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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10  
11 KELLY HOOVER,  
12 Plaintiff,  
13 v.  
14 MOM365, INC., a Missouri  
Corporation; and DOES 1 to 100,  
15 inclusive,  
16 Defendants.

CASE NO. 2:17-CV-01328-TLN-CKD  
*Assigned to: The Hon. Troy L. Nunley*

**STIPULATED PROTECTIVE  
ORDER**

Action filed: May 19, 2017  
Removed: June 30, 2017

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18  
19 **1. PURPOSES AND LIMITATIONS**

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

1 principles. The parties further acknowledge, as set forth in Section 12.3, below,  
2 that this Stipulated Protective Order does not entitle them to file confidential  
3 information under seal; the Local Rules and Eastern District of California’s ECF  
4 Policies and Procedures set forth the procedures that must be followed and the  
5 standards that will be applied when a party seeks permission from the court to file  
6 material under seal.

7 **2. DEFINITIONS**

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

10 2.2 “CONFIDENTIAL” Information or Items: information (regardless  
11 of how it is generated, stored or maintained) or tangible things that qualify for  
12 protection under Federal Rule of Civil Procedure 26(c).

13 2.3 Counsel (without qualifier): Outside Counsel of Record and House  
14 Counsel (as well as their support staff).

15 2.4 Designating Party: a Party or Non-Party that designates information  
16 or items that it produces in disclosures or in responses to discovery as  
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
18 ONLY”.

19 2.5 Disclosure or Discovery Material: all items or information,  
20 regardless of the medium or manner in which it is generated, stored, or maintained  
21 (including, among other things, testimony, transcripts, and tangible things), that  
22 are produced or generated in disclosures or responses to discovery in this matter.

23 2.6 Expert: a person with specialized knowledge or experience in a  
24 matter pertinent to the litigation who has been retained by a Party or its counsel to  
25 serve as an expert witness or as a consultant in this action.

26 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
27 Information or Items: extremely sensitive “Confidential Information or Items,”  
28 disclosure of which to another Party or Non-Party would create a substantial risk of

1 serious harm that could not be avoided by less restrictive means.

2       2.8 House Counsel: attorneys who are employees of a party to this action.  
3 House Counsel does not include Outside Counsel of Record or any other outside  
4 counsel.

5       2.9 Non-Party: any natural person, partnership, corporation, association,  
6 or other legal entity not named as a Party to this action.

7       2.10 Outside Counsel of Record: attorneys who are not employees of a  
8 party to this action but are retained to represent or advise a party to this action and  
9 have appeared in this action on behalf of that party or are affiliated with a law firm  
10 which has appeared on behalf of that party.

11       2.11 Party: any party to this action, including all of its officers, directors,  
12 employees, consultants, retained experts, and Outside Counsel of Record (and  
13 their support staffs).

14       2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
15 Discovery Material in this action.

16       2.13 Professional Vendors: persons or entities that provide litigation  
17 support services (e.g., photocopying, videotaping, translating, preparing exhibits  
18 or demonstrations, and organizing, storing, or retrieving data in any form or  
19 medium) and their employees and subcontractors.

20       2.14 Protected Material: any Disclosure or Discovery Material that is  
21 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –  
22 ATTORNEYS’ EYES ONLY.”

23       2.15 Receiving Party: a Party that receives Disclosure or Discovery  
24 Material from a Producing Party.

25 **3. SCOPE**

26       The protections conferred by this Stipulation and Order cover not only  
27 Protected Material (as defined above), but also (1) any information copied or  
28 extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or  
2 presentations by Parties or their Counsel that might reveal Protected Material.  
3 However, the protections conferred by this Stipulation and Order do not cover the  
4 following information: (a) any information that is in the public domain at the time  
5 of disclosure to a Receiving Party or becomes part of the public domain after its  
6 disclosure to a Receiving Party as a result of publication not involving a violation  
7 of this Order, including becoming part of the public record through trial or  
8 otherwise; and (b) any information known to the Receiving Party prior to the  
9 disclosure or obtained by the Receiving Party after the disclosure from a source  
10 who obtained the information lawfully and under no obligation of confidentiality  
11 to the Designating Party. Any use of Protected Material at trial shall be governed  
12 by a separate agreement or order.

