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15
 16 UNITED STATES DISTRICT COURT
 17 FOR THE DISTRICT OF NORTHERN CALIFORNIA
 18 SAN FRANCISCO DIVISION

19
 20 JASON STEVENS,

CASE NO. CV 09 0622 EMC

21 Plaintiffs,

STIPULATED PROTECTIVE ORDER

22 vs.

23 THOMAS KELLER RESTAURANT
 24 GROUP, a California business organization
 form unknown, BOUCHON LP, a
 25 California limited partnership, and
 BOUCHON, LLC, a California limited
 26 liability corporation.

Date Complaint Filed: January 10, 2008
 Trial Date: None

27 Defendants.
 28

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords extends only to the
8 limited information or items that are entitled under the applicable legal principles to treatment as
9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
10 Stipulated Protective Order creates no entitlement to file confidential information under seal;
11 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
12 that will be applied when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Party: any party to this action, including all of its officers, directors, employees,
15 consultants, retained experts, and outside counsel (and their support staff).

16 2.2 Disclosure or Discovery Materials: all items or information, regardless of the medium or
17 manner generated, stored, or maintained, (including, among other things, testimony, transcripts, or
18 tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

19 2.3 “Confidential” Information or Items: information (regardless of how generated, stored or
20 maintained) or tangible things that qualify for protection under standards developed under
21 F.R.Civ.P.26(c).

22 2.4 “Highly Confidential- Attorneys’ Eyes Only” Information or Items:
23 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-
24 party would create a substantial risk of serious injury that could not be avoided by less restrictive
25 means.

26 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
27 Party.

1 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Materials in
2 this action.

3 2.7 Designating Party: a Party or non-party that designates information or items that it
4 produces in disclosures or in response to discovery as “Confidential” or “Highly Confidential –
5 Attorneys’ Eyes Only.”

6 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
7 “Confidential” or as “Highly Confidential- Attorneys’ Eyes Only.”

8 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to
9 represent or advise a Party in this action.

10 2.10 House Counsel: attorneys who are employees of a Party.

11 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support
12 staffs).

13 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the
14 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
15 in this action and who is not a past or a current employee of a Party or of a competitor of a Party’s and
16 who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a
17 Party’s. This definition includes a professional jury or trial consultant retained in connection with this
18 litigation.

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

22 3. SCOPE

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

1 4. DURATION

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

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-
7 party that designates information or items for protection under this Order must take care to limit any
8 such designation to specific material that qualifies under the appropriate standards. A Designating Party
9 must take care to designate for protection only those parts of material, documents, items, or oral or
10 written communications that qualify - so that other portions of the material, documents, items, or
11 communications for which protection is not warranted are not swept unjustifiably within the ambit of
12 this Order.

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

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

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
22 e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that
23 qualifies for protection under this Order must be clearly so designated before the material is disclosed or
24 produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (apart from transcripts of depositions or
27 other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
28 "HIGHLY CONFIDENTIAL – ATTORNEY' EYES ONLY" at the top of each page that contains
protected material. If only a portion or portions of the material on a page qualifies for protection, the

1 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings
2 in the margins) and must specify, for each portion, the level of protection being asserted (either
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

4 A Party or non-party that makes original documents or materials available for
5 inspection need not designate them for protection until after the inspecting Party has indicated which
6 material it would like copied and produced. During the inspection and before the designation, all of the
7 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY.” After the inspecting Party has identified the documents it wants copied and produced,
9 the Producing Party must determine which documents, or portions thereof, qualify for protection under
10 this Order, then, before producing the specified documents, the Producing Party must affix the
11 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY”) at the top of each page that contains Protected Material. If only a portion or portions of the
13 material on a page qualifies for protection, the Producing Party also must clearly identify the protected
14 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
15 level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY”).

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

1 Transcript pages containing Protected Material must be separately bound by the court
2 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-party offering or
4 sponsoring the witness or presenting the testimony.

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

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
12 qualified information or items as “Confidential” or “Highly Confidential- Attorneys’ Eyes Only” does
13 not, standing alone, waive the Designating Party’s right to secure protection under this Order for such
14 material. If material is appropriately designated as "Confidential" or “Highly Confidential- Attorneys’
15 Eyes Only” after the material was initially produced, the Receiving Party on timely notification of the
16 designation, must make reasonable efforts to assure that the material is treated in accordance with the
17 provisions of this Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s confidentiality
20 designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a
21 later significant disruption or delay of the litigation, a Party does not waive its right to challenge a
22 confidentiality designation by electing not to mount a challenge promptly after the original designation
23 is disclosed.

24 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s
25 confidentiality designation must do so in good faith and must begin the process by conferring directly
26 (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the
27 Designating Party. In conferring, the challenging Party must explain the basis for its belief that the
28 confidentiality designation was not proper and must give the Designating Party an opportunity to review

1 the designated material, to reconsider the circumstances, and, if no change in designation is offered, to
2 explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the
3 challenge process only if it has engaged in this meet and confer process first.

