attached hereto as Exhibit A.

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

14 When a Producing Party gives notice to Receiving Parties that certain  
15 inadvertently produced material is subject to a claim of privilege or other protection,  
16 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
17 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
18 may be established in an e-discovery order that provides for production without prior  
19 privilege review. Furthermore, if a receiving party discovers that it has come into  
20 possession of materials that it reasonably should understand would be subject to a  
21 claim of privilege or other protection by the producing party, and which reasonably  
22 appear under the circumstances to have been produced inadvertently, the receiving  
23 party will give immediate notice to the producing party. If the producing party then  
24 confirms that the materials are subject to a claim of privilege or other protection, and  
25 were inadvertently produced, the obligations of the Receiving Parties are those set  
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27 <sup>1</sup> 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 forth in Federal Rule of Civil Procedure 26(b)(5)(B).

2 13. MISCELLANEOUS

3 13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
4 person to seek its modification by the court in the future.

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

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

22 14. FINAL DISPOSITION

23 Within 60 days after the final disposition of this action, as defined in section  
24 4 (DURATION), each Receiving Party must return all Protected Material to the  
25 Producing Party or destroy such material. As used in this subdivision, "all Protected  
26 Material" includes all copies, abstracts, compilations, summaries, and any other  
27 format reproducing or capturing any of the Protected Material. Whether the  
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1 Protected Material is returned or destroyed, the Receiving Party must submit a  
2 written certification to the Producing Party (and, if not the same person or entity, to  
3 the Designating Party) by the 60-day deadline that (1) identifies (by category, where  
4 appropriate) all the Protected Material that was returned or destroyed and (2) affirms  
5 that the Receiving Party has not retained any copies, abstracts, compilations,  
6 summaries or any other format reproducing or capturing any of the Protected  
7 Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
8 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
9 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
10 work product, and consultant and expert work product, even if such materials contain  
11 Protected Material. Any such archival copies that contain or constitute Protected  
12 Material remain subject to this Protective Order as set forth in Section 4  
13 (DURATION).

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15  
16 DATED: August 24, 2018

LAW OFFICE OF DAVID S. BARRETT

17 /David Barrett/

18 By: \_\_\_\_\_

19 DAVID S. BARRETT  
20 Attorneys for Plaintiffs Creek Media, Inc.  
21 and Redstone Print & Mail, Inc.  
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DATED: August 24, 2018

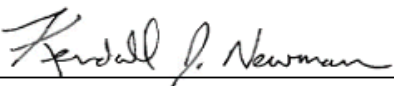
MURCHISON & CUMMINGS, LLP

/Jean M. Daly/

By: \_\_\_\_\_  
JEAN M. DALY  
Attorneys for Defendants Marksys, LLC,  
Dmitry Budoragin, Jerod Meents, Ryan  
Gutshall

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: August 29, 2018

  
\_\_\_\_\_  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE 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 \_\_\_\_\_ [date] in the case of *Salt Creek  
Media, Inc., a California corporation; Redstone Print & Mail, Inc., a California  
corporation v. Marksys, LLC, a California limited liability company; Dmitry  
Budoragin, an individual; Ryan Gutshall, an individual; and DOES 1-100,  
inclusive*, Eastern District of California Case No. 2:17-cv-00714-KJN. I 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

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process in connection with this action or any proceedings related to enforcement of  
this Stipulated Protective Order.

Date: \_\_\_\_\_

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

Printed name: \_\_\_\_\_

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