13 **4. DURATION**

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

22 **5. DESIGNATING PROTECTED MATERIAL**

23 5.1 Exercise of Restraint and Care in Designating Material for  
24 Protection. Each Party or Non-Party that designates information or items for  
25 protection under this Order must take care to limit any such designation to specific  
26 material that qualifies under the appropriate standards. The Designating Party  
27 must designate for protection only those parts of material, documents, items, or  
28 oral or written communications that qualify – so that other portions of the

1 material, documents, items, or communications for which protection is not  
2 warranted are not swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited.

4 Designations that are shown to be clearly unjustified or that have been  
5 made for an improper purpose (e.g., to unnecessarily encumber or retard the case  
6 development process or to impose unnecessary expenses and burdens on other  
7 parties) expose the Designating Party to sanctions.

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

12 5.2 Manner and Timing of Designations. Except as otherwise provided  
13 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
14 stipulated or ordered, Disclosure or Discovery Material that qualifies for  
15 protection under this Order must be clearly so designated before the material is  
16 disclosed or produced.

17 Designation in conformity with this Order requires:

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

26 A Party or Non-Party that makes original documents or materials available  
27 for inspection need not designate them for protection until after the inspecting  
28 Party has indicated which material it would like copied and produced. During the

1 inspection and before the designation, all of the material made available for  
2 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
3 ONLY.” After the inspecting Party has identified the documents it wants copied  
4 and produced, the Producing Party must determine which documents, or portions  
5 thereof, qualify for protection under this Order. Then, before producing the  
6 specified documents, the Producing Party must affix the appropriate legend  
7 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
8 ONLY” to each page that contains Protected Material. If only a portion or portions  
9 of the material on a page qualifies for protection, the Producing Party also must  
10 clearly identify the protected portion(s) (e.g., by making appropriate markings in  
11 the margins) and must specify, for each portion, the level of protection being  
12 asserted.

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

28 Parties shall give the other parties notice if they reasonably expect a

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

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

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

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

1 provisions of this Order.

2 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge  
27 without court intervention, the Designating Party shall file and serve a motion to  
28 retain confidentiality within 21 days of the initial notice of challenge or within 14

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

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

## 22 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

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

1 below (FINAL DISPOSITION).

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

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
6 otherwise ordered by the court or permitted in writing by the Designating Party, a  
7 Receiving Party may disclose any information or item designated  
8 “CONFIDENTIAL” only to:

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

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

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

21 (d) Alternative dispute resolution neutrals (e.g., mediators);

22 (e) the court and its personnel;

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

27 (g) during their depositions, witnesses in the action to whom  
28 disclosure is reasonably necessary and who have signed the “Acknowledgment

1 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the  
2 Designating Party or ordered by the court. Pages of transcribed deposition  
3 testimony or exhibits to depositions that reveal Protected Material must be  
4 separately bound by the court reporter and may not be disclosed to anyone except  
5 as permitted under this Stipulated Protective Order.

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

8 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
9 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in  
10 writing by the Designating Party, a Receiving Party may disclose any information  
11 or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
12 only to:

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

18 (b) Experts of the Receiving Party (1) to whom disclosure is  
19 reasonably necessary for this litigation, (2) who have signed the “Acknowledgment  
20 and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set  
21 forth in paragraph 7.4(a)(2), below, have been followed;

22 (c) the court and its personnel;

23 (d) Alternative dispute resolution neutrals (e.g., mediators);

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

28 (f) the author or recipient of a document containing the information or

1 a custodian or other person who otherwise possessed or knew the information.

2 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to  
4 Experts.

5 (a) Unless otherwise ordered by the court or agreed to in writing by the  
6 Designating Party, a Party that seeks to disclose to an Expert (as defined in this  
7 Order) any information or item that has been designated “HIGHLY  
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c)  
9 first must make a written request to the Designating Party that (1) identifies the  
10 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
11 ONLY” information that the Receiving Party seeks permission to disclose to the  
12 Expert, (2) sets forth the full name of the Expert and the city and state of his or her  
13 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies  
14 the Expert’s current employer(s), (5) identifies each person or entity from whom the  
15 Expert has received compensation or funding for work in his or her areas of  
16 expertise or to whom the expert has provided professional services, including in  
17 connection with a litigation, at any time during the preceding five years,<sup>1</sup> and (6)  
18 identifies (by name and number of the case, filing date, and location of court) any  
19 litigation in connection with which the Expert has offered expert testimony,  
20 including through a declaration, report, or testimony at a deposition or trial, during  
21 the preceding five years.

