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10 Attorneys for Plaintiffs

11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

<p>13 CHRISTINA SMITH, et al. 14 Plaintiffs, 15 v. 16 LEVINE LEICHTMAN CAPITAL PARTNERS, INC., et al. 17 Defendants.</p>	<p>18 Civ. No. 3:10-cv-0010 JSW 19 CLASS ACTION 20 STIPULATED PROTECTIVE ORDER IN CONFORMITY TO N.D. CALIF. FORM ORDER FOR STANDARD LITIGATION</p>
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21 1. PURPOSES AND LIMITATION

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 disclosure
 24 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
 25 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
 26 Order. The parties acknowledge that this Order does not confer blanket protections on all
 27 disclosures or responses to discovery and that the protection it affords from public disclosure and
 28 use extends only to the limited information or items that are entitled to confidential treatment under
 the applicable legal principles. The parties further acknowledge, as set forth in Section 8, below,
 that this Stipulated Protective Order does not entitle them to file confidential information under seal;
 Civil Local Rule 79-5 sets for the procedures that must be followed and the standards that will be
 applied when a party seeks permission from the court to file material under seal.

1 2. DEFINITIONS

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
3 information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it
5 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
6 of Civil Procedure 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
8 (as well as their support staff).

9 2.4 Designating Party: A Part or Non-Party that designates information or items
10 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

11 2.5 Disclosure or Discovery Material: all items or information, regardless of the
12 medium or manner in which it is generated, stored, or maintained (including, among other things,
13 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
14 responses to discovery in this matter.

15 2.6 Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
17 witness or as a consultant in this action.

18 2.7 House Counsel: attorneys who are employees of a party to this action. House
19 Counsel does not include Outside Counsel of Record or any other outside counsel.

20 2.8 Non-Party: any natural person, partnership, corporation, association, or other
21 legal entity not named a s a Party to this action.

22 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
23 this action but are retained to represent or advise a party to this action and have appeared in this
24 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that
25 party.

26 2.10 Party: any to this action, including all if its officers, directors, employees,
27 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

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1 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
2 Material in this action.

3 2.12 Professional Vendors: persons or entities that provide litigation support
4 services (e.g. photocopying, videotaping, translating, preparing exhibits or demonstrations, and
5 organizing, storing, or retrieving data in any form or medium), and their employees and
6 subcontractors.

7 2.13 Protected Material: any Disclosure or Discovery material that is designated
8 as "CONFIDENTIAL."

9 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from
10 a Producing Party.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected
13 Material (as defined above), but also (1) any information copied or extracted from Protected
14 Material; (2) all copies, excerpts, summaries, or compilation of Protected Material; and (3) any
15 testimony, conversation, or presentations by Parties of their counsel that might reveal Protected
16 material. However, the protections conferred by this Stipulation and Order do not cover the
17 following information: (a) any information that is in the public domain at the time of disclosure to a
18 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
19 result of publication not involving a violation of this Order, including becoming part of the public
20 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the
21 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
22 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
23 Protected Material at trial shall be governed by a separate agreement or order.

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations imposed
26 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
27 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
28 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the

1 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
2 including the time limits for filing any motions or applications for extension of time pursuant to
3 applicable law.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating material for Protection. Each
6 Party or Non-Party that designates information or items for protection under this Order must take
7 care to limit any such designation to specific material that qualifies under the appropriate standards.
8 The Designating Party must designate for protection only those parts of material, documents, items,
9 or oral or written communications that qualify – so that other portions of the material, documents,
10 items, or communications for which protection is not warranted are not swept unjustifiably within
11 the ambit of this Order.

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

16 If it comes to a Designating party's attention that information or items that it
17 designated for protection do not qualify for protections, that Designating Party must promptly notify
18 all other Parties that it is withdrawing the mistaken designation.

19 5.2 Manner and Timing of Depositions. Except as otherwise provided in this
20 Order (see, e.g. second paragraph or section 5.2(a) below), or as otherwise stipulated or ordered,
21 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
22 designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents, but
25 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
26 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion
27 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
28 identify the protected portion(s) e.g., by making appropriate markings in the margins).

1 A Party or Non-Party that makes original documents or materials available for
2 inspection need not designate them for protection until after the inspecting Party has indicated
3 which material it would like copied and produced. During the inspection and before the
4 designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.”
5 After the inspecting Party has identified the documents it wants copied and produced, the Producing
6 Party must determine which documents, or portions thereof, qualify for protection under this Order.
7 Then, before producing the specified documents, the Producing party must affix the
8 “CONFIDENTIAL” legend to each page that contains Protected material. If only a portion or
9 portions of the material on a page qualifies for protection, the Producing Party, to the extent
10 practicable, shall identify the protected portion(s) (e.g., by making appropriate markings in the
11 margins).

12 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
13 the Designating Party identify on the record, before the close of the deposition, hearing, or other
14 proceeding, all protected testimony.

15 (c) for information produced in some form other than documentary and for any
16 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
17 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”
18 If only a portion of or portions of the information or item warrant protection, the Producing Party, to
19 the extent practicable, shall identify the protected portion(s).

