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 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION

12
 13 ASHANKA STAGG, DAMIAN SEQUOIA,
 14 LUCIAN BALMER, SUNDARI
 MICHAELIAN,

Case No.: CV 10-02768 JSW

STIPULATED PROTECTIVE ORDER

15 Plaintiffs,

16 vs.

17 ANANDA FUARA RESTAURANT; an
 18 entity, form unknown; GARIMA, INC., a
 19 corporation; GARIMA HOFFMANN, an
 20 individual; SRI CHINMOY SOCIETY, INC.,
 a corporation; SRI CHINMOY CENTRE,
 21 an entity, form unknown; and DOES 1-
 100, inclusive,

22 Defendants.

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 24 1. PURPOSES AND LIMITATIONS

25 Disclosure and discovery activity in this action are likely to involve production of
 26 confidential, proprietary, or private information for which special protection from public
 27 disclosure and from use for any purpose other than prosecuting this litigation may be
 28 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the

1 following Stipulated Protective Order. The parties acknowledge that this Order does not
2 confer blanket protections on all disclosures or responses to discovery and that the
3 protection it affords from public disclosure and use extends only to the limited
4 information or items that are entitled to confidential treatment under the applicable legal
5 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
6 Stipulated Protective Order does not entitle them to file confidential information under
7 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the
8 standards that will be applied when a party seeks permission from the court to file
9 material under seal.

10 2. DEFINITIONS

11 2.1 Challenging Party: a Party or Non-Party that challenges the
12 designation of information or items under this Order.

13 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
14 how it is generated, stored or maintained) or tangible things that qualify for protection
15 under Federal Rule of Civil Procedure 26(c).

16 2.3 Counsel (without qualifier): Outside Counsel of Record and House
17 Counsel (as well as their support staff).

18 2.4 Designating Party: a Party or Non-Party that designates information
19 or items that it produces in disclosures or in responses to discovery as
20 "CONFIDENTIAL."

21 2.5 Disclosure or Discovery Material: all items or information,
22 regardless of the medium or manner in which it is generated, stored, or maintained
23 (including, among other things, testimony, transcripts, and tangible things), that are
24 produced or generated in disclosures or responses to discovery in this matter.

25 2.6 Expert: a person with specialized knowledge or experience in a
26 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
27 as an expert witness or as a consultant in this action.

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1 2.7 House Counsel: attorneys who are employees of a party to this
2 action. House Counsel does not include Outside Counsel of Record or any other
3 outside counsel.

4 2.8 Non-Party: any natural person, partnership, corporation,
5 association, or other legal entity not named as a Party to this action.

6 2.9 Outside Counsel of Record: attorneys who are not employees of a
7 party to this action but are retained to represent or advise a party to this action and have
8 appeared in this action on behalf of that party or are affiliated with a law firm which has
9 appeared on behalf of that party.

10 2.10 Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this action.

15 2.12 Professional Vendors: persons or entities that provide litigation
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
18 their employees and subcontractors.

19 2.13 Protected Material: any Disclosure or Discovery Material that is
20 designated as "CONFIDENTIAL."

21 2.14 Receiving Party: a Party that receives Disclosure or Discovery
22 Material from a Producing Party.

23 3. SCOPE

24 The protections conferred by this Stipulation and Order cover not only Protected
25 Material (as defined above), but also (1) any information copied or extracted from
26 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
27 Material; and (3) any testimony, conversations, or presentations by Parties or their
28 Counsel that might reveal Protected Material. However, the protections conferred by

1 this Stipulation and Order do not cover the following information: (a) any information that
2 is in the public domain at the time of disclosure to a Receiving Party or becomes part of
3 the public domain after its disclosure to a Receiving Party as a result of publication not
4 involving a violation of this Order, including becoming part of the public record through
5 trial or otherwise; and (b) any information known to the Receiving Party prior to the
6 disclosure or obtained by the Receiving Party after the disclosure from a source who
7 obtained the information lawfully and under no obligation of confidentiality to the
8 Designating Party. Any use of Protected Material at trial shall be governed by a
9 separate agreement or order.

