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 6 CAL RESTAURANTS, LTD., formerly known as
 CNL CALIFORNIA RESTAURANTS, LTD.
 7

8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

11 SILVER CREEK VALLEY – C.F., a
 California limited partnership; and
 12 NORTH FIRST STREET PROPERTIES, a
 California general partnership,

13 Plaintiffs,

14 vs.

15 TGI FRIDAY’S, INC., a New York
 16 corporation; CNL CALIFORNIA
 RESTAURANTS, LTD., a Florida limited
 17 partnership; and DOES 1 THROUGH 10,
 INCLUSIVE,

18 Defendants.
 19

CASE NO: C-09-05500 JSW
STIPULATED PROTECTIVE ORDER

21 1. PURPOSES AND LIMITATIONS

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

1 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
2 Stipulated Protective Order creates no entitlement to file confidential information under seal;
3 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
4 that will be applied when a party seeks permission from the court to file material under seal.

5 2. DEFINITIONS

6 2.1 Party: any party to this action, including all of its officers, directors,
7 employees, consultants, retained experts, and outside counsel (and their support staff).

8 2.2 Disclosure or Discovery Material: all items or information, regardless of
9 the medium or manner generated, stored, or maintained (including, among other things,
10 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
11 responses to discovery in this matter.

12 2.3 “Confidential” Information or Items: information (regardless of how
13 generated, stored or maintained) or tangible things that qualify for protection under standards
14 developed under F.R.Civ.P. 26(c).

15 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
16 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or
17 non-party would create a substantial risk of serious injury that could not be avoided by less
18 restrictive means.

19 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
20 from a Producing Party.

21 2.6 Producing Party: a Party or non-party that produces Disclosure or
22 Discovery Material in this action.

23 2.7 Designating Party: a Party or non-party that designates information or
24 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
25 Confidential — Attorneys’ Eyes Only.”

26 2.8 Protected Material: any Disclosure or Discovery Material that is
27 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

28 2.9 Outside Counsel: attorneys who are not employees of a Party but who are

1 retained to represent or advise a Party in this action.

2 2.10 House Counsel: attorneys who are employees of a Party.

3 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
4 as their support staffs).

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

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

15 3. SCOPE

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

20 4. DURATION

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

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection.

26 Each Party or non-party that designates information or items for protection under this Order must
27 take care to limit any such designation to specific material that qualifies under the appropriate
28 standards. A Designating Party must take care to designate for protection only those parts of

1 material, documents, items, or oral or written communications that qualify — so that other
2 portions of the material, documents, items, or communications for which protection is not
3 warranted are not swept unjustifiably within the ambit of this Order.

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

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

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

16 Designation in conformity with this Order requires:

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

25 A Party or non-party that makes original documents or materials available
26 for inspection need not designate them for protection until after the inspecting Party has indicated
27 which material it would like copied and produced. During the inspection and before the
28 designation, all of the material made available for inspection shall be deemed "HIGHLY

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

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

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

28 (c) for information produced in some form other than documentary.

1 and for any other tangible items, that the Producing Party affix in a prominent place on the
2 exterior of the container or containers in which the information or item is stored the legend
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY.” If only
4 portions of the information or item warrant protection, the Producing Party, to the extent
5 practicable, shall identify the protected portions, specifying whether they qualify as
6 “Confidential” or as “Highly Confidential — Attorneys’ Eyes Only.”

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

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

1 6.3 Judicial Intervention. A Party that elects to press a challenge to a
2 confidentiality designation after considering the justification offered by the Designating Party
3 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
4 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the
5 challenge. Each such motion must be accompanied by a competent declaration that affirms that
6 the movant has complied with the meet and confer requirements imposed in the preceding
7 paragraph and that sets forth with specificity the justification for the confidentiality designation
8 that was given by the Designating Party in the meet and confer dialogue.

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

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
24 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
25 disclose any information or item designated CONFIDENTIAL only to:

26 (a) the Receiving Party's Outside Counsel of record in this action, as
27 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
28 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is

1 attached hereto as Exhibit A;

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

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

8 (d) the Court and its personnel;

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

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

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

19 7.3 Disclosure of “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES
20 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by
21 the Designating Party, a Receiving Party may disclose any information or item designated
22 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” only to:

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

27 (b) House Counsel of a Receiving Party (1) who has no involvement in
28 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,

1 and (3) who has signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

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

6 (d) the Court and its personnel;

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

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

12 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL —
13 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

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

26 (b) A Party that makes a request and provides the information specified
27 in the preceding paragraph may disclose the subject Protected Material to the identified Expert
28 unless, within seven court days of delivering the request, the Party receives a written objection

1 from the Designating Party. Any such objection must set forth in detail the grounds on which it is
2 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 resolve the
5 matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the
6 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local
7 Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must
8 describe the circumstances with specificity, set forth in detail the reasons for which the disclosure
9 to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and
10 suggest any additional means that might be used to reduce that risk. In addition, any such motion
11 must be accompanied by a competent declaration in which the movant describes the parties'
12 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
13 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to
14 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 (under the
17 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to
18 its Expert.

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

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

27 The Receiving Party also must immediately inform in writing the Party who
28 caused the subpoena or order to issue in the other litigation that some or all the material covered

1 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
2 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action
3 that caused the subpoena or order to issue.

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

10 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

22 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
23 Producing Party, within sixty days after the final termination of this action, each Receiving Party
24 must return all Protected Material to the Producing Party. As used in this subdivision, “all
25 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of
26 reproducing or capturing any of the Protected Material. With permission in writing from the
27 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
28 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must

1 submit a written certification to the Producing Party (and, if not the same person or entity, to the
2 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all
3 the Protected Material that was returned or destroyed and that affirms that the Receiving Party has
4 not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
5 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
6 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
7 correspondence or attorney work product, even if such materials contain Protected Material. Any
8 such archival copies that contain or constitute Protected Material remain subject to this Protective
9 Order as set forth in Section 4 (DURATION), above.

10 12. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
12 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 disclosing or
15 producing any information or item on any ground not addressed in this Stipulated Protective
16 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
17 the material covered by this Protective Order.

18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19 DATED: April 28, 2010

BUCHALTER NEMER
A Professional Corporation

21 By: /s/ Glenn P. Zwang
22 GLENN P. ZWANG
23 Attorneys for Defendant
CAL RESTAURANTS, LTD.

24 DATED: April 28, 2010

MCGRANE GREENFIELD LLP

26 By: /s/ Christopher D. Sullivan
27 CHRISTOPHER D. SULLIVAN
Attorneys for Plaintiffs

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: May 3, 2010


United States District/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 on [date] in the case of
_____ **[insert formal name of the case and the number and initials
assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
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]