20 5.3 Inadvertent Failures to Designate. If promptly corrected upon discovery, an
21 inadvertent failure to designate qualified information or items as “Confidential” does not, standing
22 alone, waive the Designating Party’s right to secure protection under this Order for such material. If
23 material is appropriately designated as “Confidential” after the material was initially produced, the
24 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
25 that the material is treated in accordance with the provisions of this Order.

26 5.4 Designation by Party other than Producing Party. A Party, other than the
27 Producing Party, may designate as “CONFIDENTIAL” information or items produced by another
28 Party by giving written notice to all Parties within thirty (30) days of production of the material by

1 another Party. Upon timely designation, the Producing Party and Receiving Party will work in good
2 faith with the Designating Party to ensure the “CONFIDENTIAL” Information or Items receive any
3 necessary legends and are treated in accordance with the provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

11 Mass, indiscriminate, or routinized challenges are prohibited. Challenges that are
12 shown to be clearly unjustified or that have been made for an improper purposes (e.g., to
13 unnecessarily encumber or retard the case development process or to impose unnecessary expenses
14 and burdens on other parties) may expose the Challenging Party to sanctions.

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

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
4 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
5 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
6 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
7 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
8 competent declaration affirming that the movant has complied with the meet and confer
9 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
10 motion including the required declaration within 21 days (or 14 days, if applicable) shall
11 automatically waive the confidentiality designation for each challenged designation. In addition, the
12 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
13 good cause for doing so, including a challenge to the designation of a deposition transcript or any
14 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
15 competent declaration affirming that the movant has complied with the meet and confer
16 requirements imposed by the preceding paragraph.

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

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

1 the litigation has been terminated, a Receiving Party must comply with the provisions of section 13
2 below (FINAL DISPOSITON).

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

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

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

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

15 (c) Co-defendants of the Producing Party and such party's Outside Counsel of
16 Record, unless the Producing Party clearly indicates that that the Protected Material may not be
17 disclosed to co-defendants or their Outside Counsel. Any such restriction shall be considered a
18 Confidentiality Designation, subject to the procedures in Section 6.

19 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure
20 is reasonably necessary for this litigation and who have signed the "Acknowledgment and
21 Agreement to Be Bound" (Exhibit A), provided that the Expert is not an employee of a competitor
22 of any Party;

23 (e) the court and its personnel;

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

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

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

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

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
8 OTHER LITIGATION

9 If a Party is served with a subpoena or a court order issued in other litigation that
10 compels disclosure of any information or items designated in this action as “CONFIDENTIAL,”
11 that Party must:

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

14 (b) promptly notify in writing the party who caused the subpoena or order to
15 issue in the other litigation that some or all of the material covered by the subpoena is subject to this
16 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

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

19 If the Designating Party timely seeks a protective order, the Party served with the
20 subpoena or court order shall not produce any information designated in this action as
21 “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued,
22 unless the Party has obtained the designating Party’s permission. The Designating Party shall bear
23 the burden and expenses of seeking protection in that court of its confidential material – and nothing
24 in these provisions should be construed as authorizing or encouraging a Receiving Party in this
25 action to disobey a lawful directive from another court.
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1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
2 THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a Non-
4 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
5 Parties in connection with this litigation is protected by the remedies and relief provided by this
6 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
7 additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to produce a
9 Non-Party’s confidential information in its possession, and the Party is subject to an agreement with
10 the Non-Party not to produce the non-Party’s confidential information, then the Party shall:

11 1. promptly notify in writing the Requesting Party and the Non-Party
12 that some or all of the information requested is subject to a confidentiality agreement with a Non-
13 Party;

14 2. promptly provide the Non-Party with a copy of the Stipulated
15 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
16 description of the information requested; and

17 3. make the information requested available for inspection by the Non-
18 Party.

19 (c) If the Non-Party fails to object or seek a protective from this court within 14
20 days of receiving the notice and accompanying information, the Receiving Party may produce the
21 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely
22 seeks a protective order, the Receiving Party shall not produce any information in its possession or
23 control that is subject to the confidentiality agreement with the Non-Party before a determination by
24 the court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
25 seeking protection in this court of its Protected Material.

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¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
14 is not intended to modify whatever procedure may be established in an e-discovery order that
15 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
16 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
17 communication or information covered by the attorney-client privilege or work product protection,
18 the parties may incorporate their agreement in the stipulated protective order submitted to the court.

19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order no Party waives any right it otherwise would have to object to disclosing or
24 producing any information or item on any ground not addressed in this Stipulated Protective Order.
25 Similarly, no Party waives any right to object on any ground to the use in evidence of any of the
26 material covered by this Protective Order.

27 12.3 Filing Protected Material. Without written permission from the Designating
28 Party or a court order secured after appropriate notice to all interested persons, a Party may not file

1 in the public record in this action any Protected material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
3 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
4 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
5 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
6 to protection under the law. If a Receiving Party's request to file Protected Material under seal
7 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the
8 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by
9 the court.

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

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD, this 6TH day of August, 2010.

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4 /s/ Irv Ackelsberg

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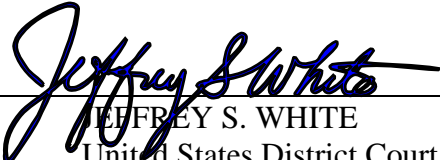
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: August 9, 2010



JEFFREY S. WHITE
United States District Court

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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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 name 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 sworn and signed: _____

Printed name: _____

Signature: _____