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 6 TELECARE CORPORATION

7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 MICHELLE FRANCIS,  
 11  
 12 Plaintiff,

13 v.

14 TELECARE CORPORATION,  
 DOES 1 through 10,  
 15 Defendants.

Case No. CV 08 2468 BZ  
 STIPULATED PROTECTIVE ORDER

16  
 17 **1. PURPOSES AND LIMITATIONS**

18 Disclosure and discovery activity in this action are likely to involve production of  
 19 confidential, proprietary, or private information for which special protection from public disclosure  
 20 and from use for any purpose other than prosecuting this litigation would be warranted.  
 21 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
 22 Protective Order. The parties acknowledge that this Order does not confer blanket protections on all  
 23 disclosures or responses to discovery and that the protection it affords extends only to the limited  
 24 information or items that are entitled under the applicable legal principles to treatment as  
 25 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated  
 26 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule  
 27  
 28

1 79-5 sets forth the procedures that must be followed and reflect the standards that will be applied  
2 when a party seeks permission from the court to file material under seal.

3 **2. DEFINITIONS**

4 **2.1 Party:** any party to this action, including all of its officers, directors,  
5 employees, consultants, retained experts, and outside counsel (and their support staff).

6 **2.2 DISCLOSURE OR DISCOVERY MATERIAL:** all items or information,  
7 regardless of the medium or manner generated, stored, or maintained (including, among other things,  
8 testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses  
9 to discovery in this matter.

10 **2.3 "CONFIDENTIAL" INFORMATION OR ITEMS:** information  
11 (regardless of how generated, stored or maintained) or tangible things that qualify for protection  
12 under standards developed under F.R.Civ.P. 26(c).

13 **2.4 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY**  
14 **INFORMATION OR ITEMS:** extremely sensitive "Confidential Information or Items" whose  
15 disclosure to another Party or non-party would create a substantial risk of serious injury that could  
16 not be avoided by less restrictive means.

17 **2.5 RECEIVING PARTY:** a Party that receives Disclosure or Discovery  
18 Material from a Producing Party.

19 **2.6 PRODUCING PARTY:** a Party or non-party that produces Disclosure or  
20 Discovery Material in this action.

21 **2.7 DESIGNATING PARTY:** a Party or non-party that designates information  
22 or items that it produces in disclosures or in responses to discovery as "Confidential" or "Highly  
23 Confidential - Attorneys' Eyes Only."

24 **2.8 PROTECTED MATERIAL:** any Disclosure or Discovery Material that is  
25 designated as "Confidential" or "Highly Confidential - Attorneys' Eyes Only."

26 **2.9 OUTSIDE COUNSEL:** attorneys who are not employees of a Party but who  
27 are retained to represent or advise a Party in this action.

28 **2.10 HOUSE COUNSEL:** attorneys who are employees of a Party.

1                   **2.11 COUNSEL (without qualifier):** Outside Counsel and House Counsel (as  
2 well as their support staffs).

3                   **2.12 EXPERT:** a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
5 witness or as a consultant in this action and who is not a past or a current employee of a Party or of a  
6 competitor of a Party's and who, at the time of retention, is not anticipated to become an employee  
7 of a Party or a competitor of a Party's. This definition includes a professional jury or trial consultant  
8 retained in connection with this litigation.

9                   **2.13 Professional Vendors:** persons or entities that provide litigation support  
10 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
11 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
12 subcontractors.

### 13 **3. SCOPE**

14                   The protections conferred by this Stipulation and Order cover not only Protected  
15 Material (as defined above), but also any information copied or extracted therefrom, as well as all  
16 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations  
17 by parties or counsel to or in court or in other settings that might reveal Protected Material.

### 18 **4. DURATION**

19                   Even after the termination of this litigation, the confidentiality obligations imposed by  
20 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
21 order otherwise directs.

### 22 **5. DESIGNATING PROTECTED MATERIAL**

#### 23 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

24 Each Party or non-party that designates information or items for protection under this Order must  
25 take care to limit any such designation to specific material that qualifies under the appropriate  
26 standards. A Designating Party must take care to designate for protection only those parts of  
27 material, documents, items, or oral or written communications that qualify - so that other portions of  
28

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

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

7 If it comes to a Party's or a non-party's attention that information or items that it  
8 designated for protection do not qualify for protection at all, or do not qualify for the level of  
9 protection initially asserted, that Party or non-party must promptly notify all other parties that it is  
10 withdrawing the mistaken designation.

