

1 Leigh A. White, State Bar No. 167477
 Connor J. Moyle, State Bar No. 250384
 2 CARLTON DiSANTE & FREUDENBERGER LLP
 601 Montgomery Street
 3 Suite 350
 San Francisco, California 94111
 4 Telephone: (415) 981-3233
 Facsimile: (415) 981-3246
 5 E-Mail: lwhite@cdflaborlaw.com
 cmoyle@cdflaborlaw.com

6 Attorneys for Defendant
 7 AMERICAN EXPRESS TRAVEL RELATED SERVICES
 COMPANY, INC.

8
 9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

12 SANDRA VERMA,

13 Plaintiff,

v.

14 AMERICAN EXPRESS, a New York
 15 corporation; DOES 1-25, inclusive,

16 Defendant.

) Case No. C 08-02702 SI

) Judge: Hon. Susan Y. Illston

) **STIPULATION AND [PROPOSED]**
) **PROTECTIVE ORDER REGARDING**
) **CONFIDENTIAL, PROPRIETARY,**
) **PRIVATE AND/OR TRADE SECRET**
) **INFORMATION**

) Action Filed: May 29, 2008

) Trial Date: Sept. 21, 2009

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STIPULATION

IT IS HEREBY STIPULATED by and between Defendant American Express Travel Related Services Company, Inc. ("Defendant") and Plaintiff Sandra Verma ("Plaintiff"), through their respective counsel, that a protective order be entered in this action in accordance with the following terms:

1. Good Cause for Protective Order. Given the nature of the allegations made by Plaintiff and the anticipated subjects of discovery in this action, various Discovery Responses (defined below) may contain confidential, private, proprietary, commercially sensitive, trade secret or other personal business information regarding, among other things, Defendant's clients, services, operations, and finances. Various Discovery Responses may also disclose information that involves third party privacy rights. Consequently, Defendant seeks and Plaintiff agrees to maintain the confidentiality of such Discovery Responses in this action. Moreover, the parties are willing to forego a Motion for a Protective Order at this time by mutually agreeing as to the proper method to keep, secure, use and handle such Discovery Responses.

2. Application and Identification. This Protective Order shall apply to all Discovery Responses that Defendant or Plaintiff identifies as being covered by this Protective Order. Such Discovery Responses shall clearly be marked and bear the notation "CONFIDENTIAL."

3. Definitions. The following definitions shall apply in the construction and application of this Stipulation and Protective Order.

a. The phrase "Discovery Responses" means any documents or information produced by Defendant or Plaintiff in connection with this action, including but not limited to: (1) documents produced as part of the initial disclosures pursuant to the requirements of Federal Rule of Civil Procedure 26(a)(1); (2) documents produced pursuant to requests under the Federal Rules of Civil Procedure; (3) documents produced pursuant to a subpoena *duces tecum*; (4) documents produced voluntarily or in response to informal requests; (5) responses to requests for admissions; (6) responses to interrogatories; (7) responses to document requests; (8) deposition testimony; and (9) any information contained within any documents produced to Plaintiff or Defendant.

b. The term "Non-Party" means any person or entity other than the named

1 parties in this action, their respective counsel, any attorney, paralegal, stenographic, clerical or
2 secretarial personnel employed by counsel for the parties, or any person employed by counsel for
3 the parties to assist such counsel in this action, such as experts or consultants. If this action is
4 subsequently amended to add another plaintiff or plaintiffs, this Stipulation shall likewise apply
5 with full force and effect to such other plaintiff or plaintiffs if they are represented by the same
6 counsel as Plaintiff.

7 c. The term "Disclosure" or any version thereof means to show, give, make
8 available or communicate in any fashion any Discovery Responses, information concerning the
9 existence or content of Discovery Responses, or any portion, version or summary of any Discovery
10 Responses.