10 4. DURATION

11 Even after final disposition of this litigation, the confidentiality obligations imposed
12 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
13 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
14 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
15 judgment herein after the completion and exhaustion of all appeals, rehearings,
16 remands, trials, or reviews of this action, including the time limits for filing any motions
17 or applications for extension of time pursuant to applicable law.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for
20 Protection. Each Party or Non-Party that designates information or items for protection
21 under this Order must take care to limit any such designation to specific material that
22 qualifies under the appropriate standards. The Designating Party must designate for
23 protection only those parts of material, documents, items, or oral or written
24 communications that qualify – so that other portions of the material, documents, items,
25 or communications for which protection is not warranted are not swept unjustifiably
26 within the ambit of this Order.

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1 Mass, indiscriminate, or routinized designations are prohibited.

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

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

9 5.2 Manner and Timing of Designations. Except as otherwise provided
10 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under
12 this Order must be clearly so designated before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

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

20 A Party or Non-Party that makes original documents or materials available
21 for inspection need not designate them for protection until after the inspecting Party has
22 indicated which material it would like copied and produced. During the inspection and
23 before the designation, all of the material made available for inspection shall be deemed
24 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
25 copied and produced, the Producing Party must determine which documents, or
26 portions thereof, qualify for protection under this Order. Then, before producing the
27 specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to
28 each page that contains Protected Material. If only a portion or portions of the material

1 on a page qualifies for protection, the Producing Party also must clearly identify the
2 protected portion(s) (e.g., by making appropriate markings in the margins).

3 (b) for testimony given in deposition, the entire deposition transcript will be
4 deemed "CONFIDENTIAL" up until 14-days after receipt of the court reporter's
5 transcript. During the 14-day period following receipt of the court reporter's transcript,
6 Designating Party must designate the protected testimony. Upon expiration of the 14-
7 day period, only the designated portions of the transcript, if any, will remain
8 "CONFIDENTIAL."

9 (c) for testimony given in other pretrial or trial proceedings, that the
10 Designating Party identify on the record, before the close of the hearing, or other
11 proceeding, all protected testimony.

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

18 5.3 Inadvertent Failures to Designate. If timely corrected, an
19 inadvertent failure to designate qualified information or items does not, standing alone,
20 waive the Designating Party's right to secure protection under this Order for such
21 material. Upon timely correction of a designation, the Receiving Party must make
22 reasonable efforts to assure that the material is treated in accordance with the
23 provisions of this Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time. Unless a prompt challenge to a Designating
27 Party's confidentiality designation is necessary to avoid foreseeable, substantial
28 unfairness, unnecessary economic burdens, or a significant disruption or delay of the

1 litigation, a Party does not waive its right to challenge a confidentiality designation by
2 electing not to mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
4 resolution process by providing written notice of each designation it is challenging and
5 describing the basis for each challenge. To avoid ambiguity as to whether a challenge
6 has been made, the written notice must recite that the challenge to confidentiality is
7 being made in accordance with this specific paragraph of the Protective Order. The
8 parties shall attempt to resolve each challenge in good faith and must begin the process
9 by conferring directly (in voice to voice dialogue; other forms of communication are not
10 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
11 Party must explain the basis for its belief that the confidentiality designation was not
12 proper and must give the Designating Party an opportunity to review the designated
13 material, to reconsider the circumstances, and, if no change in designation is offered, to
14 explain the basis for the chosen designation. A Challenging Party may proceed to the
15 next stage of the challenge process only if it has engaged in this meet and confer
16 process first or establishes that the Designating Party is unwilling to participate in the
17 meet and confer process in a timely manner.

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
19 without court intervention, the Designating Party shall file and serve a motion to retain
20 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
21 applicable) within 21 days of the initial notice of challenge or within 14 days of the
22 parties agreeing that the meet and confer process will not resolve their dispute,
23 whichever is earlier. Each such motion must be accompanied by a competent
24 declaration affirming that the movant has complied with the meet and confer
25 requirements imposed in the preceding paragraph. Failure by the Designating Party to
26 make such a motion including the required declaration within 21 days (or 14 days, if
27 applicable) shall automatically waive the confidentiality designation for each challenged
28 designation. In addition, the Challenging Party may file a motion challenging a

1 confidentiality designation at any time if there is good cause for doing so, including a
2 challenge to the designation of a deposition transcript or any portions thereof. Any
3 motion brought pursuant to this provision must be accompanied by a competent
4 declaration affirming that the movant has complied with the meet and confer
5 requirements imposed by the preceding paragraph.