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

15 Designation in conformity with this Order requires:

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

23 A Party or non-party that makes original documents or materials available for  
24 inspection need not designate them for protection until after the inspecting party has indicated which  
25 material it would like copied and produced. During the inspection and before the designation, all of  
26 the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –  
27 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants  
28 copied and produced, the Producing Party must determine which documents, or portions thereof,

1 qualify for protection under this Order, then, before producing the specified documents, the  
2 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that contains Protected  
4 Material. 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 appropriate  
6 markings in the margins) and must specify, for each portion, the level of protection being asserted  
7 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

8           (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
9 Party or non-party offering or sponsoring the testimony identify on the record, before the close of the  
10 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of  
11 the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When  
12 it is impractical to identify separately each portion of testimony that is entitled to protection, and  
13 when it appears that substantial portions of the testimony may qualify for protection, the Party or  
14 non-party that sponsors, offers, or gives the testimony may invoke on the record (before the  
15 deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions  
16 of the testimony as to which protection is sought and to specify the level of protection being asserted  
17 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY). Only those  
18 portions of the testimony that are appropriately designated for protection within the 20 days shall be  
19 covered by the provisions of this Stipulated Protective Order.

20           Transcript pages containing Protected Material must be separately bound by the court  
21 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL,” as instructed  
22 by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

23           (c) for information produced in some form other than documentary, and for any other  
24 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
25 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or item  
27 warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
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1 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’  
2 Eyes Only.”

3           **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent  
4 failure to designate qualified information or items as “Confidential” or “Highly Confidential –  
5 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure  
6 protection under this Order for such material. If material is appropriately designated as  
7 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially  
8 produced, the Receiving Party, on timely notification of the designation, must make reasonable  
9 efforts to assure that the material is treated in accordance with the provisions of this Order.

## 10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11           **6.1 Timing of Challenges.** Unless a prompt challenge to a Designating Party’s  
12 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
13 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive  
14 its right to challenge a confidentiality designation by electing not to mount a challenge promptly  
15 after the original designation is disclosed.

16           **6.2 Meet and Confer.** A Party that elects to initiate a challenge to a Designating  
17 Party’s confidentiality designation must do so in good faith and must begin the process by conferring  
18 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel  
19 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief  
20 that the confidentiality designation was not proper and must give the Designating Party an  
21 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
22 designation is offered, to explain the basis for the chosen designation. A challenging Party may  
23 proceed to the next stage of the challenge process only if it has engaged in this meet and confer  
24 process first.

25           **6.3 Judicial Intervention.** A Party that elects to press a challenge to a  
26 confidentiality designation after considering the justification offered by the Designating Party may  
27 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
28 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.

1 Each such motion must be accompanied by a competent declaration that affirms that the movant has  
2 complied with the meet and confer requirements imposed in the preceding paragraph and that sets  
3 forth with specificity the justification for the confidentiality designation that was given by the  
4 Designating Party in the meet and confer dialogue.

5 The burden of persuasion in any such challenge proceeding shall be on the  
6 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the  
7 material in question the level of protection to which it is entitled under the Producing Party's  
8 designation.

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

10 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is  
11 disclosed or produced by another Party or by a non-party in connection with this case only for  
12 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
13 disclosed only to the categories of persons and under the conditions described in this Order. When  
14 the litigation has been terminated, a Receiving Party must comply with the provisions of section 11,  
15 below (FINAL DISPOSITION).

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

18 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise  
19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
20 disclose any information or item designated CONFIDENTIAL only to:

21 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
22 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
23 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
24 hereto as Exhibit A;

25 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
26 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
27 "Agreement to Be Bound by Protective Order" (Exhibit A);

28

1 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is  
2 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
3 Protective Order" (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters, their staffs, and professional vendors to whom disclosure is  
6 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
7 Protective Order" (Exhibit A);

8 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
9 necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A).  
10 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material  
11 must be separately bound by the court reporter and may not be disclosed to anyone except as  
12 permitted under this Stipulated Protective Order.

13 (g) the author of the document or the original source of the information.