11 d. The term "CONFIDENTIAL" is a designation that any party may apply to
12 documents containing (1) sensitive client information, including client identities, client lists, and/or
13 information relating to client-specific pricing, (2) contact information of individuals who are not
14 parties to this lawsuit, including Defendant's employees, (3) financial information of Plaintiff,
15 Defendant, or any non-parties and (4) medical and/or mental health care information.

16 4. Objection to Designation of "CONFIDENTIAL" Information. If a dispute arises
17 over the propriety of the designation of a Discovery Response as Confidential Information, the
18 party challenging the designation must meet and confer in writing with the designating party. If the
19 parties are unable to resolve the dispute by meeting and conferring, the Party challenging the
20 designation may file a motion with the Court to remove the "CONFIDENTIAL" designation. The
21 challenged document or non-documentary matter will be treated as "Confidential" pending the
22 Court's ruling on such motion.

23 5. Disclosure to Persons Affiliated with Counsel for Plaintiff. In the case of any
24 Disclosure of Discovery Responses marked "CONFIDENTIAL" to Plaintiff's counsel of record or
25 (a) any of the employees of Plaintiff's counsel of record, including any attorney, paralegal,
26 stenographic, clerical or secretarial personnel, or (b) those employed by Plaintiff's counsel to assist
27 such counsel in this action, such as experts or consultants; or (c) Plaintiff, counsel for Plaintiff shall
28 inform those persons to whom any Disclosure is being made of the existence and effect of this

1 Stipulation and Protective Order and secure their agreement as to its terms and conditions.

2 6. Disclosure to Persons Affiliated with Counsel for Defendant. In the case of any
3 Disclosure of Discovery Responses marked "CONFIDENTIAL" to Defendant's counsel of record
4 or (a) any of the employees of Defendant's counsel of record, including any attorney, paralegal,
5 stenographic, clerical or secretarial personnel; or (b) those employed by Defendant's counsel to
6 assist such counsel in this action, such as experts or consultants; or (c) any employee of Defendant,
7 counsel for Defendant shall inform those persons to whom any Disclosure is being made of the
8 existence and effect of this Stipulation and Protective Order and secure their agreement as to its
9 terms and conditions.

10 7. Disclosure to Non-Parties. Any Non-Party permitted access to Discovery
11 Responses marked "CONFIDENTIAL" pursuant to this paragraph shall be informed of the
12 requirement that such Discovery Responses be kept confidential in accordance with the terms of
13 this Stipulation and Protective Order prior to obtaining such access and must agree to the terms
14 herein in writing. Counsel for Plaintiff or Defendant, whichever is making the disclosure to the
15 Non-Party, must maintain the original signed agreement for each Non-Party permitted access to
16 Discovery Responses marked "CONFIDENTIAL" and must produce such signed agreement if so
17 requested by counsel for any party.

18 8. Subsequent Disclosure. All persons permitted access by this Stipulation and
19 Protective Order to any Discovery Responses marked "CONFIDENTIAL" may disclose the same,
20 in whole or in part, only to those persons who have been permitted access to such information and
21 documents pursuant to this Stipulation and Protective Order.

22 9. No Waiver. Nothing in this Stipulation and Protective Order shall be deemed to
23 limit or waive any right of Defendant or Plaintiff to object to discovery with respect to any
24 information or documents which may be claimed to be outside the scope of discovery for any
25 reason, including without limitation the reasons that it is privileged, confidential, and/or trade
26 secret information which would not adequately be protected by the provisions of this Stipulation
27 and Protective Order. In addition, by entering into this Stipulation and Protective Order, Defendant
28 and Plaintiff do not waive their respective rights to object to the admission of evidence of the

1 information and documents it/she deems confidential. Defendant and Plaintiff further retain their
 2 respective rights to use its/her own documents and information with complete discretion.