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

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

28 (a) the Receiving Party's Outside Counsel of Record in this action, as well
as employees of said Outside Counsel of Record to whom it is reasonably necessary to

1 disclose the information for this litigation and who have signed the “Acknowledgment
2 and Agreement to Be Bound” that is attached hereto as Exhibit A;

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

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

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants,
11 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for
12 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
13 (Exhibit A);

14 (f) during their depositions, witnesses in the action to whom disclosure is
15 reasonably necessary shall be advised regarding the existence of the Stipulated
16 Protective Order and of the requirement that the witness must comply with the
17 limitations imposed with respect to information designated as “CONFIDENTIAL” or else
18 be subject to contempt if he or she should violate the limitations imposed in the
19 Stipulated Protective Order before the witness is permitted to read or be shown the
20 information or items which have been designated “CONFIDENTIAL,” unless otherwise
21 agreed by the Designating Party or ordered by the court. Pages of transcribed
22 deposition testimony or exhibits to depositions that reveal Protected Material must be
23 separately bound by the court reporter and may not be disclosed to anyone except as
24 permitted under this Stipulated Protective Order.

25 (g) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information.

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

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

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

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

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

14 If the Designating Party timely seeks a protective order, the Party served with the
15 subpoena or court order shall not produce any information designated in this action as
16 “CONFIDENTIAL” before a determination by the court from which the subpoena or
17 order issued, unless the Party has obtained the Designating Party’s permission. The
18 Designating Party shall bear the burden and expense of seeking protection in that court
19 of its confidential material – and nothing in these provisions should be construed as
20 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
21 from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
23 PRODUCED IN THIS LITIGATION

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

1 (b) In the event that a Party is required, by a valid discovery request, to produce
2 a Non-Party's confidential information in its possession, and the Party is subject to an
3 agreement with the Non-Party not to produce the Non-Party's confidential information,
4 then the Party shall:

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

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

11 3. make the information requested available for inspection by the Non-
12 Party.

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

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

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

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of
15 any person to seek its modification by the court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in this
19 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground
20 to use in evidence of any of the material covered by this Protective Order.

21 12.3 Filing Protected Material. Without written permission from the
22 Designating Party or a court order secured after appropriate notice to all interested
23 persons, a Party may not file in the public record in this action any Protected Material. A
24 Party that seeks to file under seal any Protected Material must comply with Civil Local
25 Rule 79-5. Protected Material may only be filed under seal pursuant to a court order
26 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil
27 Local Rule 79-5, a sealing order will issue only upon a request establishing that the
28 Protected Material at issue is privileged, protectable as a trade secret, or otherwise
entitled to protection under the law. If a Receiving Party's request to file Protected

1 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the
2 Receiving Party may file the information in the public record pursuant to Civil Local Rule
3 79-5(e) unless otherwise instructed by the court.

4 13. FINAL DISPOSITION. Within 60 days after the final disposition of this
5 action, as defined in paragraph 4, each Receiving Party must return all Protected
6 Material to the Producing Party or destroy such material. As used in this subdivision,
7 “all Protected Material” includes all copies, abstracts, compilations, summaries, and any
8 other format reproducing or capturing any of the Protected Material. Whether the
9 Protected Material is returned or destroyed, the Receiving Party must submit a written
10 certification to the Producing Party (and, if not the same person or entity, to the
11 Designating Party) by the 60 day deadline that (1) identifies (by category, where
12 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
13 the Receiving Party has not retained any copies, abstracts, compilations, summaries or
14 any other format reproducing or capturing any of the Protected Material.

15 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
16 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
17 correspondence, deposition and trial exhibits, expert reports, attorney work product, and

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