14 **7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES**  
15 **ONLY" Information or Items.** Unless otherwise ordered by the court or permitted in writing by  
16 the Designating party, a Receiving Party may disclose any information or item designated "HIGHLY  
17 CONFIDENTIAL - ATTORNEYS' EYES ONLY" only to:

18 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
19 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
20 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
21 hereto as Exhibit A;

22 (b) House Counsel of the Receiving Party to whom disclosure is reasonably  
23 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order"  
24 (Exhibit A);

25 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably  
26 necessary for this litigation, and (2) who have signed the "Agreement to Be Bound by Protective  
27 Order" (Exhibit A);

28 (d) the Court and its personnel;



1 (e) court reporters, their staffs, and professional vendors to whom disclosure is  
2 reasonably necessary for this litigation; and

3 (f) the author of the document or the original source of the information.

4 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
5 **LITIGATION**

6 If a Receiving Party is served with a subpoena or an order issued in other litigation  
7 that would compel disclosure of any information or items designated in this action as  
8 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the  
9 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately  
10 and in no event more than three court days after receiving the subpoena or order. Such notification  
11 must include a copy of the subpoena or court order.

12 The Receiving Party also must immediately inform in writing the Party who caused  
13 the subpoena or order to issue in the other litigation that some or all the material covered by the  
14 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
15 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
16 caused the subpoena or order to issue.

17 The purpose of imposing these duties is to alert the interested parties to the existence  
18 of this Protective Order and to afford the Designating Party in this case an opportunity to try to  
19 protect its confidentiality interests in the court from which the subpoena or order issued. The  
20 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
21 confidential material—and nothing in these provisions should be construed as authorizing or  
22 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

23 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
25 Protected Material to any person or in any circumstance not authorized under this Stipulated  
26 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party  
27 of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,  
28 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this

1 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to  
2 Be Bound" that is attached hereto as Exhibit A.

3 **10. FILING PROTECTED MATERIAL**

4 Without written permission from the Designating Party or a court order secured after  
5 appropriate notice to all interested persons, a Party may not file in the public record in this action  
6 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
7 with Civil Local Rule 79-5.

8 **11. FINAL DISPOSITION**

9 Unless otherwise, ordered or agreed in writing by the Producing Party, within sixty  
10 days after the final termination of this action, each Receiving Party must return all Protected  
11 Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all  
12 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
13 Protected Material. With permission in writing from the Designating Party, the Receiving Party may  
14 destroy some or all of the Protected Material instead of returning it. Whether the Protected Material  
15 is returned or destroyed, the Receiving Party must submit a written certification to the Producing  
16 Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that  
17 identifies (by category, where appropriate) all the Protected Material that was returned or destroyed  
18 and that affirms that the Receiving Party has not retained any copies, abstracts, compilations,  
19 summaries or other forms of reproducing or capturing any of the Protected Material.  
20 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,  
21 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such  
22 materials contain Protected Material. Any such archival copies that contain or constitute Protected  
23 Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

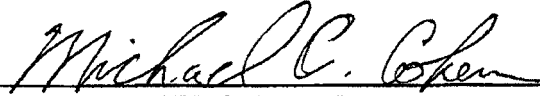
24 **12. MISCELLANEOUS**

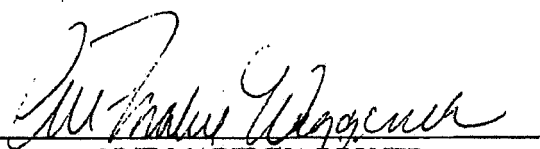
25 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any  
26 person to seek its modification by the Court in the future.

27 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this  
28 Protective Order no Party waives any right it otherwise would have to object to disclosing or


1 producing any information or item on any ground not addressed in this Stipulated Protective Order.  
2 Similarly, no Party waives any right to object on any ground to use in evidence of any of the material  
3 covered by this Protective Order.  
4

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6  
7 DATED: 3/19/09   
8 MICHAEL C. COHEN  
9 Attorney for Plaintiff  
10 MICHELLE FRANCIS

11  
12 DATED: 3/18/09   
13 ANNE-MARIE WAGGONER  
14 LITTLER MENDELSON  
15 A Professional Corporation  
16 Attorneys for Defendant  
17 TELECARE CORPORATION

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19  
20 DATED: April 14, 2009   
21 HON. BERNARD ZIMMERMAN  
22 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 Northern District of California in the case of *Michelle Francis v. Telecare Corporation*, Case No. CV 08 2468 BZ. I agree to comply with and to be bound by a 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 Northern 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.

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

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

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]

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