3 10. Protecting Confidential Discovery Responses at Depositions. If any Discovery
 4 Response marked "CONFIDENTIAL" is marked as an exhibit in a deposition, or during a hearing
 5 herein, and/or its contents are disclosed, wholly or partially, in the course of the testimony at such
 6 deposition, or hearing, counsel for the parties shall advise the reporter taking and transcribing the
 7 testimony at such deposition or hearing of the portions of such testimony that refer to such
 8 Discovery Response, and the exhibit itself, as well as the portions of the transcript containing such
 9 disclosure, shall be marked "CONFIDENTIAL" and shall be deemed subject to the provisions of
 10 this Stipulation and Protective Order. To this end, the reporter shall not furnish copies thereof to
 11 anyone other than counsel of record for the parties herein, and, if so requested by such counsel, the
 12 witness and/or the witness' counsel.

13 11. Use of Confidential Discovery Responses in Court Filings. The parties agree that
 14 they are not required to file pleadings and other papers submitted to the Court pursuant to this
 15 litigation under seal, except that Plaintiff and Defendant respectively agree that any Discovery
 16 Responses marked "CONFIDENTIAL" by the opposing party shall be submitted to the Court under
 17 seal pursuant to Northern District Civil Local Rule 79-5. Plaintiff and Defendant acknowledge that
 18 they will not file, quote, or append any Discovery Responses marked "CONFIDENTIAL" provided
 19 by the opposing party without complying with the requirements of Northern District Civil Local
 20 Rule 79-5.

21 12. Use of Discovery Responses. Discovery Responses marked "CONFIDENTIAL"
 22 and any information therein shall be used solely for the purposes of this litigation. Information
 23 contained in Discovery Responses marked "CONFIDENTIAL" may not be used by Plaintiff or
 24 counsel for Plaintiff for the purpose of soliciting any individual to initiate, pursue or join in any
 25 lawsuit against Defendant, including this litigation, unless otherwise ordered by this Court. Should
 26 either party seek to use any Discovery Responses marked "CONFIDENTIAL" at trial, the parties
 27 shall confer prior to the trial date in an effort to agree upon a procedure to ensure the confidentiality
 28 of such information and documents (e.g., requesting a closed courtroom). In the event an

1 agreement is not reached, the matter will be submitted to the Court to determine how best to assure
2 that the confidentiality of such information and documents is maintained in an appropriate fashion.

3 13. Return of Confidential Documents. Within thirty (30) days after the final
4 termination of this action, any documents marked "CONFIDENTIAL" and all summaries and
5 descriptions of such documents shall be returned to counsel for the party that produced such
6 Discovery Response. Counsel may retain their working files, provided that the working files that
7 contain any Discovery Responses marked "CONFIDENTIAL" be maintained in such a manner that
8 access will not be given to any person not authorized to receive the information under this
9 Stipulation and Protective Order.

10 14. Continuing Effect and Enforcement. The terms and conditions of this Stipulation
11 and Protective Order shall remain in full force and effect until further order of this Court or a Court
12 of competent jurisdiction and shall not cease to be in effect because this litigation is finally
13 adjudicated. The Court shall retain jurisdiction over this matter after entry of final judgment to
14 enforce the terms of this Stipulation and Protective Order.

15 15. Further Protection. Nothing contained in this Stipulation and Protective Order shall
16 be deemed to preclude either party from seeking and obtaining from counsel for the opposing party
17 or the Court, on appropriate showing, a further stipulation and/or protective order relating to any
18 discovery in this case or the use of Discovery Responses at trial.

19 **IT IS SO STIPULATED:**

20 Dated: December 1, 2008

PIERCE & SHEARER LLP

21
22 By: /S/ - Stacy A. Smith

Stacy A. Smith

23 Attorneys for Plaintiff
24 SANDRA VERMA

1 Dated: December 22, 2008

CARLTON DiSANTE & FREUDENBERGER LLP

2
3 By: /S/ - Connor J. Moyle

Connor J. Moyle

4 Attorneys for Defendant
5 AMERICAN EXPRESS TRAVEL RELATED SERVICES
COMPANY, INC.

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7 PURSUANT TO STIPULATION, AND GOOD CAUSE APPEARING, IT IS SO

8 ORDERED.

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Dated: _____

11 The Honorable Susan Illston
12 Judge, United States District Court

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