22 (b) A Party that makes a request and provides the information  
23 specified in the preceding respective paragraphs may disclose the subject Protected  
24 Material to the identified Expert unless, within 14 days of delivering the request,

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25 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality  
26 obligation to a third-party, then the Expert must provide whatever information the  
27 Expert believes can be disclosed without violating any confidentiality agreements,  
28 and the Party seeking to disclose to the Expert shall be available to meet and confer  
with the Designating Party regarding any such engagement.

1 the Party receives a written objection from the Designating Party. Any such  
2 objection must set forth in detail the grounds on which it is based.

3 (c) A Party that receives a timely written objection must meet and  
4 confer with the Designating Party (through direct voice to voice dialogue) to try to  
5 resolve the matter by agreement within seven days of the written objection. If no  
6 agreement is reached, the Party seeking to make the disclosure to the Expert may  
7 file a motion seeking permission from the court to do so. Any such motion must  
8 describe the circumstances with specificity, set forth in detail the reasons why the  
9 disclosure to the Expert is reasonably necessary, assess the risk of harm that the  
10 disclosure would entail, and suggest any additional means that could be used to  
11 reduce that risk. In addition, any such motion must be accompanied by a competent  
12 declaration describing the parties' efforts to resolve the matter by agreement (i.e.,  
13 the extent and the content of the meet and confer discussions) and setting forth the  
14 reasons advanced by the Designating Party for its refusal to approve the disclosure.

15 In any such proceeding, the Party opposing disclosure to the Expert shall  
16 bear the burden of proving that the risk of harm that the disclosure would entail  
17 (under the safeguards proposed) outweighs the Receiving Party's need to disclose  
18 the Protected Material to its Expert.

19 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
20 **PRODUCED IN OTHER LITIGATION**

21 If a Party is served with a subpoena or a court order issued in other  
22 litigation that compels disclosure of any information or items designated in this  
23 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'  
24 EYES ONLY" that Party must:

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

27 (b) promptly notify in writing the party who caused the subpoena or  
28 order to issue in the other litigation that some or all of the material covered by the

1 subpoena or order is subject to this Protective Order. Such notification shall  
2 include a copy of this Stipulated Protective Order; and

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

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

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

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

22 (b) In the event that a Party is required, by a valid discovery request,  
23 to produce a Non-Party’s confidential information in its possession, and the Party  
24 is 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  
27 Non-Party that some or all of the information requested is  
28 subject to a confidentiality agreement with a Non-Party;

- 1 (2) promptly provide the Non-Party with a copy of the  
2 Stipulated Protective Order in this litigation, the relevant  
3 discovery request(s), and a reasonably specific description  
4 of the information requested; and  
5 (3) make the information requested available for inspection by  
6 the Non-Party.

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

16 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

26 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
27 **OTHERWISE PROTECTED MATERIAL**

28 When a Producing Party gives notice to Receiving Parties that certain

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

10 **12. MISCELLANEOUS**

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of  
12 any person to seek its modification by the court in the future.

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

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

1 Receiving Party may file the information in the public record unless otherwise  
2 instructed by the court.

3 **13. FINAL DISPOSITION**

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

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**IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

Dated: January 10, 2018

Respectfully submitted,

FORD & HARRISON LLP

By: /s/ Alexandria M. Witte

Michelle B. Abidoye  
Alexandria M. Witte

Attorneys for Defendant MOM365, INC.

Dated: January 10, 2018

Respectfully submitted,

SHIMODA LAW CORP.

By: /s/ Justin P. Rodriguez

Galen T. Shimoda  
Justin P. Rodriguez

Attorneys for Plaintiff KELLY HOOVER

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**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated: January 10, 2018

  
\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
5 that I have read in its entirety and understand the Stipulated Protective Order that  
6 was issued by the United States District Court for the Eastern District of  
7 California in the case of *Hoover v. Mom365, Inc., et al.*, U.S.D.C. Eastern District  
8 of California Case No. 2:17-cv-01328-TLN-CKD. I agree to comply with and to  
9 be bound by all the terms of this Stipulated Protective Order and I understand and  
10 acknowledge that failure to so comply could expose me to sanctions and  
11 punishment in the nature of contempt. I solemnly promise that I will not disclose  
12 in any manner any information or item that is subject to this Stipulated Protective  
13 Order to any person or entity except in strict compliance with the provisions of  
14 this Order.

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

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

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

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

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

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