4 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
5 designation after considering the justification offered by the Designating Party may file and serve a
6 motion under Civil Local Rule (and in compliance with Civil Local Rule 79-5, if applicable) that
7 identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion
8 must be accompanied by a competent declaration that affirms that the movant has complied with the
9 meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the
10 justification for the confidentiality designation that was given by the Designating Party in the meet and
11 confer dialogue.

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

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
17 produced by another Party or by a non-party in connection with this case only for prosecuting,
18 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
19 categories of persons and under the conditions described in this Order. When the litigation has been
20 terminated, a Receiving Party must comply with the provisions of section II, below (FINAL
21 DISPOSITION).

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

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
25 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information
26 or item designated CONFIDENTIAL only to:

27 (a) the Receiving Party's Outside Counsel of record in this action, as well as employees
28 of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and

1 who have signed the “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A;

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

5 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
6 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective
7 Order” (Exhibit A);

8 (d) the Court and its personnel;

9 (e) court reporters, their staffs, and professional vendors to whom disclosure is
10 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective
11 Order” (Exhibit A);

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

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

18 (h) the mediator selected by the parties.

19 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

20 Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating
21 Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL
22 – ATTORNEYS’ EYES ONLY” only to:

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

26 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for
27 this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A), and
28 (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;

1 (c) the Court and its personnel;

2 (d) court reporters, their staffs, and professional vendors to whom disclosure is
3 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective
4 Order” (Exhibit A); and

5 (e) the author of the document or the original source of the information.

6 (f) the mediator selected by the parties.

7 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL- ATTORNEYS’
8 EYES ONLY” Information or Items to "Experts"

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

21 (b) A Party that makes a request and provides the information specified in the preceding
22 paragraph may disclose the subject Protected Material to the identified Expert unless, within seven court
23 days of delivering the request, the Party receives a written objection from the Designating Party. Any
24 such objection must set forth in detail the grounds on which it is based.

25 (c) A Party that receives a timely written objection must meet and confer with the
26 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement. If
27 no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion as
28 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking

1 permission from the court to do so. Any such motion must describe the circumstances with specificity,
2 set forth in detail the reasons for which the disclosure to the Expert is reasonably necessary, assess the
3 risk of harm that the disclosure would entail and suggest any additional means that might be used to
4 reduce that risk. In addition, any such motion must be accompanied by a competent declaration in which
5 the movant describes the parties' efforts to resolve the matter by agreement (i.e., the extent and the
6 content of the meet and confer discussions) and sets forth the reasons advanced by the Designating Party
7 for its refusal to approve the disclosure.

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

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
12 LITIGATION.

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

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

24 The purpose of imposing these duties is to alert the interested parties to the existence of
25 this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
26 confidentiality interests in the court from which the subpoena or order issued. The Designating Party
27 shall bear the burdens and the expenses of seeking protection in that court of its confidential material-
28 and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in

1 this action to disobey a lawful directive from another court.

2 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

14 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the Producing Party,
15 within sixty days after the final termination of this action, each Receiving Party must return all Protected
16 Material to the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,
17 abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected
18 Material. With permission in writing from the Designating Party, the Receiving Party may destroy some
19 or all of the Protected Material instead of returning it. Whether the Protected Material is returned or
20 destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the
21 same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category,
22 where appropriate) all the Protected Material that was returned or destroyed and that affirms that the
23 Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of
24 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
25 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
26 correspondence or attorney work product, even if such materials contain Protected Material. Any such
27 archival copies that contain or constitute Protected Material remain subject to this Protective Order as
28

1 set forth in Section 4 (DURATION), above.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
5 modification by the Court in the future

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no
7 Party waives any right it otherwise would have to object to disclosing or producing any information or
8 item on any ground not addressed in this Stipulated protective Order. Similarly, no Party waives any
9 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 RUDY, EXELROD, ZIEFF & LOWE, L.L.P.

14 DATED: May 19, 2009

/s/ Kenneth J. Sugarman
Attorneys for Plaintiff

16 DICKENSON, PEATMAN & FOGARTY, P.C.

17 DATED: May 19, 2009

/s/ Brandon R. Blevans
Attorneys for Defendant

20 PURSUANT TO STIPULATION, IT IS SO ORDERED



21 May 26, 2009

22 DATED: _____

Edward M. Chen
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3
4 I, _____ [print or
5 type full name], of _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Stipulated Protective Order that was issued by the
7 United States District Court for the Northern District of California on [date] in the case of
8 _____ **insert formal name of the case and the number and initials assigned to it by the**
9 **court**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to sanctions and punishment in
11 the nature of contempt. I solemnly promise that I will not disclose in any manner any information or
12 item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance
13 with the provisions of this Order.

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

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

21
22 Date: _____

23
24 City and State where sworn and signed: _____

25 Printed name: _____
[printed name]

26 Signature: _____
[signature]